

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



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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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# Membership

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# Guide to the Digest

The Legislation Review Committee has two broad functions set out in sections 8A and 9 of the *Legislation Review Act 1987* (**the Act**). Section 8A requires the Committee to scrutinise all Bills introduced into Parliament while section 9 requires the scrutiny of all regulations.

## Part One: Functions Regarding Bills

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:

- (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) trespass unduly on personal rights and liberties
  - (ii) makes rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers
  - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions
  - (iv) inappropriately delegates legislative powers, or
  - (v) 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
- procedural fairness
- rule of law and separation of powers
- extraterritoriality
- strict liability and penalty notice offences
- search and seizure without warrant
- confidential communications and privilege
- wide regulatory powers
- access to vote
- ability to engage in public life and public elections
- equal application of laws
- freedom of expression and free speech
- freedom of religion and belief
- freedom of contract
- right to personal and real property
- privacy and protection of personal information
- right to personal physical integrity
- legislative interference in standing judicial matters

**Insufficiently defined administrative powers:**

- insufficiently defined or wide powers

**Non-reviewable decisions:**

- excludes access to review
- limits type of evidence available to a decision-maker
- provides decision-maker is not required to provide reasons for a decision
- decisions made in private

**Inappropriate delegation of legislative powers:**

- provides the executive with unilateral authority to commence an Act (i.e. commencement by proclamation)
- wide power of delegation
- wide regulation-making powers (e.g. creation of offences or setting penalties)
- Henry VIII clauses (clauses that allow amendment of Acts by regulation)
- imposition of tax or levy by regulation

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny**

- subordinate legislation not tabled in Parliament and not subject to disallowance
- insufficient disallowance period
- significant matters which should be set by Parliament (e.g. definitions)
- incorporating rules or standards of other bodies in force not subject to disallowance

In practice, the Committee highlights issues of concern and takes into consideration the potential reasons for introducing such a provision and any safeguards in place. The Committee 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 it. However, this does not prevent the Committee from reporting on any passed or enacted Bill.



## Part Two: Functions Regarding Regulations

The Committee's functions regarding regulations are established under section 9 of the Act:

- (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament, and
- (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.

The Committee reviews all disallowable regulations which have been tabled in Parliament. However, unlike Bills, 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.



## Conclusions on Bills and Regulations

Part One of the Digest contains the Committee's reports on Bills which were introduced into Parliament. Under the section titled 'Issues considered by the Committee', the report includes commentary about whether the Bill engages with one or more of the five criteria for scrutiny set out in section 8A(1)(b) of the Act. This will include either:

- Where no issues set out in section 8A(1)(b) are identified, that 'The Committee makes no comment in respect of the issues set out in section 8A of the LRA.'
- Where issues set out in section 8A(1)(b) are identified, a distinct comment on each issue identified.

Part Two of the Digest contains the Committee's reports on regulations and other statutory instruments which are tabled in Parliament and are still subject to disallowance. As noted, the Committee only reports on regulations and other statutory instruments with identified issues under section 9 of the Act, and those instruments which don't have identified issues are listed in Appendix Two of the Digest. Like Bill reports, the Committee's regulation reports includes a distinct comment on each issue identified under the section titled 'Issues considered by the Committee'.

For every issue identified in a report, the Committee's comment will conclude either that the Committee 'refers/notes the matter to Parliament' or 'makes no further comment'.

Where the Committee concludes to **refer/notes the matter to Parliament**, the Committee considers that it requires a response or further comment by the Member with carriage of the Bill (for Bill reports) or the responsible Minister (for regulation reports).

Where the Committee concludes to **make no further comment** on an identified issue in the report, the Committee considers that the issue may technically engage with the criteria under section 8A or 9 of the Act but, given counterbalancing considerations (e.g. legislated safeguards), it is unlikely in practice to raise the issues under the relevant section. The Committee invites but does not otherwise require the Member with carriage (for Bill reports) or the responsible Minister (for regulation reports) to comment on these identified issues.

# Digest Snapshot

## PART ONE – BILLS

### 1. [Energy and Utilities Administration Amendment Bill 2022](#)

Issue identified	Conclusion of Committee
<i>Wide official powers – property rights, right to silence and privilege against self-incrimination</i>	Noted
<i>Penalty notice offences</i>	No further comment
<i>Operates over all other laws – freedom of contract/separation of powers</i>	Noted
<i>Declarations by Premier</i>	Noted
<i>Ministerial directions</i>	Noted
<i>Matters deferred to the regulations – creation of offences</i>	No further comment
<i>Significant matters deferred to regulations</i>	No further comment

### 2. [Forestry Amendment \(Timber Harvesting Safety Zones\) Bill 2022\\*](#)

Issue identified	Conclusion of Committee
<i>Strict liability offences carrying custodial penalties and right to peaceful assembly</i>	Noted

### 3. [Health Services Amendment \(Nurse-to-Patient and Midwife-to-Patient Ratios\) Bill 2022\\*](#)

Issue identified	Conclusion of Committee
<i>Wide and ill-defined power – safe patient care compliance directions</i>	Noted

## PART TWO – REGULATIONS

### 1. [Bail Amendment \(Proceedings for Administration of Sentence\) Regulation 2022](#)

Issue identified	Conclusion of Committee
<i>Right of the child – bail decisions in respect to juvenile parolee</i>	Noted

### 2. [Biodiversity Conservation Amendment \(Bee Keeping and Grazing\) Regulation 2022](#)

Issue identified	Conclusion of Committee
<i>Statutory rule expressed to commence before publication on NSW legislation website</i>	Noted

### 3. [Electricity Supply \(General\) Amendment \(Energy Security Safeguard Schemes\) Regulation 2022](#)

Issue identified	Conclusion of Committee
<i>Interference with privacy rights</i>	Noted

#### **4. Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 2022**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
<i>Meaning of 'Government of NSW'</i>	Noted

#### **5. Government Advertising Amendment (Exemptions) Regulation 2022**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
<i>Broad exemption from prohibition – government advertising campaigns during pre-election period</i>	Noted

#### **6. Place Management NSW Regulation 2022**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
<i>Wide enforcement powers – right to freedom of movement</i>	Noted

#### **7. Point to Point Transport (Taxis and Hire Vehicles) Amendment Regulation 2022**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
<i>Matters to be included in primary legislation – shell legislation</i>	Noted

#### **8. Protection of the Environment Operations (General) Regulation 2022**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
<i>Delegation of legislative powers</i>	Noted
<i>Use of 'examples'</i>	Noted

#### **9. Totalizator Regulation 2022**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
<i>Penalty notice offences – issue of penalty notices to persons aged under 18 years</i>	Noted

# Summary of Conclusions

## PART ONE – BILLS

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### 1. Energy and Utilities Administration Amendment Bill 2022

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

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##### *Wide official powers – property rights, right to silence and privilege against self-incrimination*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which provides inspectors appointed for a declared coal market price emergency, a number of investigation and enforcement powers. This includes powers to enter and search premises for a purpose set out in clause 14, examining and inspecting premises and things, taking things and copies of documents, and requiring a person give documents or information.

Clause 18 establishes offences for non-compliance, obstruction or giving false or misleading information in connection with the exercise of these powers, without reasonable excuse. These offences carry a maximum penalty of \$11 000 (100 penalty units) and clause 16 clarifies that self-incrimination is not a reasonable excuse for non-compliance with a requirement to give documents or information.

Therefore, the Bill may grant appointed inspectors wide powers of investigation and enforcement. The exercise of these powers may impact an individual's rights including, for example, their property rights in respect to the power to enter premises and seize property, and their privilege from self-incrimination in respect to the power to give directions for assistance.

The Committee recognises that these provisions are intended to strengthen compliance with the regulatory framework established for responding to the extraordinary challenges faced by global energy markets. These provisions are intended as a temporary intervention and will expire on 30 June 2024. The Bill also provides safeguards on the power to compel documents and information by prohibiting the use of that information in criminal proceedings where objection on grounds of self-incrimination were or could have been raised.

However, these powers may be exercised without a warrant and on broadly defined grounds like determining compliance, general administration or obtaining documents and information in connection with that administration. Civil liability is also excluded for actions taken in the execution of the Schedule.

The Committee notes that the Bill was introduced on 21 December 2022, and then passed both Houses of Parliament on that date. Consequently, the Committee was unable to report on the Bill before the second reading debates or consideration of amendments moved in either House.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

### *Penalty notice offences*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which enables appointed inspectors to issue a penalty notice to a person who appears to have committed a penalty notice offence. It also provides for regulations to prescribe penalty notice offences.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. As they may be issued a penalty notice if it 'appears' to an inspector that they have committed a penalty notice offence, this may also impact on a person's right to the presumption of innocence.

However, the Committee recognises that individuals retain the right to elect to have their matter heard and decided by a Court. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. In the circumstances, the Committee makes no further comment.

### *Operates over all other laws – freedom of contract/separation of powers*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, providing for the declaration and regulation of coal market price emergencies. Clause 22 provides that the schedule has effect despite anything expressed or implied in other laws, judgments, orders, contracts, agreements, deeds, documents, securities or 'other instruments'.

Therefore, the Bill provides for the operation of its provisions despite any inconsistency in other laws and instruments. The Committee generally comments where provisions may operate in a manner inconsistent with other laws, as this may make it harder for individuals to ascertain and understand the law applicable to them.

The Committee further notes that, by providing for legislative provisions to override judgments and orders, the Bill may infringe the constitutional doctrine of the separation of powers. This doctrine protects the independence and inherent legal powers of the judiciary from the legislature and executive branches of government in Australia.

The Bill may also impact an individual's freedom to contract by overriding terms of contracts, agreements, deeds, documents, securities or 'other instruments' which parties have agreed upon.

The Committee acknowledges that this provision is intended to facilitate the government's ability to respond to the temporary challenges faced by global energy markets. It also acknowledges that the Bill is part of a broader national response to these extraordinary circumstances. However, the wide terms of this provision may effectively enable the legislature to overrule the independent judgments of courts and undermine the validity of contracting in New South Wales. For these reasons, the Committee would usually refer this matter to the Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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

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#### *Declarations by Premier*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which enables the Premier to declare a 'coal market price emergency' by written order. This declaration may be

made if the Premier is satisfied that it is necessary to reduce the risk of the community being adversely impacted by past or projected coal price increases or insufficient domestic coal supply.

As these declarations deal with matters which have significant bearing on the delivery of an essential service to New South Wales, the Committee would prefer that they be included in a regulation to ensure an appropriate level of parliamentary oversight. This is because, unlike orders of the Premier, regulations must be tabled in Parliament and are subject to disallowance under the *Interpretation Act 1987*.

The Committee acknowledges that the declarations are intended as a temporary intervention to enable the government to respond to the extraordinary circumstances faced by global energy markets. It also acknowledges that the Bill is part of a broader national response to these circumstances.

However, the Committee notes that the Premier is not required to consult with anyone or comply with any procedural fairness requirement before making or revoking a declaration, and is only required to be published 'as soon as practicable' after it is made. As these declarations enable significant intervention in the delivery of an essential service, the Committee would usually refer this matter to the Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

#### *Ministerial directions*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which enables the Minister to give directions by written notice during a period of a coal market price emergency declared by the Premier. These directions may be given if the Minister considers it 'reasonably necessary' to respond to the emergency. Failure to comply with the requirements of a direction is an offence which carries a maximum penalty of \$110 000 (1 000 penalty units) for individuals.

As the provisions do not limit what the direction may do or require, the Bill may provide for a wide ministerial power. The Committee generally comments where there is a wide ministerial power to give directions, as it may impact upon the rights, liberties or obligations of individuals that would be subject to those directions.

Further, 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 ministerial directions be included in regulations to ensure an appropriate level of parliamentary oversight.

The Committee acknowledges that wide powers to give ministerial directions may enable flexible and timely government responses to the extraordinary circumstances faced by global energy markets. It also acknowledges that the Bill is part of a broader national response to these circumstances.

However, the Committee notes that the Minister is explicitly not required to consult with anyone or comply with any procedural fairness requirement before giving, amending or revoking a direction. The direction is only required to be published 'as soon as practicable' after it is made. As the contents of these directions are not limited, and non-compliance is an offence carrying a significant maximum monetary penalty for individuals, the Committee would usually refer this matter to Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.



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*Matters deferred to the regulations – creation of offences*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which includes a special regulation-making power to create offences that carry a maximum penalty not exceeding \$55 000 (500 penalty units). The Committee generally prefers that offences be established in primary legislation, in order to facilitate an appropriate level of parliamentary scrutiny.

The special regulation-making power explicitly operates despite section 53(3) of the Act, which limits the maximum penalty carried by offences created in regulations to no more than 20 penalty units. The Committee generally comments where provisions may be inconsistent with other laws as this may make the law hard to ascertain and understand, particularly where it concerns different penalties applicable to individuals.

However, the maximum penalty punishable by offences created by regulations is only monetary and not custodial. Regulations are also still required to be tabled in both Houses of Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*. Furthermore, Schedule 3 including the special regulation-making power to create offences is time limited for repeal on 30 June 2024. In the circumstances, the Committee makes no further comment.

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

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*Significant matters deferred to regulations*

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The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987* to make provisions in respect to declared 'coal market price emergencies'. Schedule 3 defers a number of significant matters to the regulations, including: what the Minister's directions may require, impose or do; who may be appointed as the independent regulator and inspectors; and the functions conferred on these inspectors. 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, 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. Regulations are also 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.

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## **2. Forestry Amendment (Timber Harvesting Safety Zones) Bill 2022\***

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

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*Strict liability offences carrying custodial penalties and right to peaceful assembly*

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The Bill introduces various strict liability offences into the principal Act for certain activities in relation to timber safety harvesting zones. This includes strict liability offences incurring a maximum monetary penalty of 120 penalty units (\$13 200) and/or a custodial sentence of 12 months where a person re-enters a timber harvesting safety zone or another zone, contrary to an authorised officer's direction not to do so. These penalties also apply where a person interferes with or obstructs timber harvesting or related forestry operations being carried out in a zone. Other strict liability offences may incur a maximum monetary penalty of 60 penalty units (\$6 600).

The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element is relevant to establishing liability for an offence. The Committee acknowledges that strict liability offences with monetary penalties are not uncommon in regulatory settings to encourage compliance. Further, the Bill limits the application of certain offences in specific circumstances, including where notice of the timber harvesting safety zone was not given in accordance with the Bill's requirements.

However, the Committee notes that a number of strict liability offences are introduced by this Bill and that certain offences can result in both custodial and monetary penalties being imposed on an individual. The Committee notes the seriousness of the Bill's custodial sentences and their impact on the right to personal liberty. Further, that the lawful exercise of personal rights such as the right to peaceful assembly may still attract liability for certain offences. This may discourage peaceful protest.

The Bill also increases the maximum penalty for certain strict liability offences under section 83(2) from 50 penalty units (\$5 500) and/or imprisonment for 6 months to 120 penalty units (\$13 200) and/or imprisonment for 12 months. These offences include assaulting or bribing an authorised officer. The Committee acknowledges that the introduction of increased penalties intends to strengthen deterrence and reflects the seriousness of these offences. However, the Committee again notes the seriousness of custodial sentences and their impact on the right to personal liberty.

The Committee would usually refer these matters to Parliament for its consideration. However, as the Bill lapsed on prorogation of the 57<sup>th</sup> Parliament, the Committee instead notes these matters for Parliament's consideration.

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### **3. Health Services Amendment (Nurse-to-Patient and Midwife-to-Patient Ratios) Bill 2022\***

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

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##### *Wide and ill-defined power – safe patient care compliance directions*

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The Bill inserts Part 4 into Chapter 10 of the *Health Services Act 1997*, to introduce minimum staffing ratios and requirements for NSW public hospitals. It also provides that the Health Secretary may issue a 'safe patient care compliance direction' to the operator of a hospital to give effect to these requirements. Those directions would require the operator to do or refrain from doing a specified 'thing'.

There appears to be no provisions of the Act or Regulation which define or narrow the scope of the ordinary meaning of 'thing'. The Bill may thereby provide a wide and ill-defined power to the Health Secretary, to require an operator of a public hospital to take any step or do anything for the purpose of compliance with the relevant staffing requirements.

The Committee acknowledges that the minimum staffing requirements are intended to protect public health and safety by ensuring an acceptable quality of patient care can be provided. However, the Committee notes that the term 'thing', 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.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Bill lapsed on prorogation of the 57<sup>th</sup> Parliament, the Committee instead notes these matters for Parliament's consideration.

## PART TWO – REGULATIONS

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### Explanatory note on Part Two

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The Committee notes that the following regulations set out in Part Two of this Legislation Review Digest were tabled in the 58<sup>th</sup> Parliament and are no longer subject to disallowance.

Section 9(1A) of the *Legislation Review Act 1987* provides that the Committee is not precluded from exercising its functions of considering and reporting on regulations under section 9(1) of the Act which are no longer subject to disallowance if, while it is subject to disallowance, the Committee resolves to review and report to Parliament on the Regulation.

In this instance, the Committee was dissolved on 3 March 2023 with the expiration of the 57<sup>th</sup> Parliament and no such resolution was made during the disallowance period. Therefore, the reports on regulations set out in Part Two of this Digest are provided for information only.

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### 1. Bail Amendment (Proceedings for Administration of Sentence) Regulation 2022

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

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##### *Right of the child – bail decisions in respect to juvenile parolee*

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The Regulation amends the *Bail Regulation 2021* to prescribe proceedings under the *Children (Detention Centres) Act 1987* for an alleged failure by the person to comply with obligations under a parole order as 'proceedings for the administration of sentence' under Schedule 1 of the *Bail Act 2013*. This would enable the Children's Court to make a bail decision in respect to a juvenile offender, if they are 'brought or appears before the court' in proceedings for alleged non-compliance with their obligations under a parole order.

By enabling the Children's Court to make bail decisions, the Regulation may impact the rights of the child under the *Convention on the Rights of the Child* (CRC) where juvenile parolees are refused bail and held in custody pending determination of their proceedings. The rights of children contained in Article 37 of the CRC protects children from arbitrary or unlawful deprivation of their liberty. This guarantees the use of arrest, detention or imprisonment of a child only as a measure of last resort.

The Committee recognises that imposing conditions for release on parole is a common measure intended to balance the rights of offenders and the need to protect public safety. It also acknowledges that magistrates of the Children's Court retain the judicial discretion to release alleged non-compliant parolees on bail.

However, the Committee notes that a juvenile parolee refused bail would be held in custody without first being found to have breached their bail conditions. Young people under the age of 18 years may lack the capacity to understand the conditions of a parole or bail order, or the consequences of a refusal to be released on bail. The Committee also notes that juvenile offenders who are subject to proceedings regarding alleged non-compliance with a parole order, are not required to be legally represented at relevant hearings before the Children's Court under the *Children (Detention Centres) Act 1987*.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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## 2. Biodiversity Conservation Amendment (Bee Keeping and Grazing) Regulation 2022

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

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#### *Statutory rule expressed to commence before publication on NSW legislation website*

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The Regulation is expressed to commence on a day prior to its publication on the NSW Legislation website. This does not appear to align with section 39(2A) of the *Interpretation Act 1987*. The section provides that where a statutory rule is published on the NSW legislation website after the day on which one or more of its provisions is or are expressed to commence, that those provisions commence on the day the statutory rule is published on the NSW legislation website (rather than the earlier day).

In this case, it appears that the defence included in the Regulation, to prosecution of an offence under the *Biodiversity Conservation Act 2016*, Part 2, Division 1, would therefore not apply until the day the Regulation was published on the NSW Legislation website. Although, this may be unclear to an individual.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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## 3. Electricity Supply (General) Amendment (Energy Security Safeguard Schemes) Regulation 2022

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

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#### *Interference with privacy rights*

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The Regulation expands the definition of 'relevant agency' under the Act to prescribe 9 new entities that can enter into information sharing arrangements with the Scheme Administrator. Under an information sharing arrangement, the Scheme Administrator and a relevant agency may exchange information about offences and alleged offences related to the energy savings scheme or the peak demand reduction scheme, as well as the administration of these schemes, and any other matter prescribed by the regulations.

The Committee notes that the Act delegates a broad discretion to the regulation to include additional information within the scope of an information sharing arrangement. Given the introduction of 9 new entities, some with extraterritorial jurisdiction, and broad powers to include additional information in the information sharing arrangement, the Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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#### 4. Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 2022

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##### **Form or intention calls for elucidation: s 9(1)(b)(vii) of the LRA**

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###### *Meaning of 'Government of NSW'*

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The Regulation expands the definition of 'Crown' applicable to Part 6 of the *Environmental Planning and Assessment Act 1979*, about building and subdivision certification, to include the 'Government of New South Wales'. This term is not defined. It may therefore be unclear to whom the exclusions and requirements to which the provisions of Part 6 relevant to Crown building work apply.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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#### 5. Government Advertising Amendment (Exemptions) Regulation 2022

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##### **May not have been within the general objects of the legislation under which it was made: s 9(1)(b)(iii) of the LRA**

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###### *Broad exemption from prohibition – government advertising campaigns during pre-election period*

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The Regulation amends clause 8 of the *Government Advertising Regulation 2018*, to update the exemptions from the restriction on pre-election Government advertisement campaigns under section 10 of the *Government Advertising Act 2011*. These amendments include an exemption for the Department of Enterprise, Investment and Trade, to enable it to conduct a Government advertising campaign during the pre-election period if the campaign's purpose is to promote investment, trade or education in New South Wales.

The Committee notes that the exemption for advertising campaigns promoting 'investment, trade or education in New South Wales' in the pre-election period is broadly worded. It may include campaigns which are directly or indirectly of a political nature, which may fall outside of the general objects of the Regulation's parent Act, the *Government Advertising Act 2011*.

The Committee would usually refer this matter to Parliament for its consideration, however the Regulation has passed its disallowance date and its provisions are already in force. Instead, the Committee notes this matter for Parliament's consideration and will be reviewing this issue in detail during this Parliament.

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#### 6. Place Management NSW Regulation 2022

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

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###### *Wide enforcement powers – right to freedom of movement*

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The Regulation enables a ranger or police officer to exercise additional enforcement powers in the public domain. This includes the power to remove or confiscate an object from a person in breach of a direction given to them by Place Management NSW or a ranger/police officer. It also enables rangers to use reasonable force when removing a person. The Regulation may therefore

provide for wide enforcement powers, the exercise of which may impact a person's property rights, right to security of persons and freedom of movement.

The Committee notes that the provisions are intended to strengthen compliance with laws regulating the orderly and peaceful enjoyment by the community of the public domain. However, the provisions would allow police officers and rangers to forcibly remove a person from public spaces.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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## 7. Point to Point Transport (Taxis and Hire Vehicles) Amendment Regulation 2022

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

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### *Matters to be included in primary legislation – shell legislation*

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The Regulation provides for further adjustment assistance for the taxi industry, including regarding the eligibility of payment of further transitional assistance funds to owners of ordinary taxi licences that are to be cancelled consequent on the enactment of the *Point to Point Transport (Taxis and Hire Vehicles) Amendment Act 2022* (Amendment Act).

The Committee acknowledges that the referral of matters to regulations builds flexibility into the regulatory framework. However, it considers that the matters included in the Regulation in accordance with the Amendment Act are significant as they provide the legislative detail for the scheme governing the provision of further transitional assistance funds. For example, the eligibility of applications for further transitional assistance funds, the amount payable and the process for reviews of decisions about applications.

The Committee generally prefers key detail of a legislative scheme to be included in primary legislation rather than the subordinate legislation to foster a greater level of parliamentary oversight. While the Regulation is subject to disallowance under section 41 of the *Interpretation Act 1987*, the Committee takes into account the breadth and importance of the matters addressed by the Regulation.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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## 8. Protection of the Environment Operations (General) Regulation 2022

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

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### *Delegation of legislative powers*

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The Regulation provides that an organisation may authorise a member of staff to exercise the functions of an enforcement officer under Part 8.2 of the *Protection of the Environment Operations Act 1997*. These functions include the issuing of penalty notices to a person who appears to be

committing a penalty notice offence and instituting enforcement proceedings in relation to that penalty notice.

Penalty notices allow a person to pay a specified monetary amount without having the matter heard before a Court. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. However, the Committee notes that a person retains the right to elect to have the matter heard by a court.

The Committee further notes that there appears to be no definition of what entities are 'organisations', for the purposes of authorising a staff member to act as an enforcement officer, and may include private entities. The Regulation may thereby delegate to private organisations the authorisation of the exercise of public functions, in this case enforcement powers.

The Committee generally prefers provisions authorising the exercise of legislative powers to be specified in legislation, preferably primary legislation to ensure an appropriate level of parliamentary oversight. The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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#### **Form or intention calls for elucidation: s 9(1)(b)(vii) of the LRA**

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##### *Use of 'examples'*

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The Regulation enables the inclusion of an example of the operation of a provision at the end of that provision. Subsection 4(2) clarifies that an example does not limit the meaning of the provision and also provides that an example 'may extend' the meaning of the provision.

Without further clarification, the use of examples may extend the operation of provisions without limit which may impact a person's ability to ascertain the operation of regulatory provisions. This may run counter to the rule of law principle that people are entitled to know the law to which they are subject at any given time.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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## **9. Totalizator Regulation 2022**

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

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#### *Penalty notice offences – issue of penalty notices to persons aged under 18 years*

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Schedule 2 of the Regulation prescribes a number of offences under the *Totalizator Act 1997* as penalty notice offences. This includes the offence of making a bet on a totalizator while under the age of 18 years, under section 84 of the Act. Penalty notices allow a person to pay the amount specified for an offence within a certain time should they 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 recognises the practical benefits of penalty notices such as their cost effectiveness and ease of administration. It also notes that the provisions do not prevent a person from electing to have the matter proceed to court.

However, the Committee notes that young people under the age of 18 years may lack the capacity to understand the consequences of being issued a penalty notice, or the ability and steps needed to challenge the penalty notice. It also notes that an inspector may issue a penalty notice if it appears to them that a minor is committing the relevant offence. It is unclear if the safeguard provision under section 84 extends to the issue of penalty notices.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.





# Part One – Bills

# 1. Energy and Utilities Administration Amendment Bill 2022

Date introduced	21 December 2022
House introduced	Legislative Assembly
Minister introducing <sup>1</sup>	The Hon. Dominic Perrottet MP
Minister responsible	The Hon. Penny Sharpe MLC
Portfolio	Energy

## Purpose and description

- 1.1 The object of this Bill is to amend the *Energy and Utilities Administration Act 1987* to:
- (a) provide that the Premier may declare a coal market price emergency
  - (b) provide that the Minister may impose price caps and other measures while a coal market price emergency declaration is in force to reduce the risk of increased electricity prices.

## Background

- 1.2 The Committee notes that the Bill was introduced in the 57<sup>th</sup> Parliament on 21 December 2022, and passed both Houses of Parliament on that date. Consequently, the Committee was unable to report on the Bill before the second reading debates or consideration of amendments moved in either House.
- 1.3 The Bill amends the *Energy Utilities Administration Act 1987* (the **Act**), which regulates the supply of and market for electricity and water in New South Wales. Primarily, the Bill inserts Schedule 3 into the Act, which enables the declaration and regulation of 'coal market price emergencies'.
- 1.4 In his second reading speech to the Bill, the Hon. Dominic Perrottet MP, Premier, described Schedule 3 as giving the Government 'the ability to manage the price and supply of coal by enabling the Minister for Energy to make directions regarding coal prices and supply domestically, including the introduction of a temporary price cap'.
- 1.5 The Premier also highlighted that these provisions are a response to the specific context of unprecedented price increases faced by global energy markets:

The Energy and Utilities Administration Amendment Bill 2022 introduces temporary changes to secure energy bill savings for households and stability for businesses. ... The conflict in Ukraine and the resulting trade sanctions imposed on Russian coal and gas have distorted the global

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<sup>1</sup> The Bill was introduced in the previous 57<sup>th</sup> Parliament by the Hon. Dominic Perrottet MP, then Premier, who had carriage of the Bill. The Committee notes that, in accordance with the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#), the Minister for Energy, the Hon. Penny Sharpe MLC, is responsible for the administration of the [Energy and Utilities Administration Act 1987](#) which the Bill seeks to amend.

market by limiting supply while demand remains high. This is causing extreme and unusual increases in energy bills for Australian families and businesses in every State and Territory.

- 1.6 Accordingly, clause 24 repeals Schedule 3 on 30 June 2024.
- 1.7 The Statement of Public Interest to the Bill noted that these legislative powers introduced by the Bill are 'in conjunction with the Commonwealth's gas price cap'. The Premier also emphasised in his second reading speech that the Bill is part of a broader national response, stating that:

... National Cabinet agreed to cap the price of gas and coal used for electricity generation in the domestic energy market, as part of a national solution to bring down the cost of energy for Australian families and businesses. This bill is necessary to implement the agreed steps to be taken here in New South Wales as part of that national solution.

## Issues considered by the Committee

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

*Wide official powers – property rights, right to silence and privilege against self-incrimination*

- 1.8 The Bill inserts Schedule 3 into the Act which establishes a legislative framework for the declaration and regulation of 'coal market price emergencies'. Part 5 of Schedule 3 provides for the appointment of inspectors by the regulator and sets out the functions of inspectors during a declared coal market price emergency.
- 1.9 Clauses 15 to 17 set out a number of powers which appointed inspectors may exercise. Clause 18 also establishes offences for failing to comply with a requirement given under these powers, giving false or misleading information or intentionally delaying or obstructing the exercise of these powers. These offences carry a maximum penalty of \$11 000 (100 penalty units) for individuals.
- 1.10 Relevantly, clause 14(2) provides that the powers and functions of an inspector under Schedule 3 or regulations may be exercised for the following purposes:
- (a) to determine whether there has been compliance with, or a contravention of, this Schedule, regulations made for the purposes of this Schedule or a direction,
  - (b) to obtain documents or information for a purpose connected with the administration of this Schedule, including—
    - (i) in connection with the making of a declaration or direction, or
    - (ii) to determine whether a declaration or direction should be given,
  - (c) generally for administering this Schedule,
  - (d) another purpose prescribed by the regulations.

- 1.11 Under clause 15, inspectors may enter non-residential premises for one of the above purposes. Clause 17 enables an inspector to be accompanied by 'a person' who the inspector believes can assist them in the exercise of their functions.
- 1.12 Upon lawfully entering premises, subclause 15(2) provides that the inspector may 'do anything that, in the inspector's opinion, is necessary to be done for the purposes of this Schedule'. This can include examining and inspecting the premises or a thing on the premises, taking AVL and other recordings the inspector considers necessary, and requiring a person produce documents, answer questions or provide information.
- 1.13 Clause 16 also empowers inspectors to require a person to give a document or information specified in a written notice which is connected to 'a matter arising under or in connection with' Schedule 3. This may include requiring attendance at a specified place and time to answer questions. The inspector may also take a copy of a document provided under this clause.
- 1.14 Relevantly, subclause 16(5) clarifies that:
- A person is not excused from a requirement under this clause to provide documents or information, including answering a question, on the ground the document, information or answer might incriminate the person or make the person liable to a penalty.
- 1.15 However, that information or document is not admissible as evidence against the person in criminal proceedings (other than proceedings for an offence of non-compliance with under clause 16), if either:
- (a) the person objected to giving that document or information at the time on the grounds of self-incrimination, or
  - (b) the person was not warned that they may object to giving the document or information on grounds of self-incrimination.
- 1.16 This prohibition extends to any documents or information which are obtained as a direct or indirect consequence of something given in compliance with clause 16.

**The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which provides inspectors appointed for a declared coal market price emergency, a number of investigation and enforcement powers. This includes powers to enter and search premises for a purpose set out in clause 14, examining and inspecting premises and things, taking things and copies of documents, and requiring a person give documents or information.**

**Clause 18 establishes offences for non-compliance, obstruction or giving false or misleading information in connection with the exercise of these powers, without reasonable excuse. These offences carry a maximum penalty of \$11 000 (100 penalty units) and clause 16 clarifies that self-incrimination is not a reasonable excuse for non-compliance with a requirement to give documents or information.**

**Therefore, the Bill may grant appointed inspectors wide powers of investigation and enforcement. The exercise of these powers may impact an individual's rights including, for example, their property rights in respect to the power to enter premises and seize property, and their**

privilege from self-incrimination in respect to the power to give directions for assistance.

The Committee recognises that these provisions are intended to strengthen compliance with the regulatory framework established for responding to the extraordinary challenges faced by global energy markets. These provisions are intended as a temporary intervention and will expire on 30 June 2024. The Bill also provides safeguards on the power to compel documents and information by prohibiting the use of that information in criminal proceedings where objection on grounds of self-incrimination were or could have been raised.

However, these powers may be exercised without a warrant and on broadly defined grounds like determining compliance, general administration or obtaining documents and information in connection with that administration. Civil liability is also excluded for actions taken in the execution of the Schedule.

The Committee notes that the Bill was introduced on 21 December 2022, and then passed both Houses of Parliament on that date. Consequently, the Committee was unable to report on the Bill before the second reading debates or consideration of amendments moved in either House.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

#### *Penalty notice offences*

- 1.17 Clause 21 of Schedule 3 inserted by the Bill provides for penalty notice offences. Specifically, subclause 21(2) provides that the regulations may prescribe an offence against Schedule 3 or the regulations as a penalty notice offence. Subclause 21(1) permits an inspector to issue a penalty notice to a person 'if it appears to the inspector that the person has committed a penalty notice offence'.

The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which enables appointed inspectors to issue a penalty notice to a person who appears to have committed a penalty notice offence. It also provides for regulations to prescribe penalty notice offences.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. As they may be issued a penalty notice if it 'appears' to an inspector that they have committed a penalty notice offence, this may also impact on a person's right to the presumption of innocence.

However, the Committee recognises that individuals retain the right to elect to have their matter heard and decided by a Court. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. In the circumstances, the Committee makes no further comment.

*Operates over all other laws – freedom of contract/separation of powers*

1.18 Clause 22(1) of Schedule 3 inserted by the Bill provides that:

This Schedule has effect despite anything, whether expressed or implied, in—

- (a) another provision of this Act or another Act, or
- (b) a judgment or order, or
- (c) a contract or agreement, whether oral or in writing, or
- (d) a deed, document, security or other instrument.

**The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, providing for the declaration and regulation of coal market price emergencies. Clause 22 provides that the schedule has effect despite anything expressed or implied in other laws, judgments, orders, contracts, agreements, deeds, documents, securities or 'other instruments'.**

**Therefore, the Bill provides for the operation of its provisions despite any inconsistency in other laws and instruments. The Committee generally comments where provisions may operate in a manner inconsistent with other laws, as this may make it harder for individuals to ascertain and understand the law applicable to them.**

**The Committee further notes that, by providing for legislative provisions to override judgments and orders, the Bill may infringe the constitutional doctrine of the separation of powers. This doctrine protects the independence and inherent legal powers of the judiciary from the legislature and executive branches of government in Australia.**

**The Bill may also impact an individual's freedom to contract by overriding terms of contracts, agreements, deeds, documents, securities or 'other instruments' which parties have agreed upon.**

**The Committee acknowledges that this provision is intended to facilitate the government's ability to respond to the temporary challenges faced by global energy markets. It also acknowledges that the Bill is part of a broader national response to these extraordinary circumstances. However, the wide terms of this provision may effectively enable the legislature to overrule the independent judgments of courts and undermine the validity of contracting in New South Wales. For these reasons, the Committee would usually refer this matter to the Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.**

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

*Declarations by Premier*

1.19 As noted earlier, the Bill inserts Schedule 3 into the Act which makes provisions for the declaration of 'coal market price emergencies'. Clause 3 enables the Premier to

declare a 'coal market price emergency' by written order (a 'declaration') if the Premier is satisfied that it is necessary to reduce the risk that members of the community would be adversely affected by either:

- (a) increases in coal prices, whether past or projected increases,
- (b) insufficient domestic supply of coal.

- 1.20 Relevantly, subclause 3(3) notes that an increase in coal prices may 'adversely affect' the community if it 'contributes or may contribute to' increased electricity prices.
- 1.21 Subclause 3(2) clarifies that the Premier may make or revoke the declaration without a need 'to consult with any person or otherwise comply with any requirement of procedural fairness'.
- 1.22 In accordance with clause 5, an order making or revoking a declaration must be published in the Gazette or on the NSW legislation website 'as soon as practicable after the order is made'.

**The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which enables the Premier to declare a 'coal market price emergency' by written order. This declaration may be made if the Premier is satisfied that it is necessary to reduce the risk of the community being adversely impacted by past or projected coal price increases or insufficient domestic coal supply.**

**As these declarations deal with matters which have significant bearing on the delivery of an essential service to New South Wales, the Committee would prefer that they be included in a regulation to ensure an appropriate level of parliamentary oversight. This is because, unlike orders of the Premier, regulations must be tabled in Parliament and are subject to disallowance under the *Interpretation Act 1987*.**

**The Committee acknowledges that the declarations are intended as a temporary intervention to enable the government to respond to the extraordinary circumstances faced by global energy markets. It also acknowledges that the Bill is part of a broader national response to these circumstances.**

**However, the Committee notes that the Premier is not required to consult with anyone or comply with any procedural fairness requirement before making or revoking a declaration, and is only required to be published 'as soon as practicable' after it is made. As these declarations enable significant intervention in the delivery of an essential service, the Committee would usually refer this matter to the Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.**

#### *Ministerial directions*

- 1.23 Clause 6 of Schedule 3 inserted into the Act by the Bill enables the Minister to give directions by written notice during a declared coal market price emergency. The Minister may give a direction if they consider it 'reasonably necessary to respond to the coal market price emergency'.

- 1.24 Relevantly, clause 7 establishes an offence for failing to comply with a direction without reasonable excuse. This offence carries a maximum penalty of \$110 000 (1 000 penalty units) for individuals. Subclause 7(2) states that 'it is not a reasonable excuse that complying with the direction would cause the person to be in breach of contractual obligations entered into on or after 9 December 2022'.
- 1.25 Subclauses 6(3) and (4) provides that the Minister's direction may:
- (a) impose a cap or different caps on coal prices, and/or require a person to comply with terms and conditions determined by the Minister for the supply of, or offer to supply, coal or in relation to an imposed cap
  - (b) require a person to supply, or offer to supply, coal to a particular person specified in the direction
  - (c) impose terms and conditions on a person who purchases or acquires coal, including terms restricting or prohibiting on-selling the coal at a higher price
  - (d) operate throughout the whole of or in a specified part of the State, and/or for a specified period, time or occasion
  - (e) apply generally, be limited in its application by reference to specified exceptions or factors, or differently according to different factors of a specified kind.
- 1.26 Like a declaration by the Premier, subclause 6(2) clarifies that the Minister is not required to 'consult with any person or otherwise comply with any requirement of procedural fairness' before making, amending or revoking a relevant direction. A notice of the making, amendment or revocation of a Minister's direction is also required to be published on the legislation website or the Gazette 'as soon as practicable after the notice is made'.

**The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which enables the Minister to give directions by written notice during a period of a coal market price emergency declared by the Premier. These directions may be given if the Minister considers it 'reasonably necessary' to respond to the emergency. Failure to comply with the requirements of a direction is an offence which carries a maximum penalty of \$110 000 (1 000 penalty units) for individuals.**

**As the provisions do not limit what the direction may do or require, the Bill may provide for a wide ministerial power. The Committee generally comments where there is a wide ministerial power to give directions, as it may impact upon the rights, liberties or obligations of individuals that would be subject to those directions.**

**Further, 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 ministerial directions be included in regulations to ensure an appropriate level of parliamentary oversight.**

**The Committee acknowledges that wide powers to give ministerial directions may enable flexible and timely government responses to the extraordinary circumstances faced by global energy markets. It also**



acknowledges that the Bill is part of a broader national response to these circumstances.

However, the Committee notes that the Minister is explicitly not required to consult with anyone or comply with any procedural fairness requirement before giving, amending or revoking a direction. The direction is only required to be published 'as soon as practicable' after it is made. As the contents of these directions are not limited, and non-compliance is an offence carrying a significant maximum monetary penalty for individuals, the Committee would usually refer this matter to Parliament for its consideration. However, as the Bill passed in the previous Parliament and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

*Matters deferred to the regulations – creation of offences*

- 1.27 Section 53 of the Act sets out general regulation-making powers, including subsection (3) which enables regulations to create an offence punishable by a penalty not greater than \$2 200 (20 penalty units).
- 1.28 Clause 20 of Schedule 3 inserted by the Bill provides that the regulations may create offences. It also provides that, despite section 53(3), the maximum penalty punishable by those offences cannot exceed \$55 000 (500 penalty units) for individuals or \$220 000 (2 000 penalty units) for corporations.

The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987*, which includes a special regulation-making power to create offences that carry a maximum penalty not exceeding \$55 000 (500 penalty units). The Committee generally prefers that offences be established in primary legislation, in order to facilitate an appropriate level of parliamentary scrutiny.

The special regulation-making power explicitly operates despite section 53(3) of the Act, which limits the maximum penalty carried by offences created in regulations to no more than 20 penalty units. The Committee generally comments where provisions may be inconsistent with other laws as this may make the law hard to ascertain and understand, particularly where it concerns different penalties applicable to individuals.

However, the maximum penalty punishable by offences created by regulations is only monetary and not custodial. Regulations are also still required to be tabled in both Houses of Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*. Furthermore, Schedule 3 including the special regulation-making power to create offences is time limited for repeal on 30 June 2024. 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 regulations*

- 1.29 As noted earlier, the Bill inserts Schedule 3 into the Act which provides for the declaration and management of 'coal market price emergencies'. In providing for this

regulatory framework, the Bill prescribes a number of substantive matters by regulations, including:

- what a direction by the Minister may include, require, impose or otherwise do (clause 6(3)(e))
- who may be appointed the independent regulator during a declared coal market price emergency, who is responsible for ensuring compliance with Schedule 3 and its regulations including initiating proceedings for offences under the Schedule (clause 10(c))
- what class of persons may be appointed as inspectors for the purposes of Schedule 3, including exercising enforcement and compliance powers under clause 15 (clause 13(1)(d))
- what functions are conferred or imposed on an inspector appointed for the purposes of a declared coal market price emergency, and the purposes for which these functions may be exercised (clause 14(1) and (2)(d)).

**The Bill inserts Schedule 3 into the *Energy Utilities Administration Act 1987* to make provisions in respect to declared 'coal market price emergencies'. Schedule 3 defers a number of significant matters to the regulations, including: what the Minister's directions may require, impose or do; who may be appointed as the independent regulator and inspectors; and the functions conferred on these inspectors. 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, 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. Regulations are also 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.**

## 2. Forestry Amendment (Timber Harvesting Safety Zones) Bill 2022\*

Date introduced	16 November 2022
House introduced	Legislative Assembly
Member responsible	The Hon. Mark Banasiak MLC
Portfolio	*Private Members Bill <sup>2</sup>

### Purpose and description

- 2.1 The object of this Bill is to amend the *Forestry Act 2012* (the **principal Act**) to:
- (a) establish offences relating to certain areas in which timber harvesting operations are carried out (**timber harvesting safety zones**)
  - (b) increase the maximum penalties for certain obstruction offences.

### Background

- 2.2 The principal Act provides for the dedication, management and use of State forests and other Crown-timber land for forestry and other purposes.
- 2.3 The Bill inserts a new Part 5C into the principal Act. This Part introduces notice requirements for timber harvesting safety zones, various offences relating to these zones and the power for authorised officers to give certain directions to persons in these zones.
- 2.4 Part 5C defines *timber harvesting safety zone* as an area specified or shown on a notice given under section 69ZC and includes:
- (a) roads within the zone that have been closed to enable timber harvesting and related forestry operations to be carried out
  - (b) all land within 150m of a zone boundary that is part of a State forest.
- 2.5 The Bill also increases maximum penalties for offences under section 83 of the principal Act.
- 2.6 In his second reading speech, the Hon. Mark Banasiak MLC provided that the Bill introduces new offences and increases penalties for certain obstruction offences to deter protest activity, and emphasised the importance of workplace safety for forestry workers, authorised personnel and security personnel.

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<sup>2</sup> The Bill was introduced in the previous 57<sup>th</sup> Parliament by the Hon. Mark Banasiak MLC, who had carriage of the Bill. The Committee notes that, upon prorogation, all business on the notice paper lapses.

## Issues considered by the Committee

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

#### *Strict liability offences carrying custodial penalties and right to peaceful assembly*

- 2.7 The Bill introduces various strict liability offences for individuals under the new Part 5C for certain activities in relation to timber safety harvesting zones.
- 2.8 Custodial and/or monetary penalties apply for certain new offences including strict liability offences. Specifically, where:
- (a) a person who is not an authorised person enters a timber harvesting safety zone in contravention of an authorised officer's direction not to re-enter the zone, or not to enter other timber harvesting safe zones, whether specified or not. A penalty of 120 penalty units (\$13 200) or imprisonment for 12 months, or both, applies (section 69ZD(5))
  - (b) a person obstructs or interferes with timber harvesting or related forestry operations carried out within a timber harvesting safety zone. A penalty of 120 penalty units (\$13 200) or imprisonment for 12 months, or both, applies (section 69ZE(2)).
- 2.9 A monetary penalty of 60 penalty units (\$6 600) applies for other new offences including strict liability offences. For example, where:
- (a) a person who is not an authorised person enters or remains in a timber harvesting safe zone (section 69ZD(1))
  - (b) a person who is not an authorised person alters, removes or destroys a notice of a timber harvesting safety zone displayed in accordance with the requirements in the Bill (section 69ZF(1)(a))
  - (c) a person who is not an authorised person dismantles, damages or destroys a fence or other barrier erected to restrict or prevent access to a timber harvesting safety zone (section 69ZF(1)(b))
  - (d) a person does not comply with the direction of an authorised officer to stop or relocate their vehicle or remove a dog from a timber harvesting safety zone, as applicable (section 69ZG).
- 2.10 A person does not commit an offence under section 69ZE or 69ZF if notice of the timber harvesting safety zone was not given in accordance with the Bill's requirements, or in the course of carrying out functions as an authorised officer or work they were engaged to carry out in the zone.
- 2.11 Section 69ZB provides that an *authorised person* means an authorised officer, a person engaged to carry out work in a timber harvesting safety zone and a person authorised to enter a timber harvesting safety zone by the holder of the relevant timber licence.
- 2.12 The Bill also increases the maximum penalty applying to offences under section 83(2) of the principal Act. Section 83(2) provides that it is an offence for a person to:
- (a) assault, threaten or intimidate an authorised officer

(b) bribe an authorised officer without lawful excuse.

2.13 The Bill increases the maximum penalty applying to offences under section 83(2) from 50 penalty units (\$5 500) or imprisonment for 6 months, or both, to 120 penalty units (\$13 200) or imprisonment for 12 months, or both.

**The Bill introduces various strict liability offences into the principal Act for certain activities in relation to timber safety harvesting zones. This includes strict liability offences incurring a maximum monetary penalty of 120 penalty units (\$13 200) and/or a custodial sentence of 12 months where a person re-enters a timber harvesting safety zone or another zone, contrary to an authorised officer's direction not to do so. These penalties also apply where a person interferes with or obstructs timber harvesting or related forestry operations being carried out in a zone. Other strict liability offences may incur a maximum monetary penalty of 60 penalty units (\$6 600).**

**The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element is relevant to establishing liability for an offence. The Committee acknowledges that strict liability offences with monetary penalties are not uncommon in regulatory settings to encourage compliance. Further, the Bill limits the application of certain offences in specific circumstances, including where notice of the timber harvesting safety zone was not given in accordance with the Bill's requirements.**

**However, the Committee notes that a number of strict liability offences are introduced by this Bill and that certain offences can result in both custodial and monetary penalties being imposed on an individual. The Committee notes the seriousness of the Bill's custodial sentences and their impact on the right to personal liberty. Further, that the lawful exercise of personal rights such as the right to peaceful assembly may still attract liability for certain offences. This may discourage peaceful protest.**

**The Bill also increases the maximum penalty for certain strict liability offences under section 83(2) from 50 penalty units (\$5 500) and/or imprisonment for 6 months to 120 penalty units (\$13 200) and/or imprisonment for 12 months. These offences include assaulting or bribing an authorised officer. The Committee acknowledges that the introduction of increased penalties intends to strengthen deterrence and reflects the seriousness of these offences. However, the Committee again notes the seriousness of custodial sentences and their impact on the right to personal liberty.**

**The Committee would usually refer these matters to Parliament for its consideration. However, as the Bill lapsed on prorogation of the 57<sup>th</sup> Parliament, the Committee instead notes these matters for Parliament's consideration.**

### 3. Health Services Amendment (Nurse-to-Patient and Midwife-to-Patient Ratios) Bill 2022\*

Date introduced	16 November 2022
House introduced	Legislative Council
Member responsible	Ms Cate Faehrmann MLC
Portfolio	*Private Members Bill <sup>3</sup>

#### Purpose and description

- 3.1 The object of this Bill is to establish requirements for a minimum number of nurses or midwives per number of patients in specified wards or beds, recognising that nursing workloads impact on the quality of patient care.

#### Background

- 3.2 The Bill seeks to amend the *Health Services Act 1997* (the **Act**) to insert Part 4 of Chapter 10 and Schedule 9. These amendments would provide for minimum staffing ratios and staffing requirements in NSW public hospitals.

- 3.3 In her second reading speech, Ms Cate Faehrmann MLC noted that, by introducing minimum staffing levels and nurse-to-patient ratios, the Bill is intended to 'ensure there are enough nurses and midwives on every shift, every time, to provide safe levels of care for patients'. She further highlighted the importance of setting minimum staffing requirements to public health outcomes, stating:

Nurse-to-patient ratios acknowledge that patients require a minimum level of care to achieve good health outcomes and that nurses can only provide particular levels of care to a certain number of patients. This bill will ensure that the number of nurses on a shift is enough to provide a level of care that provides for the health and wellbeing of patients in our State's public hospitals. ... We know that poor staffing leads to poorer health outcomes and increased rates of readmission, increasing the burden on a shrinking pool of nurses.

- 3.4 Division 1 of proposed Chapter 10, Part 4 to the Act would establish legal minimum staffing ratios for each ward in a public hospital as well as requirements for the composition of health care staff in a public hospital. Schedule 9 proposed by the Bill sets out the minimum staffing nurse-to-patient staffing ratios for specified wards and shift times. It also enables the Health Secretary and relevant union to agree to vary the minimum staffing ratio for a ward in a public hospital, if that variation would not have a significant adverse impact on the quality of patient care.

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<sup>3</sup> The Bill was introduced in the previous 57<sup>th</sup> Parliament by Ms Cate Faehrmann MLC, who had carriage of the Bill. The Committee notes that, upon prorogation, all business on the notice paper lapses.

- 3.5 Additionally, Divisions 2 and 3 of proposed Part 4 makes provisions for compliance and enforcement of the minimum staffing ratios and requirements. These would compel reports by public hospital operators and the Health Secretary on compliance with these requirements, provide for the ability to issue compliance directions, and present avenues for dispute resolution between relevant staff or unions and the public hospital operators regarding breaches of the requirements.
- 3.6 The Bill also proposes to insert Part 5 into Chapter 10 of the Act, which would require certain reviews of staffing requirements in maternity units and outpatient wards, as well as investigations into the implementation of certain national standards for specialised nurses.
- 3.7 Speaking to the Bill's provisions more broadly, Ms Faehrmann stated that the minimum staffing ratios align with other Australian state jurisdictions and highlighted the potential economic benefits of the proposed amendments:

New South Wales will join Victoria, Queensland and the ACT in having legislated nurse-to-patient ratios. ... The Queensland ratios legislation included a requirement for an independent analysis of the impact of ratios to be conducted. Published in *The Lancet* in May last year, the analysis showed that ratios had direct cost benefits to the health system of about \$70 million between 2016 and 2018. The analysis also found that in each hospital with ratios, there were 145 fewer deaths, 255 fewer readmissions and 29,222 fewer hospital days than if they had not implemented the policy.

Prior to the 2019 election, the Parliamentary Budget Office estimated that it would cost just \$1.3 billion over seven years, and \$590 million per year after that, to implement the nurse and midwife-to-patient ratio system in New South Wales public hospitals. That is a small price to pay to save our public health system, to save lives, to lower readmissions and to stem the mass exodus of nurses and midwives from our health system.

### 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 and ill-defined power – safe patient care compliance directions*

- 3.8 As noted earlier, the Bill seeks to insert Part 4 into Chapter 10 of the Act, which legislates mandatory minimum staffing ratios and staffing composition requirements for public hospitals under Division 1. Section 132D provides that the object of Part 4 is to:

...ensure safe patient care in hospitals by setting minimum requirements for the number of nurses or midwives providing clinical care to patients in a ward, recognising that nursing workloads impact on the quality of patient care.

- 3.9 Under Division 2, section 132K empowers the Health Secretary to give a written direction (a 'safe patient care compliance direction') to the operator of a public hospital 'for the purpose of giving effect to the object' of Part 4. This direction can require the operator to 'do, or refrain from doing, a thing specified in the direction'.

- 3.10 An operator of a public hospital is defined under section 132A to mean the local health district, statutory health corporation or the Crown which controls the relevant public hospital or the affiliated health organisation if the hospital is a recognised establishment of that organisation.

**The Bill inserts Part 4 into Chapter 10 of the *Health Services Act 1997*, to introduce minimum staffing ratios and requirements for NSW public hospitals. It also provides that the Health Secretary may issue a 'safe patient care compliance direction' to the operator of a hospital to give effect to these requirements. Those directions would require the operator to do or refrain from doing a specified 'thing'.**

**There appears to be no provisions of the Act or Regulation which define or narrow the scope of the ordinary meaning of 'thing'. The Bill may thereby provide a wide and ill-defined power to the Health Secretary, to require an operator of a public hospital to take any step or do anything for the purpose of compliance with the relevant staffing requirements.**

**The Committee acknowledges that the minimum staffing requirements are intended to protect public health and safety by ensuring an acceptable quality of patient care can be provided. However, the Committee notes that the term 'thing', 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.**

**The Committee would usually refer this matter to Parliament for its consideration. However, as the Bill lapsed on prorogation of the 57<sup>th</sup> Parliament, the Committee instead notes these matters for Parliament's consideration.**



# Part Two – Regulations

## Explanatory note on Part Two

The Committee notes that the following regulations set out in Part Two of this Legislation Review Digest were tabled in the 58<sup>th</sup> Parliament and are no longer subject to disallowance.

Section 9(1A) of the *Legislation Review Act 1987* provides that the Committee is not precluded from exercising its functions of considering and reporting on regulations under section 9(1) of the Act which are no longer subject to disallowance if, while it is subject to disallowance, the Committee resolves to review and report to Parliament on the Regulation.

In this instance, the Committee was dissolved on 3 March 2023 with the expiration of the 57<sup>th</sup> Parliament and no such resolution was made during the disallowance period. Therefore, the reports on regulations set out in Part Two of this Digest are provided for information only.

# 1. Bail Amendment (Proceedings for Administration of Sentence) Regulation 2022

Date tabled	LA: 11 October 2022 LC: 11 October 2022
Disallowance date	LA: 11 May 2023 LC: 11 May 2023
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

## Purpose and description

- 1.1 The object of this Regulation is to prescribe certain proceedings, relating to alleged non-compliance with a parole order under the *Children (Detention Centres) Act 1987*, as proceedings in which a court may make a bail decision in relation to a person under the *Bail Act 2013* (the **Act**).

## Issues considered by the Committee

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

#### *Right of the child – bail decisions in respect to juvenile parolee*

- 1.2 Schedule 1 of the Act sets out circumstances or proceedings involve non-offenders for which a court or body may make a 'bail decision', that is, a decision whether to grant a person bail or hold them in custody pending determination of their matter (section 8). Clause 1 of the Act provides that a court may make a bail decision regarding a person who 'is brought or appears before the court in proceedings for the administration of sentence'. Subclause 1(2)(e) enables the regulations to prescribe what proceedings amount to 'proceedings for the administration of sentence'.
- 1.3 The Regulation inserts section 9A into the *Bail Regulation 2021* (the Regulation), which provides that:
- For the purposes of the Act, Schedule 1, clause 1(2)(e), proceedings under the *Children (Detention Centres) Act 1987* for an alleged failure by the person to comply with obligations under a parole order are prescribed as ***proceedings for the administration of sentence***.
- 1.4 Under section 67 of the *Children (Detention Centres) Act 1987*, the Children's Court may hold a hearing into whether a juvenile offender has failed to comply with their obligations under a parole order, or whether there are other grounds to revoke the order.

The Regulation amends the *Bail Regulation 2021* to prescribe proceedings under the *Children (Detention Centres) Act 1987* for an alleged failure by the person to comply with obligations under a parole order as 'proceedings for the administration of sentence' under Schedule 1 of the *Bail Act 2013*. This would enable the Children's Court to make a bail decision in respect to a juvenile offender, if they are 'brought or appears before the court' in proceedings for alleged non-compliance with their obligations under a parole order.

By enabling the Children's Court to make bail decisions, the Regulation may impact the rights of the child under the *Convention on the Rights of the Child* (CRC) where juvenile parolees are refused bail and held in custody pending determination of their proceedings. The rights of children contained in Article 37 of the CRC protects children from arbitrary or unlawful deprivation of their liberty. This guarantees the use of arrest, detention or imprisonment of a child only as a measure of last resort.<sup>4</sup>

The Committee recognises that imposing conditions for release on parole is a common measure intended to balance the rights of offenders and the need to protect public safety. It also acknowledges that magistrates of the Children's Court retain the judicial discretion to release alleged non-compliant parolees on bail.

However, the Committee notes that a juvenile parolee refused bail would be held in custody without first being found to have breached their bail conditions. Young people under the age of 18 years may lack the capacity to understand the conditions of a parole or bail order, or the consequences of a refusal to be released on bail. The Committee also notes that juvenile offenders who are subject to proceedings regarding alleged non-compliance with a parole order, are not required to be legally represented at relevant hearings before the Children's Court under the *Children (Detention Centres) Act 1987*.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

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<sup>4</sup> United Nations, Office of the High Commissioner for Human Rights, [Convention on the Rights of the Child](#), 1989.

## 2. Biodiversity Conservation Amendment (Bee Keeping and Grazing) Regulation 2022

Date tabled	LA: 21 December 2022 LC: 21 December 2022
Disallowance date	LA: 29 June 2023 LC: 29 June 2023
Minister responsible	The Hon. Penny Sharpe MLC
Portfolio	Environment

### Purpose and description

- 2.1 The object of this Regulation is to provide that it is a defence to the prosecution of an offence under the *Biodiversity Conservation Act 2016*, Part 2, Division 1 if the defendant establishes that the activity constituting the offence was:
- (a) bee keeping or grazing
  - (b) authorised by a forest permit under the *Forestry Act 2012*.
- 2.2 This Regulation is made under the *Biodiversity Conservation Act 2016*.

### Issues considered by the Committee

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

*Statutory rule expressed to commence before publication on NSW legislation website*

- 2.3 Clause 2 of the Regulation provides that the Regulation commences on 9 November 2022. This date is prior to the publication of the Regulation on the NSW Legislation website (on 18 November 2022).
- 2.4 The Regulation includes the following note:

The Regulation (statutory rule) specified 9 November 2022 as the date of commencement. Under the *Interpretation Act 1987*, section 39(2A), the Regulation is not invalid merely because the Regulation was published on the NSW legislation website after the day on which one or more of its provisions is or are expressed to commence but provides, in that case, for that or those provisions to commence on the day on which it is published on the NSW legislation website, instead of on the earlier day.

**The Regulation is expressed to commence on a day prior to its publication on the NSW Legislation website. This does not appear to align with section 39(2A) of the *Interpretation Act 1987*. The section provides**

that where a statutory rule is published on the NSW legislation website after the day on which one or more of its provisions is or are expressed to commence, that those provisions commence on the day the statutory rule is published on the NSW legislation website (rather than the earlier day).

In this case, it appears that the defence included in the Regulation, to prosecution of an offence under the *Biodiversity Conservation Act 2016*, Part 2, Division 1, would therefore not apply until the day the Regulation was published on the NSW Legislation website. Although, this may be unclear to an individual.

The Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

### 3. Electricity Supply (General) Amendment (Energy Security Safeguard Schemes) Regulation 2022

Date tabled	LA: 18 October 2022
	LC: 18 October 2022
Disallowance date	LA: 25 May 2023
	LC: 25 May 2023
Minister responsible	The Hon. Penny Sharpe MLC
Portfolio	Energy

#### Purpose and description

3.1 The object of this Regulation is to make a range of amendments to the *Electricity Supply (General) Regulation 2014* dealing with the energy savings scheme (**ESS**) and the peak demand reduction scheme (**PDRS**) consequent on *the Energy Legislation Amendment Act 2021*, the *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020* and the *Electricity Supply Amendment (Peak Demand Reduction Scheme) Regulation 2021*, including the following:

- (a) updating cross-references to the Electricity Supply Act 1995 following the transfer of provisions establishing the ESS to the Act, Schedule 4A
- (b) amending existing administrative arrangements and fee provisions for the ESS
- (c) establishing administrative arrangements for the PDRS
- (d) establishing a fee structure for the PDRS
- (e) establishing a civil penalty provision regime for the ESS and the PDRS.

3.2 This Regulation is made under the *Electricity Supply Act 1995*.

#### Issues considered by the Committee

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

##### *Interference with privacy rights*

3.3 Section 69A of Schedule 4 to the *Electricity Supply Act 1995* enables the Scheme Administrator to enter into an information sharing arrangement with a 'relevant agency'. Parties to an information sharing arrangement under this section may exchange information held in relation to offences and alleged offences related to the energy savings scheme, the administration of the energy savings scheme, and other matters prescribed by the regulations.

- 3.4 Clause 29B of the Regulation expands the definition of a 'relevant agency' to prescribe 9 new entities that can enter into an information sharing arrangement with the Scheme Administrator.
- 3.5 Section 136A of Schedule 4 to the *Electricity Supply Act 1995* enables the Scheme Administrator to enter into an information sharing arrangement with a 'relevant agency'. Parties to an information sharing arrangement under this section may exchange information held in relation to offences and alleged offences related to the peak demand reduction scheme, the administration of the peak demand reduction scheme, and other matters prescribed by the regulations.
- 3.6 Clause 62ZI expands the definition of a 'relevant agency' to prescribe 9 new entities that can enter into an information sharing arrangement with the Scheme Administrator.

**The Regulation expands the definition of 'relevant agency' under the Act to prescribe 9 new entities that can enter into information sharing arrangements with the Scheme Administrator. Under an information sharing arrangement, the Scheme Administrator and a relevant agency may exchange information about offences and alleged offences related to the energy savings scheme or the peak demand reduction scheme, as well as the administration of these schemes, and any other matter prescribed by the regulations.**

**The Committee notes that the Act delegates a broad discretion to the regulation to include additional information within the scope of an information sharing arrangement. Given the introduction of 9 new entities, some with extraterritorial jurisdiction, and broad powers to include additional information in the information sharing arrangement, the Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.**



## 4. Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 2022

Date tabled	LA: 21 December 2022 LC: 21 December 2022
Disallowance date	LA: 29 June 2023 LC: 29 June 2023
Minister responsible	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

### Purpose and description

4.1 The objects of this Regulation are as follows:

- (a) to require the written consent of the owner of land if a development application is made by a person other than the owner
- (b) to provide that a development application for development involving mine grouting works may be made, in certain circumstances, by a person other than the owner of the land to which the development application relates and without the consent of the owner
- (c) to require an assessment of the consistency of development with the Macquarie Park Innovation District Place Strategy and Master Plan for development on land in the Macquarie Park Corridor under *Ryde Local Environmental Plan 2014*
- (d) to require certification that impacts on roads are, or will be, acceptable as a result of development for the purposes of waste or resource transfer stations carried out by or on behalf of public authorities
- (e) to require a design statement for certain complying development on Zone E3 Productivity Support, other than development involving only a change of use to premises or internal alterations to a building
- (f) to require a report confirming that development is consistent with a performance solution report for a building for development comprising internal alterations or a change of use to an existing building subject to a performance solution under the *Building Code of Australia*
- (g) to specify that development for the purposes of waste or resource transfer stations is not designated development in certain circumstances

- (h) to remove spent provisions and update incorrect references to provisions
- (i) to make savings and transitional provisions.

4.2 This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.10(1), 4.12(1), 4.27(5), 4.28(1), 4.55, 4.64(1), 5.6(3) and 10.13, the general regulation-making power.

## Issues considered by the Committee

### Form or intention calls for elucidation: s 9(1)(b)(vii) of the LRA

#### *Meaning of 'Government of NSW'*

4.3 Schedule 2.2 of the Regulation expands the definition of 'Crown' in section 121 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, so that in addition to:

- (a) a public authority, other than a council
- (b) an Australian university, within the meaning of the *Higher Education Act 2001*
- (c) a TAFE establishment, within the meaning of the *Technical and Further Education Commission Act 1990*
- (d) a Crown cemetery operator, within the meaning of the *Cemeteries and Crematoria Act 2013*,

it also includes:

- (e) the Government of New South Wales
- (f) a Minister of the Crown in the right of New South Wales.

4.4 The above definition of 'Crown' applies to Part 6 of the *Environmental Planning and Assessment Act 1979*, regarding building and subdivision certification.

4.5 In Part 6, certain Crown building work is excluded from certain certification requirements. Requirements also apply in the case of a subdivision carried out by the Crown.

**The Regulation expands the definition of 'Crown' applicable to Part 6 of the *Environmental Planning and Assessment Act 1979*, about building and subdivision certification, to include the 'Government of New South Wales'. This term is not defined. It may therefore be unclear to whom the exclusions and requirements to which the provisions of Part 6 relevant to Crown building work apply.**

**The Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.**

## 5. Government Advertising Amendment (Exemptions) Regulation 2022

Date tabled	LA: 21 December 2022 LC: 21 December 2022
Disallowance date	LA: 29 June 2023 LC: 29 June 2023
Minister responsible	The Hon. Jihad Dib MP
Portfolio	Customer Service and Digital Government

### Purpose and description

- 5.1 The object of this Regulation is to amend the *Government Advertising Regulation 2018* (the **principal Regulation**) to:
- (a) allow a government advertising campaign to be carried out by or on behalf of the Department of Enterprise, Investment and Trade during the pre-election period if the purpose of the campaign is to promote investment, trade or education in the State
  - (b) update references to defunct NSW Government agencies
  - (c) omit a reference to a festival that has been discontinued.
- 5.2 This Regulation is made under the *Government Advertising Act 2011* (the **Act**), including sections 4(5) and 15, the general regulation-making power.

### Issues considered by the Committee

**May not have been within the general objects of the legislation under which it was made: s 9(1)(b)(iii) of the LRA**

*Broad exemption from prohibition – government advertising campaigns during pre-election period*

- 5.3 Section 10(1) of the Act prohibits the conduct of any 'Government advertising campaign' in the calendar year of a general State election during the period from 26 January to the election (the '**pre-election period**'). However, subsection 10(2) exempts the application of this restriction to Government advertising campaigns which relate to:
- (a) public health or safety matters,
  - (b) service announcements or including (but not limited to) service announcements containing electoral information,
  - (c) notices required to be published under a law,

- (d) job advertisements,
- (e) tender advertising.

5.4 'Government advertising campaign' is defined in section 4 of the Act as:

... the dissemination to members of the public of information about a government program, policy or initiative, or about any public health or safety or other matter, that—

- (a) is funded by or on behalf of a Government agency, and
- (b) is disseminated under a commercial advertising distribution agreement by means of radio, television, the Internet, newspapers, billboards, cinemas or other media.

5.5 Subsection 4(5) provides that the regulations may conditionally or unconditionally exempt a Government advertisement campaign, or class of campaigns, from the Act or regulations. Clause 8 of the principal Regulation sets out exemptions to section 10 of the Act (the '**pre-election restriction**'). Specifically, it exempts Government advertising campaign which relates to specified matters, and campaigns which are by or on behalf of specified agencies (including for specified purposes).

5.6 The Regulation amends clause 8 of the principal Regulation, to update existing exemptions to the pre-election restriction. This includes replacing the exemption for a Government advertising campaign by or on behalf of 'Property NSW', with an exemption for a campaign by or on behalf of 'the Department of Enterprise, Investment and Trade, if the purpose of the campaign is to promote investment, trade or education in the State'.

5.7 The Act was enacted by the passage of the *Government Advertising Bill 2011* (the '**Bill**'). In his second reading speech to the Bill, the Hon. Barry O'Farrell MP, then Premier, emphasised that the primary object of the Act was to ensure the independence of 'government advertising campaign' to ensure such campaigns may not advertently or inadvertently support any one political party or figure. Speaking to section 10 of the Act, Mr O'Farrell stated that the pre-election restriction is intended to apply to 'most types of government advertising campaigns', except 'a limited number of non-contentious categories of advertisements are allowed, such as public health or safety matters, job advertisement and government tenders'.<sup>5</sup>

**The Regulation amends clause 8 of the *Government Advertising Regulation 2018*, to update the exemptions from the restriction on pre-election Government advertisement campaigns under section 10 of the *Government Advertising Act 2011*. These amendments include an exemption for the Department of Enterprise, Investment and Trade, to enable it to conduct a Government advertising campaign during the pre-election period if the campaign's purpose is to promote investment, trade or education in New South Wales.**

**The Committee notes that the exemption for advertising campaigns promoting 'investment, trade or education in New South Wales' in the**

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<sup>5</sup> New South Wales, Legislative Assembly, [Parliamentary Debates](#), 22 June 2011, pp. 3140-2 (Barry O'Farrell, Premier).

**pre-election period is broadly worded. It may include campaigns which are directly or indirectly of a political nature, which may fall outside of the general objects of the Regulation's parent Act, the *Government Advertising Act 2011*.**

**The Committee would usually refer this matter to Parliament for its consideration, however the Regulation has passed its disallowance date and its provisions are already in force. Instead, the Committee notes this matter for Parliament's consideration and will be reviewing this issue in detail during this Parliament.**

## 6. Place Management NSW Regulation 2022

Date tabled	LA: 20 September 2022
	LC: 20 September 2022
Disallowance date	LA: 9 May 2023
	LC: 9 May 2023
Minister responsible	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

### Purpose and description

- 6.1 The object of this Regulation is to repeal and remake, with some amendments, the *Place Management NSW Regulation 2017*, which is otherwise repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).
- 6.2 This Regulation deals with the following matters:
- (a) the declaration of core land for the purposes of the *Place Management NSW Act 1998*, section 6
  - (b) the prohibition of certain conduct in the parts of the Sydney Harbour foreshore area that comprise the public domain, within the meaning of the Act, including prohibitions on harming the environment or animals, bringing in certain animals, causing a nuisance and behaving unsafely
  - (c) the regulation of certain activities in the public domain, including commercial activities, exercise activities, public assemblies and weddings
  - (d) restrictions and bans on entry to the public domain
  - (e) the regulation of vehicles and vessels in the public domain
  - (f) the prohibition of certain conduct in certain areas in the public domain
  - (g) authorisation by Place Management NSW of certain conduct that would otherwise be prohibited under this Regulation
  - (h) the charging of fees by Place Management NSW for an authorisation or for a service provided by Place Management NSW
  - (i) the offences under this Regulation that may be dealt with by a penalty notice.
- 6.3 This Regulation is made under the *Place Management NSW Act 1998*.

## Issues considered by the Committee

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

#### *Wide enforcement powers – right to freedom of movement*

6.4 As noted, the Regulation substantially remakes the 2017 Regulation with amendments. This includes providing for additional enforcement and compliance powers which may be exercised by a ranger or police officer in the public domain.

6.5 Among others, the Regulation provides that a ranger or a police officer may:

- (a) remove a person from an area or the public domain if they have breached a direction given to them by Place Management NSW, a ranger or police officer (sections 20, 21, 23 and 38)
- (b) confiscate an object from a person who has failed to comply with a direction to remove from or discontinue using the object in the public domain (section 41).
- (c) for rangers, use reasonable force to remove a person as authorised by the Regulation (section 39).

**The Regulation enables a ranger or police officer to exercise additional enforcement powers in the public domain. This includes the power to remove or confiscate an object from a person in breach of a direction given to them by Place Management NSW or a ranger/police officer. It also enables rangers to use reasonable force when removing a person. The Regulation may therefore provide for wide enforcement powers, the exercise of which may impact a person's property rights, right to security of persons and freedom of movement.**

**The Committee notes that the provisions are intended to strengthen compliance with laws regulating the orderly and peaceful enjoyment by the community of the public domain. However, the provisions would allow police officers and rangers to forcibly remove a person from public spaces.**

**The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.**

## 7. Point to Point Transport (Taxis and Hire Vehicles) Amendment Regulation 2022

Date tabled	LA: 21 December 2022
	LC: 21 December 2022
Disallowance date	LA: 29 June 2023
	LC: 29 June 2023
Minister responsible	The Hon. Jenny Aitchison MP
Portfolio	Regional Transport and Roads

### Purpose and description

- 7.1 The object of this Regulation is to enable the payment of further transitional assistance funds to owners of ordinary taxi licences that are to be cancelled consequent on the enactment of the *Point to Point Transport (Taxis and Hire Vehicles) Amendment Act 2022*. The Regulation includes provisions about the following:
- (a) the persons who are eligible to receive further transitional assistance funds
  - (b) 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 matters referred to in paragraphs (a)-(i) by Transport for NSW.
- 7.2 This Regulation also makes other minor amendments consequent on the enactment of the *Point to Point Transport (Taxis and Hire Vehicles) Amendment Act 2022*.
- 7.3 This Regulation is made under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.



## Issues considered by the Committee

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

*Matters to be included in primary legislation – shell legislation*

- 7.4 As reported in Legislation Review Digest No. 51/57,<sup>6</sup> the *Point to Point Transport (Taxis and Hire Vehicles) Amendment Bill 2022* amended Schedule 3 of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* to provide that the regulations may make provisions about further transitional assistance funds to owners of ordinary taxi licences, and delegates the details of the legislative scheme to the regulations.
- 7.5 The Regulation replaces Schedule 4 of the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* to include the detail of this scheme.
- 7.6 In particular, Schedule 4, clause 2 sets out categories for eligible licences. The Regulation allows up to \$150 000 to be paid to a person who is eligible to receive further transitional assistance funds in Schedule 4, clause 5. Schedule 4, Part 2 provides that Transport for NSW may grant an application for further transitional assistance funds if it is satisfied that the requisite conditions are met. Schedule 4, Part 3 sets out the right to seek review of decisions and the process for review.

**The Regulation provides for further adjustment assistance for the taxi industry, including regarding the eligibility of payment of further transitional assistance funds to owners of ordinary taxi licences that are to be cancelled consequent on the enactment of the *Point to Point Transport (Taxis and Hire Vehicles) Amendment Act 2022* (Amendment Act).**

**The Committee acknowledges that the referral of matters to regulations builds flexibility into the regulatory framework. However, it considers that the matters included in the Regulation in accordance with the Amendment Act are significant as they provide the legislative detail for the scheme governing the provision of further transitional assistance funds. For example, the eligibility of applications for further transitional assistance funds, the amount payable and the process for reviews of decisions about applications.**

**The Committee generally prefers key detail of a legislative scheme to be included in primary legislation rather than the subordinate legislation to foster a greater level of parliamentary oversight. While the Regulation is subject to disallowance under section 41 of the *Interpretation Act 1987*, the Committee takes into account the breadth and importance of the matters addressed by the Regulation.**

**The Committee would usually refer this matter to Parliament for its consideration. However, as the Regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.**

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<sup>6</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 51/57](#) (15 November 2022).

## 8. Protection of the Environment Operations (General) Regulation 2022

Date tabled	LA: 20 September 2022
	LC: 20 September 2022
Disallowance date	LA: 9 May 2023
	LC: 9 May 2023
Minister responsible <sup>7</sup>	The Hon. Penny Sharpe MLC
Portfolio	Environment

### Purpose and description

- 8.1 The object of this Regulation is to remake, with amendments, the provisions of the *Protection of the Environment Operations (General) Regulation 2021*, which is repealed on 1 September 2022 under that Regulation, clause 149(1).
- 8.2 This Regulation makes provision for or in relation to the following:
- (a) identifying the appropriate regulatory authority, within the meaning of the *Protection of the Environment Operations Act 1997* (the **Act**), for certain types of activities (Chapter 2)
  - (b) environment protection licences including fees payable in relation to environment protection licences, (Chapter 3)
  - (c) pollution incident response management plans (Chapter 4)
  - (d) vehicle testing and inspection, including the approval of persons and places in connection with the testing and inspection (Chapter 5)
  - (e) exemptions from certain provisions of the Act, including exemptions from the offence of polluting waters (Chapter 6)
  - (f) environmental monitoring programs including the Upper Hunter Air Quality Monitoring Network and Newcastle Local Air Quality Monitoring Network (Chapter 7)
  - (g) compliance with the National Environment Protection (National Pollutant Inventory) Measure under the National Environment Protection Council Act 1994 of the Commonwealth (Chapter 8)

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<sup>7</sup> The Committee notes that, at the time of publication, the responsible Minister in accordance with the [Allocation of the Administration of Acts](#) was the Minister for Environment and Heritage, the Hon. James Griffin MP.

- (h) issuing penalty notices under certain environmental legislation (Chapter 9, Part 1)
  - (i) matters relating to pollution incidents, including the notification of pollution incidents (Chapter 9, Part 2)
  - (j) burning native forest bio-material in electricity generating works (Chapter 9, Part 3)
  - (k) energy recovery from the thermal treatment of waste (Chapter 9, Part 4)
  - (l) regulating the use of PFAS firefighting foam (Chapter 9, Part 5)
  - (m) other matters of a minor, consequential or ancillary nature (Chapter 9, Part 6).
- 8.3 Schedule 9 of this Regulation is made under a provision of the Act that enables a regulation to amend the Act (a **Henry VIII provision**). Schedule 9 of the Regulation directly amends Schedule 1 of the Act.
- 8.4 Chapter 6 and section 150 of this Regulation are made under a provision that is arguably a Henry VIII provision as it enables the Act to be impliedly amended by regulations.
- 8.5 Sections 25, 33, 142, 144, 152 and 153 of this Regulation and Schedule 10, Dictionary, definition of **Approved Methods Publication** enable quasi legislation as the provisions provide for legislative matters to be dealt with in documents that can be amended by the EPA from time to time and are not disallowable by the Parliament.
- 8.6 This Regulation is made under the *Protection of the Environment Operations Act 1997*.

### Issues considered by the Committee

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

##### *Delegation of legislative powers*

- 8.7 Section 127 of the Regulation provides for the authorisation of enforcement officers by an organisation. Specifically, it enables an organisation to appoint a member of staff as an enforcement officer 'by authorising the person to exercise the functions of an enforcement officer' under Part 8.2 of the Act.
- 8.8 Part 8.2 enables an enforcement officer to:
- (a) issue a penalty notice to a person who appears to be committing a penalty notice offence (section 224 of the Act)
  - (b) to institute enforcement proceedings in respect to a penalty notice (section 221 of the Act).

**The Regulation provides that an organisation may authorise a member of staff to exercise the functions of an enforcement officer under Part 8.2 of the *Protection of the Environment Operations Act 1997*. These functions include the issuing of penalty notices to a person who appears to be**

committing a penalty notice offence and instituting enforcement proceedings in relation to that penalty notice.

Penalty notices allow a person to pay a specified monetary amount without having the matter heard before a Court. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. However, the Committee notes that a person retains the right to elect to have the matter heard by a court.

The Committee further notes that there appears to be no definition of what entities are 'organisations', for the purposes of authorising a staff member to act as an enforcement officer, and may include private entities. The Regulation may thereby delegate to private organisations the authorisation of the exercise of public functions, in this case enforcement powers.

The Committee generally prefers provisions authorising the exercise of legislative powers to be specified in legislation, preferably primary legislation to ensure an appropriate level of parliamentary oversight. The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

#### **Form or intention calls for elucidation: s 9(1)(b)(vii) of the LRA**

##### *Use of 'examples'*

8.9 Section 4 of the Regulation makes provisions in respect to the use of an example of the operation of a provision at the provision's end. Specifically, subsection 4(2) states that:

- (2) An example of the operation of a provision of this Regulation—
  - (a) is not exhaustive, and
  - (b) does not limit, but may extend, the meaning of the provision.

The Regulation enables the inclusion of an example of the operation of a provision at the end of that provision. Subsection 4(2) clarifies that an example does not limit the meaning of the provision and also provides that an example 'may extend' the meaning of the provision.

Without further clarification, the use of examples may extend the operation of provisions without limit which may impact a person's ability to ascertain the operation of regulatory provisions. This may run counter to the rule of law principle that people are entitled to know the law to which they are subject at any given time.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.

## 9. Totalizator Regulation 2022

Date tabled	LA: 20 September 2022
	LC: 20 September 2022
Disallowance date	LA: 9 May 2023
	LC: 9 May 2023
Minister responsible	The Hon. David Harris MP
Portfolio	Gaming and Racing

### Purpose and description

- 9.1 The object of this Regulation is to remake, with changes, the *Totalizator Regulation 2012*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).
- 9.2 This Regulation provides for the following:
- (a) the regulation of responsible gambling practices
  - (b) the prescription of persons as key employees in relation to the conduct of a totalizator
  - (c) the identification of persons who are not key employees in relation to the conduct of a totalizator
  - (d) the circumstances in which a body's relevant interests in shares are to be disregarded for the purposes of deciding if the body has a prohibited shareholding interest in a licensee
  - (e) the changes a licensee or a contractor of the licensee must notify the Minister of and the particulars of the changes that must be notified
  - (f) the percentage of the tax reduction amount that must be paid by TAB Limited in relation to Racing New South Wales, Harness Racing New South Wales and Greyhound Racing New South Wales
  - (g) the offences under the *Totalizator Act 1997* and this Regulation for which a court may impose certain orders in addition to, or as an alternative to, another penalty if the court finds a person guilty of the offence
  - (h) the offences under the *Totalizator Act 1997* and this Regulation for which penalty notices may be issued, including the amounts payable.
- 9.3 The provisions of this Regulation that relate to the matters specified at paragraphs (c) and (d) are arguably made under Henry VIII provisions because the provisions impliedly amend the *Totalizator Act 1997* by affecting the application of the Act.
- 9.4 This Regulation is made under the *Totalizator Act 1997*.

## Issues considered by the Committee

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

#### *Penalty notice offences – issue of penalty notices to persons aged under 18 years*

9.5 The Regulation substantially remakes the *Totalizator Regulation 2012* (the **2012 Regulation**), save for some amendments.

9.6 These amendments, among others, includes the insertion of Schedule 2, which sets out offences under the *Totalizator Act 1997* (the **Act**), the *Gaming and Liquor Administration Act 2007* and the Regulation. This prescription by regulations is in accordance with section 100A of the Act, which relevantly provides:

(1) An inspector may issue a penalty notice to a person if it appears to the inspector that the person has committed a penalty notice offence.

(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

9.7 Clause 15C of the 2012 Regulation previously prescribed only the offences under the *Gaming and Liquor Administration Act 2007* as applied by section 91E of the Act, as penalty notice offences. Schedule 2 of the Regulation prescribes a significant number of additional offences under the Act and the Regulation.

9.8 Among other offences, Schedule 2 prescribes the offence under section 84(1) of the Act as a penalty notice offence for which individuals can be issued a penalty notice with an amount payable of \$220. Relevantly, section 84(1) and (2) of the Act provide that:

(1) A person who, while under the age of 18 years, makes a bet on a totalizator is guilty of an offence.

Maximum penalty—20 penalty units.

(2) A person is not to be convicted of an offence against this section unless it is proved that, when the bet was made, there was displayed in a conspicuous place on the premises at which the bet was made, a legible notice to the effect that it is an offence for a person under the age of 18 years to make a bet by means of the totalizator.

**Schedule 2 of the Regulation prescribes a number of offences under the *Totalizator Act 1997* as penalty notice offences. This includes the offence of making a bet on a totalizator while under the age of 18 years, under section 84 of the Act. Penalty notices allow a person to pay the amount specified for an offence within a certain time should they 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 recognises the practical benefits of penalty notices such as their cost effectiveness and ease of administration. It also notes that the provisions do not prevent a person from electing to have the matter proceed to court.**

However, the Committee notes that young people under the age of 18 years may lack the capacity to understand the consequences of being issued a penalty notice, or the ability and steps needed to challenge the penalty notice. It also notes that an inspector may issue a penalty notice if it appears to them that a minor is committing the relevant offence. It is unclear if the safeguard provision under section 84 extends to the issue of penalty notices.

The Committee would usually refer this matter to Parliament for its consideration. However, as the regulation has passed its disallowance date and its provisions are already in force, the Committee instead notes this matter for Parliament's consideration.



# Appendices



# Appendix One – Functions of the Committee

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

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

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

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

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

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

## Appendix Two – Regulations without comment

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

### 1. [Adoption Amendment \(Adoption Service Providers\) Regulation 2022](#)

The object of this Regulation is to repeal provisions relating to the accreditation of adoption service providers (the **transferred provisions**), and make other minor amendments, as a consequence of the transferred provisions having been transferred to the *Children’s Guardian Act 2019* or the regulations made under that Act.

This Regulation is made under the *Adoption Act 2000*, including section 208, the general regulation-making power.

### 2. [Associations Incorporation Regulation 2022](#)

The object of this Regulation is to remake, with minor amendments, the *Associations Incorporation Regulation 2016*, which will be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (a) makes a declaration for the purposes of enabling an association to transfer its registration to an entity incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth
- (b) provides for the application of certain provisions of the *Corporations Act 2001* of the Commonwealth to associations
- (c) prescribes additional information that must be included in an application for registration of an association and an application for a transfer of registration declaration
- (d) prescribes the maximum number of alternative names that may be nominated in an application for reservation of a name
- (e) declares the other names that are unacceptable for the purposes of the *Associations Incorporation Act 2009* (the **Act**)
- (f) prescribes other particulars that must be contained in an association’s register of committee members
- (g) provides for how a postal or electronic ballot for a resolution must be conducted
- (h) provides for various matters relating to financial reporting requirements for associations
- (i) prescribes the form of a certificate of authority issued to an authorised officer under the Act
- (j) prescribes penalty notice offences and the amounts payable under a penalty notice
- (k) prescribes a model constitution for associations
- (l) prescribes the fees to be paid in connection with the administration of the Act

(m) provides for other minor, consequential and ancillary matters.

This Regulation is made under the *Associations Incorporation Act 2009*, including sections 4(1), definitions of **corresponding law** and **model constitution**, 6(3)(h) and (i), 10(3)(d), 15(2)(c) and (3), 18(1)(g), 29(2)(d), 31(3), 38(2), 39(3), 42(1), 43(2), 45(2)(b), 47(2), 49(2)(b), 50(4), 78(3)(d) and (e), 88(1)(a), 93(2) and (4), 96(1), 98(2) and 107 (the general regulation-making power) and Schedule 4, clause 1 (the savings and transitional regulation-making power).

3. [Betting and Racing Amendment \(Advisory Statements\) Regulation 2022](#)

The object of this Regulation is to amend the *Betting and Racing Regulation 2022* to prescribe new advisory statements for gambling advertisements in New South Wales in line with the National Consumer Protection Framework.

This Regulation is made under the *Betting and Racing Act 1998*, including sections 33H and 37, the general regulation-making power.

4. [Biodiversity Conservation Amendment \(Bushfire-Affected Development\) Regulation 2022](#)

The object of this Regulation is to provide that certain bushfire-affected development involving the clearing of native vegetation is not taken to exceed the biodiversity offsets scheme threshold until 27 November 2023.

This Regulation is made under the *Biodiversity Conservation Act 2016*, including section 7.4(1).

5. [Biosecurity Amendment \(Miscellaneous\) Regulation 2023](#)

The objects of this Regulation are as follows:

- (a) to amend the *Biosecurity Act 2015* to update the lists of prohibited matter throughout the State
- (b) to amend the *Biosecurity Regulation 2017*, including in relation to the following:
  - (i) prohibited pig feed
  - (ii) the QX disease biosecurity zone and the POMS biosecurity zone
  - (iii) certain pests and diseases
- (c) to amend the *Biosecurity (National Livestock Identification System) Regulation 2017*, including in relation to the registration of goat depot operators.

This Regulation is made under the *Biosecurity Act 2015*, including sections 12(3), 24(1), 27(4), 39(2), 79–83 and 404, the general regulation-making power, and Schedule 5.

6. [Biosecurity Order \(Permitted Activities\) 2019 Amendment Order 2023](#)

This order is made under section 404A of the *Biosecurity Act 2015*. The power to make an order includes the power to amend or repeal any order made in exercise of that power (section 43(2), *Interpretation Act 1987*).

The object of this order is to amend the *Biosecurity Order (Permitted Activities) 2019* by:

- (a) omitting Subdivision 1 of Division 1 in Part 2, Subdivision 3 of Division 3 in Part 2 and Subdivision 2 of Division 4 in Part 2

- (b) update an outdated reference to the *Fisheries Management (Aquaculture) Regulation 2012* in clause 97.

7. [Births, Deaths and Marriages Registration Amendment \(Digital Certificates\) Regulation 2022](#)

The object of this Regulation is to permit the Registrar of Births, Deaths and Marriages to issue digital certificates under a digital form of the Registrar's signature and seal.

The Regulation is made under the *Births, Deaths and Marriages Registration Act 1995*.

8. [Building and Construction Industry Long Service Payments Regulation 2022](#)

The object of the Regulation is to remake with amendments, the *Building and Construction Industry Long Service Payments Regulation 2017*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following matters:

- (a) the prescribed awards under the definitions of ***building and construction work*** and ***Commonwealth industrial instrument***
- (b) the definition of ***standard pay***
- (c) the circumstances in which a registered worker accumulates a service credit on a non-service day
- (d) the prescribed costs incurred by a registered worker in deriving assessable income when claiming a service credit
- (e) the prescribed adjustment of a service period
- (f) the retirement age for certain workers
- (g) the prescribed interval of maximum absence from service in applications for long service benefits
- (h) the circumstances in which a long service levy is not payable and the rates of long service levies
- (i) appeals to the Building and Construction Industry Long Service Payments Committee
- (j) the records required to be kept by employers about their workers
- (k) the service of documents by electronic message using a web portal.

This Regulation is made under the *Building and Construction Industry Long Service Payments Act 1986*.

9. [Building and Development Certifiers Amendment \(Miscellaneous\) Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to require registered certifiers, as a condition of registration under the *Building and Development Certifiers Act 2018*, to carry out certification work in accordance with certain standards
- (b) to provide that a registered certifier's registration may be suspended if the Commissioner for Fair Trading:

- (i) has commenced, but not finally determined, disciplinary action against the certifier, and
- (ii) is satisfied the suspension is necessary to protect property or the safety of a person,
- (c) to make minor amendments to the qualification and experience requirements for certain registered certifiers
- (d) to make minor amendments as a consequence of the repeal of the *Environmental Planning and Assessment Regulation 2000* and the commencement of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* and the *Environmental Planning and Assessment Regulation 2021*.

This Regulation is made under the *Building and Development Certifiers Act 2018*, including sections 13(1)(a), 16(g) and 120, the general regulation-making power.

10. [Building Legislation Amendment \(Building Classes\) Regulation 2023](#)

The object of this Regulation is to:

- (a) amend the Design and Building Practitioners Regulation 2021 to do the following:
  - (i) extend the classes prescribed under the definition of **building work** to building work involved in, or involved in coordinating or supervising work involved in, the construction of a building of class 3 or 9c
  - (ii) exclude certain work from being building work and certain work from being professional engineering work
  - (iii) set out exemptions for class 3 or 9c building work if, before the commencement of particular provisions of this Regulation, certain building work has commenced, or designs for certain work have been prepared, and other conditions are complied with
  - (iv) provide for an additional ground for taking disciplinary action against a registered practitioner
  - (v) amend provisions regarding work relating to Sydney Metro
  - (vi) extend alternative pathways for registration for design practitioners—fire system classes, professional engineers and certain other design practitioners until 31 December 2023
  - (vii) insert a new class of design practitioner—building design
  - (viii) exempt registered building practitioners from insurance requirements under the *Design and Building Practitioners Act 2020* for an additional 12 months, until 30 June 2024
  - (ix) amend the qualifications, experience, knowledge and skills for certain classes of registration, and update CPD requirements for a particular pathway to registration
  - (x) make amendments in relation to fees, including to provide the fees for a building practitioner—other classes, for registration under different pathways and for the variation of a registration to add an additional class,

- (b) make minor amendments to the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020*.

Schedule 1[6] and [17] may be made under a Henry VIII provision because the exemption impliedly amends the *Design and Building Practitioners Act 2020* by affecting the application of the Act. Schedule 1[17] is the second occurrence of a provision relying on the 12 month exemption power.

This Regulation is made under the *Design and Building Practitioners Act 2020* and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

11. [Casino Control Amendment \(Miscellaneous\) Regulation 2022](#)

The object of this Regulation is to amend the *Casino Control Regulation 2019* to:

- (a) make amendments consequent on the enactment of the *Casino Legislation Amendment Act 2022*, including to replace certain references to the “Authority” with references to the “NICC”, being the NSW Independent Casino Commission established under the *Casino Control Act 1992* (the **Act**)
- (b) prescribe certain matters as substantial changes in the state of affairs of close associates of a casino operator
- (c) impose requirements on casino operators regarding the availability of player activity statements
- (d) prescribe the persons or authorities to whom the list of excluded persons required to be prepared by casino operators under the Act may be provided
- (e) extend the appointment of the manager appointed under the Act, section 28 as the manager of the casino operated by the The Star Pty Limited (ACN 060 510 410)
- (f) provide that a person ceasing to be a close associate of a casino operator is a minor change in the casino operator’s state of affairs
- (g) prescribe penalty notice offences and the amounts payable under certain penalty notices
- (h) provide for matters of a savings and transitional nature
- (i) provide for other minor, consequential and ancillary matters.

The Regulation is made under the *Casino Control Act 1992*.

12. [Cemeteries and Crematoria Amendment Regulation 2022](#)

The object of this Regulation is to amend the *Cemeteries and Crematoria Regulation 2022* to establish an interment industry scheme to regulate the provision of interment services by cemetery operators.

This Regulation is made under the *Cemeteries and Crematoria Act 2013*, including sections 31 and 142, the general regulation-making power.

13. [Child Protection \(Working with Children\) Amendment \(Miscellaneous\) Regulation \(No 3\) 2022](#)

The object of this Regulation is to amend the *Child Protection (Working with Children) Regulation 2013* to:

- (a) prescribe the NSW Education Standards Authority as a notifiable person in relation to persons who are, or apply to be, accredited within the meaning of the *Teacher Accreditation Act 2004*
- (b) provide that work as an inspector carrying out functions under the *Public Health (Tobacco) Act 2008* is child-related work
- (c) allow the Children's Guardian to disclose to the following persons, at the time a worker's details are being verified and with the consent of the worker, that a criminal record check did not disclose a criminal record for the worker:
  - (i) the Secretary of the Department of Communities and Justice
  - (ii) the Chief Executive Officer of the NSW Education Standards Authority
  - (iii) the Managing Director of the TAFE Commission.

This Regulation is made under the *Child Protection (Working with Children) Act 2012*.

14. [Children and Young Persons \(Care and Protection\) Regulation 2022](#)

The object of this Regulation is to remake the *Children and Young Persons (Care and Protection) Regulation 2012* (the **2012 Regulation**), which will be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation includes the following changes compared to the 2012 Regulation:

- (a) a change to the circumstances in which it is presumed a person's authorisation as an authorised carer will be cancelled, to account for review and appeal rights
- (b) the introduction of a requirement for an authorised carer to notify the relevant designated agency if a child placed with the carer is charged with, or convicted of, an offence for which a penalty of imprisonment for 12 months or more may be imposed.

The following matters have been transferred to the *Children's Guardian Act 2019* and the *Children's Guardian Regulation 2022*.

- (c) matters relating to the accreditation of designated agencies
- (d) matters relating to the Carers Register.

This Regulation makes provision for the following:

- (a) the mandatory reporting of children and young people at significant risk of harm by certain service providers, professions and public sector agencies
- (b) care plans and alternative care plans
- (c) administrative matters for guardianship arrangements including the following:
  - (i) the form of consent to guardianship orders
  - (ii) suitability statements for guardians
  - (iii) conditions of financial assistance to guardians
- (d) the authorisation of persons to provide residential out-of-home care, including emergency authorisations



- (e) the administration of psychotropic drugs to children and young people in statutory out-of-home care
- (f) other miscellaneous matters.

The Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*.

15. [Children's Guardian Amendment \(Child Employment\) Regulation 2022](#)

The object of this Regulation is to make further provisions about conditions of an exemption from the requirement to hold an employer's authority under the *Children's Guardian Act 2019* (an **employer's exemption**), including making a failure to comply with a condition of an employer's exemption an offence that may be dealt with by the issue of a penalty notice.

This Regulation is made under the *Children's Guardian Act 2019*.

16. [Community Land Management Amendment \(COVID-19\) Regulation \(No 2\) 2022](#)

The objects of this Regulation are to:

- (a) set out procedures relating to voting on a matter by electronic means for a meeting of an association or association committee and, in certain circumstances, for pre-meeting voting by electronic means
- (b) provide for the ways of voting, other than in person, that may be specified in a notice given for a meeting of an association or an association committee
- (c) provide for what may constitute reasonable steps to be taken by the secretary of an association or a managing agent to ensure each person entitled to vote at a meeting can participate in and vote at the meeting if the voting is not to be carried out in person
- (d) prescribe requirements for affixing the seal of an association electronically to an instrument or document.

The Regulation is made under the *Community Land Management Act 2021*.

17. [Companion Animals Amendment Regulation 2022](#)

The object of this Regulation is to enable, consequent on the commencement of the *Public Spaces (Unattended Property) Act 2021*, the following persons to access the Register of Companion Animals as established by the *Companion Animals Act 1998*:

- (a) the Secretary of the Department of Planning and Environment, or a person authorised by the Secretary, to the extent required for the purposes of the administration or execution of the *National Parks and Wildlife Act 1974*
- (b) an authorised officer within the meaning of the *Public Spaces (Unattended Property) Act 2021*, to the extent required for the purposes of exercising a function under that Act.

The Regulation is made under the *Companion Animals Act 1998*.

18. [Constitution \(Executive Council Processes\) Amendment \(Prescribed Period\) Regulation 2022](#)

The object of this Regulation is to extend the period during which regulations may be made under the *Constitution Act 1902* (the **Act**) about the ways and forms in which meetings of the Executive Council are to be held, including the ways and forms in which the Governor may preside at meetings. The object is achieved by amending the *Constitution (Executive Council Processes)*

*Regulation 2020* to prescribe 26 September 2023 as the end of the period during which regulations may be made under the Act, Schedule 8.

The Regulation is made under the *Constitution Act 1902*.

19. [Conveyancing \(General\) Amendment \(Amplitel Pty Ltd\) Regulation 2023](#)

This Regulation prescribes Amplitel Pty Ltd as a corporation in whose favour an easement without a dominant tenement may be created if the easement is for the purpose of, or incidental to, the supply of a utility service to the public.

This Regulation is made under the *Conveyancing Act 1919*, including section 88A(1), definition of **prescribed authority**, paragraph (c) and section 202, the general regulation-making power.

20. [Crime Commission Regulation 2022](#)

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

This Regulation prescribes conditions of employment for members of staff of the New South Wales Crime Commission, including conditions relating to the following:

- (a) obtaining and maintaining security clearances
- (b) the disclosure of vetting information
- (c) providing statements of personal particulars, documents and fingerprint imprints
- (d) the disclosure of conflicts of interest
- (e) compliance with drug and alcohol policies.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under the *Crime Commission Act 2012*.

21. [Crimes \(Administration of Sentences\) Amendment \(Awards\) Regulation 2022](#)

The object of this Regulation is to further provide for certain awards for correctional officers and other members of staff of Corrective Services NSW.

This Regulation is made under the *Crimes (Administration of Sentences) Act 1999*, section 234(5).

22. [Dangerous Goods \(Road and Rail Transport\) Regulation 2022](#)

The object of this Regulation is to repeal and remake, with some amendments, the *Dangerous Goods (Road and Rail Transport) Regulation 2014*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for certain matters relating to the transport of dangerous goods by road and rail that may be, or are required to be, the subject of regulations under the *Dangerous Goods (Road and Rail Transport) Act 2008* (the **Act**). The provisions of this Regulation mirror, with minor modifications, the provisions of the *Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail* prepared by the National Transport Commission.

The Regulation establishes a system of standards and licensing for the transport of dangerous goods by road and rail, including by applying provisions of the *Australian Code for the Transport of Dangerous Goods by Road & Rail* (the **ADG Code**).

The Regulation, except as specified below, comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory and matters involving the substantial implementation of Agreed Reforms, within the meaning of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

The Regulation also provides for the following matters:

- (a) the determination by a body specified by the Act as a Competent Authority, namely the Environment Protection Authority or SafeWork NSW, that specified dangerous goods, or a specified load or type of load that contains dangerous goods, may be or must or must not be transported under specified conditions
- (b) making it an offence for a person to provide information the person knows, or reasonably ought to know, is misleading if the information forms part of an application for approval of the design of a tank
- (c) requiring maintenance, testing or inspection of a vehicle with a dangerous goods vehicle licence to be carried out in accordance with applicable requirements of Chapter 4.4 of the ADG Code
- (d) requiring certain vehicles used to transport dangerous goods to be fitted with roll stability systems
- (e) prohibiting the transport of placard loads in certain circumstances
- (f) specifying requirements to provide information about incidents resulting in dangerous situations
- (g) setting out the fees to be paid for certain applications under the Act.

The Regulation is made under the *Dangerous Goods (Road and Rail Transport) Act 2008*.

23. [Design and Building Practitioners Amendment \(Miscellaneous\) Regulation \(No 2\) 2022](#)

The object of this Regulation is to:

- (a) amend the *Design and Building Practitioners Regulation 2021* to do the following:
  - (i) insert a definition of **construction issued regulated design**
  - (ii) exclude certain work from being building work
  - (iii) provide for documents to be lodged on the NSW planning portal if more than 1 construction certificate is to be issued for building work or only a portion of building work is to be completed

- (iv) make provision for work relating to Sydney Metro, including exemptions relating to Sydney Metro
  - (v) amend the qualifications, experience, knowledge and skills required for certain classes of registration, and update CPD requirements for a particular pathway to registration
- (b) make minor amendments to the *Design and Building Practitioners Act 2020*.

Amendments made by this Regulation, Schedule 2 are made under a Henry VIII provision.

This Regulation is made under the *Design and Building Practitioners Act 2020*.

24. [Drug Court Amendment \(Court Expansion\) Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to provide that residents of the Dubbo Regional local government area are eligible for the Drug Court
- (b) to allow the District Court and the Local Court, regardless of where the court is sitting in New South Wales, to refer eligible persons to the Drug Court
- (c) to allow persons acting for or on behalf of the Western NSW Local Health District to provide information to the Drug Court about offenders in the drug offender's program.

The Regulation is made under the *Drug Court Act 1998*.

25. [Duties Amendment \(Excluded Transactions\) Regulation 2022](#)

The object of this Regulation is to prescribe a transaction that results in an increase in a person's interest in dutiable property under an agreement entered into between the person and the State under a shared equity scheme as an excluded transaction for the purposes of the *Duties Act 1997*.

This Regulation is made under the *Duties Act 1997*, including section 8(3), definition of excluded transaction, paragraph (k) and section 313, the general regulation-making power.

26. [Education and Care Services National Amendment Regulations 2022](#)

These Regulations amend the *Education and Care Services National Regulations* to insert new provisions that govern the regular transportation of children by or arranged by education and care services, in particular, to prescribe requirements around children embarking and disembarking such centre-based means of transport.

The Education Ministers Meeting made these Regulations under section 301 of the *Education and Care Services National Law*, as applied and modified in NSW by the *Children (Education and Care Services National Law Application) Act 2010*.

27. [Electoral Amendment \(Electoral Material and Election Officials\) Regulation 2023](#)

The object of this Regulation is to amend the *Electoral Regulation 2018* to do the following:

- (a) prescribe the requirements for publishing the name and address of the individual on whose instructions electoral material that is a social media post is published
- (b) make amendments relating to the persons or classes of persons the Electoral Commissioner may appoint as an election official

- (c) provide for exemptions from the requirements for particular social media posts and SMS text messages to include the name and address of the person on whose instructions the material was published or distributed.

This Regulation is made under the *Electoral Act 2017*.

28. [Electoral Legislation Amendment Regulation 2022](#)

The object of this Regulation is to amend:

- (a) the *Electoral Funding Act 2018* to insert transitional provisions following the commencement of the *Electoral Legislation Amendment Act 2022*
- (b) the *Electoral Funding Regulation 2018* to omit notes
- (c) the *Electoral Regulation 2018* to do the following:
  - (i) prescribe an additional class of persons from which the Electoral Commissioner may appoint persons as election officials
  - (ii) prescribe the period following the close of voting as the period in which postal votes envelopes received by the Electoral Commission may be accepted in the scrutiny
  - (iii) provide that the offence relating to the authorisation of automated telephone calls is an offence for which a penalty notice may be issued.

Amendments made by Schedule 1 are made under a Henry VIII provision that enables the making of regulations to amend the *Electoral Funding Act 2018*, Schedule 2.

This Regulation is made under the *Electoral Act 2017* and the *Electoral Funding Act 2018*.

29. [Electricity Infrastructure Investment Amendment \(Access Schemes\) Regulation 2022](#)

The objects of this Regulation are:

- (a) to provide for the functions of the consumer trustee and infrastructure planner
- (b) to set out the matters a declaration for an access scheme may specify
- (c) to modify the *National Electricity Rules* in relation to access schemes.

The Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

30. [Electricity Infrastructure Investment Amendment \(Authorisations\) Regulation 2022](#)

The object of this Regulation is to set out an additional requirement for directions made by the Minister for Energy that require a network operator to carry out an infrastructure project. The directions must specify the contractual arrangements that the network operator is required to enter into to carry out the infrastructure project.

The Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

31. [Electricity Infrastructure Investment Amendment \(Contractual Arrangements\) 2022](#)

The object of this Regulation is to provide for the contractual arrangements that a network operator may be required to enter into to carry out a REZ network infrastructure project or priority transmission infrastructure project under an authorisation.

This Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

32. [Electricity Infrastructure Investment Amendment \(Cost Recovery\) Regulation 2022](#)

The objects of this Regulation are:

- (a) to insert a new Division in the *Electricity Infrastructure Investment Regulation 2021* dealing with cost recovery for infrastructure project costs
- (b) to provide for the *National Electricity Rules* to be modified to take account of the new Division.

This Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

33. [Electricity Infrastructure Investment Amendment \(Firming\) Regulation 2022](#)

The objects of this Regulation are:

- (a) to insert a new Part in the *Electricity Infrastructure Investment Regulation 2021* dealing with firming infrastructure
- (b) to enable the Environment Protection Authority to be appointed as a regulator, but only to exercise functions under the new Part.

The Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

34. [Electricity Infrastructure Investment Amendment \(Non-Contestable Revenue Determinations\) Regulation 2022](#)

The objects of this Regulation are:

- (a) to make various amendments relating to revenue determinations made by the regulator under the *Electricity Infrastructure Investment Act 2020*
- (b) to make other minor amendments.

This Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

35. [Electricity Infrastructure Investment Amendment \(Renewable Energy Sources\) Regulation 2022](#)

The object of this Regulation is to provide that LTES agreements may not be entered into for:

- (a) the construction and operation of generation infrastructure if the infrastructure involves generation from wood waste from timber native to Australia, or
- (b) the construction and operation of firming infrastructure if the infrastructure involves electricity generated from biomass from timber native to Australia.

The Regulation is made under the *Electricity Infrastructure Investment Act 2020*.

36. [Electricity Supply \(General\) Amendment \(Green Hydrogen Limitation\) Regulation 2023](#)

The object of this Regulation is to provide for a limitation on the recovery by a network service provider of certain charges from the following:

- (a) a person who buys electricity for the purposes of producing green hydrogen

- (b) a retailer who supplies electricity to a person for the purposes of producing green hydrogen.

This Regulation is made under the *Electricity Supply Act 1995*.

37. [Energy and Utilities Administration Amendment \(Net Zero Emissions Board\) Regulation 2023](#)

The object of this Regulation is to provide that the Net Zero Emissions Board must consider an additional emissions reduction objective of a 70% reduction of 2005 emissions levels by the year 2035, when exercising its functions.

This Regulation is made under the *Energy and Utilities Administration Act 1987*, including section 34W(3).

38. [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Amendment \(Farm Stay Accommodation\) Regulation 2022](#)

The object of this Regulation is to amend the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* to make it an offence for a person to use a building to provide farm stay accommodation unless the building complies with the relevant requirements of the *Short-Term Rental Accommodation Fire Safety Standard* approved by the Secretary of the Department of Planning and Environment and published on the Department's website, as in force from time to time.

The Regulation is made under the *Environmental Planning and Assessment Act 1979*.

39. [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Amendment \(Fire Safety\) Regulation 2022](#)

The objects of this Regulation are to amend the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* to:

- (a) clarify powers and responsibilities of the Fire Commissioner
- (b) make provision for essential fire safety measures for a building to be addressed by a performance solution
- (c) make provision for the reissue of fire safety schedules
- (d) make provision for the Commissioner for Fair Trading to approve certain forms.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*.

40. [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Amendment \(Construction Certificates\) Regulation 2023](#)

The object of this Regulation is to provide that, for multi storey buildings, the Building Code of Australia that is in force when an application for a construction certificate for building work involving the entrance floor of the building is made will continue to apply to all subsequent construction certificate applications for the same building.

This Regulation also makes an amendment relating to applications to modify development the subject of a construction certificate or an application for a construction certificate.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.17(11), 6.8(1)(a), 6.33(1) and 10.13, the general regulation-making power.



41. [Environmental Planning and Assessment Amendment \(Activation Precincts\) Regulation 2022](#)

The object of this Regulation is to make minor amendments in relation to development applications and applications for complying development certificates for development in Activation Precincts under *State Environmental Planning Policy (Precincts—Regional) 2021*, Chapter 3. The Regulation also makes minor law revision amendments to penalty provisions.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*.

42. [Environmental Planning and Assessment Amendment \(Activation Precincts\) Regulation 2023](#)

The object of this Regulation is to further provide for Activation Precinct certificates issued under *State Environmental Planning Policy (Precincts—Regional) 2021*, Chapter 3 for development on land in the Activation Precincts under that Chapter.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12 and 4.64.

43. [Environmental Planning and Assessment Amendment \(Bee Keeping and Grazing\) Regulation 2022](#)

The object of this Regulation is to:

- (a) provide that development for the purposes of bee keeping or grazing that is permitted without development consent under *State Environmental Planning Policy (Transport and Infrastructure) 2021* is not an activity for which an environmental impact assessment may otherwise be required under the *Environmental Planning and Assessment Act 1979*
- (b) correct a cross-reference.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*.

44. [Environmental Planning and Assessment Amendment \(Conflict of Interest\) Regulation 2022](#)

The object of this Regulation is to impose requirements on councils to manage conflicts of interest that may arise in connection with council-related development applications because the council is the consent authority.

A ***council-related development application*** is a development application, for which the council is the consent authority, that is:

- (c) made by or on behalf of the council, or
- (d) for development on land:
  - (i) of which the council is an owner, a lessee or a licensee, or
  - (ii) otherwise vested in or under the control of the council.

The Regulation is made under the *Environmental Planning and Assessment Act 1979*.

45. [Environmental Planning and Assessment Amendment \(Conflict of Interest\) Regulation 2023](#)

The objects of this Regulation are:

- (a) to update a definition of ***council-related development application*** to exclude development applications in relation to public roads



- (b) to permit certain conflict of interest guidelines to be updated from time to time
- (c) to correct a cross-reference
- (d) to provide that the proposed amendments do not apply to existing development applications.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.16(11), 10.13, the general regulation-making power and 10.15 and Schedule 1, clause 21.

Section 3 of this Regulation is made under a Henry VIII provision.

46. [Environmental Planning and Assessment Amendment \(Cumberland Plain Biodiversity Certification\) Regulation 2022](#)

The object of this Regulation is to specify fees for applications to modify biodiversity certification initiated under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Part 13.5A.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 7.44(1) and 10.13, the general regulation-making power.

47. [Environmental Planning and Assessment Amendment \(Dubbo\) Regulation 2023](#)

The object of this Regulation is to update a reference to the local government area of Dubbo Regional. This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.15(1)(a)(iv) and 10.13, the general regulation-making power.

48. [Environmental Planning and Assessment Amendment \(Kosciuszko Alpine Region\) Regulation 2022](#)

The object of this Regulation is to make minor amendments to the *Environmental Planning and Assessment Regulation 2021* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* as a consequence of *State Environmental Planning Policy (Precincts—Regional) Amendment (Kosciuszko Alpine Region) 2022*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*.

49. [Environmental Planning and Assessment Amendment \(Lismore Flood Recovery\) Regulation 2022](#)

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2021* to:

- (a) require an application for a complying development certificate for house-raising development in the Lismore City local government area to be accompanied by:
  - (i) a certificate issued by the Northern Rivers Reconstruction Corporation or the NSW Reconstruction Authority certifying that the land on which the development will be carried out is suitable for the development, and
  - (ii) a certificate issued by a professional engineer certifying certain matters.
- (b) require Lismore City Council to constitute a single local planning panel for the local government area.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*.

50. [Environmental Planning and Assessment Amendment \(Stage 1 Bays West Precinct\) Regulation 2022](#)

The objects of this Regulation are:

- (a) to require a development application involving land in the Stage 1 Bays West Precinct under *State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021*, Chapter 2 to be accompanied by an assessment of the consistency of the development with certain documents published by the Department of Planning and Environment
- (b) to make it clear that the removal of sandstone for certain purposes in the Stage 1 Bays West Precinct is not designated development.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.10(1), 4.64(1)(e) and 10.13, the general regulation-making power.

51. [Environmental Planning and Assessment Amendment \(Wagga Wagga Activation Precinct\) Regulation 2022](#)

The object of this Regulation is to make minor amendments as a consequence of the Wagga Wagga Activation Precinct coming into effect under *State Environmental Planning Policy (Precincts—Regional) 2021*.

The Regulation is made under the *Environmental Planning and Assessment Act 1979*.

52. [Environmental Planning and Assessment Amendment \(Water Catchments\) Regulation 2022](#)

The object of this Regulation is to set out certain factors that a determining authority must take into account when considering the environmental impact of an activity in a water catchment area.

The Regulation is made under the *Environmental Planning and Assessment Act 1979*.

53. [Environmental Planning and Assessment Amendment \(Water Supply Systems\) Regulation 2023](#)

The object of this Regulation is to prescribe the Commonwealth as a public authority for certain development that may be carried out without consent under *State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 2.159.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 1.4(1), definition of public authority, and 10.13, the general regulation-making power.

54. [Fair Trading Amendment \(Information Sharing\) Regulation 2022](#)

The object of this Regulation is to prescribe certain information so that the information can be subject to an information sharing arrangement.

This Regulation is made under the *Fair Trading Act 1987*.

55. [Fire and Emergency Services Levy Amendment Regulation 2022](#)

The object of this Regulation is to suspend the requirement under the *Fire and Emergency Services Levy Act 2017* for the Minister to commence a review of the Act until whichever of the following occurs first:

- (a) the date a regulation appointing the start date for the fire and emergency services levy is published

- (b) the date appointed by regulation for the revocation of the suspension.

This regulation is made under the *Fire and Emergency Services Levy Act 2017*.

56. [Firearms Amendment \(Approval of Club\) Regulation 2022](#)

The object of this Regulation is to include the International Practical Shooting Confederation (NSW) Inc as an association with which a club may be affiliated in order to be approved by the Commissioner of Police.

This Regulation is made under the *Firearms Act 1996*, including section 88(2)(l) and (o).

57. [Fisheries Management Legislation Amendment \(Licences\) Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to amend the *Fisheries Management (General) Regulation 2019* in relation to declared commercial fishing boat activities, with the effect that boats will no longer be required to have a fishing boat licence for commercial fishing
- (b) to set new maximum lengths for boats used in certain share management fisheries
- (c) to exempt boats used in certain share management fisheries and the southern fish trawl restricted fishery from the maximum boat length in certain circumstances
- (d) to provide that commercial fishing licences will be issued or renewed for 1, 5 or 10 years, as requested by the applicant, unless the Minister for Agriculture otherwise determines
- (e) to further provide for the fees for commercial fishing licence applications and renewals
- (f) to make other minor and consequential amendments.

This Regulation amends the following Regulations:

- (a) *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*
- (b) *Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006*
- (c) *Fisheries Management (General) Regulation 2019*
- (d) *Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006*
- (e) *Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006*
- (f) *Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006*
- (g) *Fisheries Management (Supporting Plan) Regulation 2006*.

This Regulation is made under the *Fisheries Management Act 1994*.

58. [Fisheries Management Legislation Amendment Regulation \(No 2\) 2023](#)

The objects of this Regulation are as follows:

- (a) to amend the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*:
  - (i) to provide for additional secondary species that may be taken by an endorsement holder

- (ii) concerning the construction and use of a hauling net (general purpose), garfish net (bullringing), prawn net (set pocket) and flathead net
  - (iii) concerning the use of a prawn running net and pilchard, anchovy and bait net (hauling)
  - (iv) concerning the construction of a bait net and eel trap
  - (v) to amend the way an endorsement holder may configure hooks on the holder's set lines, without increasing the total number of hooks that may be used
  - (vi) to allow a hand gathering endorsement holder or handline endorsement holder to be assisted by 1 or more persons who hold the same type of endorsement and 1 person who does not hold an endorsement
  - (vii) to correct typographical errors
- (b) to amend the *Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006*:
- (i) to provide for additional by-product species of fish that may be taken by an endorsement holder while fishing for target species of fish
  - (ii) to correct the misdescription of 1 species of fish included in the list of by-product species of fish that may be taken by an endorsement holder while fishing for target species of fish
- (c) to amend the *Fisheries Management (Lobster Share Management Plan) Regulation 2000* to update the requirements applying to the marker buoy used on a commercial lobster trap
- (d) to amend the *Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006*:
- (i) to allow commercial fishing using a hauling net (general purpose) in certain waters near Crowdy Head for a limited season each year
  - (ii) concerning the construction and use of a hauling net (general purpose)
- (e) to amend the *Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006* to:
- (i) amend the way an endorsement holder may configure hooks on the holder's set lines, without increasing the total number of hooks that may be used
  - (ii) adjust the season for taking male spanner crabs
  - (iii) permit the holder of a line fishing eastern zone endorsement to use an automated baiting machine
  - (iv) increase the period allow for an endorsement holder who takes bigeye ocean perch to make a final catch report from 3 hours to 6 hours.

This Regulation is made under the *Fisheries Management Act 1994*.

59. [Fisheries Management Legislation Amendment Regulation 2023](#)

The objects of this Regulation are as follows:

- (a) to update references to the common names and scientific descriptions of fish
- (b) to amend the requirements relating to prior notification and record keeping if oysters, catching material or cultivation material are moved from oyster-producing estuaries under the *Fisheries Management (Aquaculture) Regulation 2017*, including to allow for electronic records
- (c) to set out the requirements for prawning endorsement holders receiving assistance from other prawning endorsement holders when using a prawn net (set pocket) under the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*
- (d) to make amendments to offences relating to the following under the *Fisheries Management (General) Regulation 2019*:
  - (i) the use of lines, to allow fishers to possess additional rods and lines when fishing with lures in inland waters
  - (ii) the use of light
  - (iii) the mutilation of fish
- (e) to prescribe purposes for which the Minister may approve the taking and possession of fish or marine vegetation
- (f) to set out provisions relating to charter fishing management, consequent on amendments made to the *Fisheries Management Act 1994* by the *Fisheries Management Amendment Act 2015*, including prescribing fees and prescribing offences as penalty notice offences
- (g) to prescribe the period in which catch estimate reports and final catch reports are to be made for certain fish under the *Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006*
- (h) to make other minor and consequential amendments.

This Regulation amends the following regulations:

- (a) the *Fisheries Management (Abalone Share Management Plan) Regulation 2000*
- (b) the *Fisheries Management (Aquaculture) Regulation 2017*
- (c) the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*
- (d) the *Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006*
- (e) the *Fisheries Management (General) Regulation 2019*
- (f) the *Fisheries Management (Lobster Share Management Plan) Regulation 2000*
- (g) the *Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006*
- (h) the *Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006*
- (i) the *Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006*
- (j) the *Fisheries Management (Supporting Plan) Regulation 2006*.

This Regulation is made under the *Fisheries Management Act 1994*.

60. [Forestry Amendment \(Penalty Notice Offences\) Regulation 2022](#)

The object of this Regulation is to provide that a penalty notice may be issued for an offence under the *Forestry Act 2012*, section 68(1) and specify the amount payable.

This Regulation is made under the *Forestry Act 2012*, section 85(7).

61. [Forestry Regulation 2022](#)

The object of this Regulation is to remake, with amendments, the *Forestry Regulation 2012*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (a) the control and management of forestry areas, including:
  - (i) the giving of directions to leave forestry areas
  - (ii) the removal of persons from forestry areas
  - (iii) the entry of persons and vehicles into forestry areas
  - (iv) the regulations and prohibition of certain activities in forestry areas
- (b) the regulation of fires in forestry areas, including activities that create a risk of fire in forestry areas
- (c) the issue and transfer of licences and forest permits, the grant of forest leases and the imposition of conditions on licences, forest permits and forest leases
- (d) the approval of timber contractors
- (e) the branding of timber cut or obtained from forestry areas
- (f) the requirements for bee-keeping and grazing activities in certain forestry areas
- (g) miscellaneous offences, including in relation to activities in forestry areas and persons dealing in timber or forest products
- (h) the offences under the *Forestry Act 2012* and this Regulation for which penalty notices may be issued, including the amounts payable.

This Regulation is made under the *Forestry Act 2012*.

62. [Gaming Machines Amendment \(Responsible Conduct of Gambling Training\) Regulation 2022](#)

This Regulation amends the *Gaming Machines Regulation 2019* to:

- (a) enable tiered Responsible Conduct of Gambling (RCG) training courses, including by recognising an advanced RCG training course
- (b) strengthen the RCG course assessment framework by including a new online assessment
- (c) enable an individual to renew their RCG endorsement by completing the RCG training course, an advanced RCG training course or a refresher RCG training course as appropriate

- (d) introduce a fee structure for fees relating to the RCG endorsement framework that is consistent with existing fee units in the Regulation
- (e) provide for other minor and miscellaneous matters relating to the RCG endorsement framework, including matters of a transitional nature.

This Regulation is made under the *Gaming Machines Act 2001*, including sections 34(3), 49A, 49B and section 210(1), the general regulation-making power.

63. [Gas Supply \(Safety and Network Management\) Regulation 2022](#)

The object of this Regulation is to remake, with changes, the provisions of the *Gas Supply (Safety and Network Management) Regulation 2013*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation makes provision for the following:

- (a) the safety of gas networks
- (b) the safety and operating plans for gas networks
- (c) the standards for natural gas
- (d) the protection of underground gas pipelines
- (e) the reports to be given to the Secretary of the Treasury in relation to the maintenance and safety aspects of the operation of a gas network
- (f) savings and formal matters.

This Regulation is made under the *Gas Supply Act 1996*.

64. [Government Information \(Public Access\) Amendment \(Greater Sydney Commission\) Regulation 2022](#)

The object of this Regulation is to amend the *Government Information (Public Access) Regulation 2018* to provide that, for the purposes of the *Government Information (Public Access) Act 2009*, the Greater Sydney Commission is no longer declared to be a part of and included in the Department of Planning and Environment.

The Regulation is made under the *Government Information (Public Access) Act 2009*.

65. [Government Sector Finance Amendment \(Annual Reporting Requirements\) Regulation 2023](#)

The object of this Regulation is to prescribe the following:

- (a) the reporting exemption criteria the Treasurer must consider in determining whether to give a direction that an SDA account, or kind of SDA account, should be exempted from particular requirements relating to financial reporting by the responsible manager for the account or kind of account
- (b) the reporting GSF agencies to which the Act, Part 7, Division 7.3 does not apply until 1 July 2023
- (c) particular matters relating to how a reporting GSF agency must, from 1 July 2024, present its annual reporting information

- (d) particular matters relating to climate-related risks and opportunities that a reporting GSF agency must, from 1 July 2024, include in its annual reporting information.

This Regulation is made under the *Government Sector Finance Act 2018*, including section 7.8, 7.10, 7.11 and 10.4, the general regulation-making power.

66. [Government Sector Finance Amendment \(Working Accounts\) Regulation 2022](#)

The object of this Regulation is to amend the *Government Sector Finance Act 2018* (the **GSF Act**), Schedule 1 to include different or additional savings and transitional provisions consequent on the enactment of the GSF Act to extend, until 31 December 2022, the period during which working accounts established under the *Public Finance and Audit Act 1983* are taken to be working accounts established under the GSF Act.

This Regulation is made under the GSF Act, including section 10.4, the general regulation-making power, and Schedule 1, clause 1.

67. [Greater Cities Commission Regulation 2022](#)

The object of this Regulation is to transfer the land within the local government area of Sutherland Shire from the Central River City to the Eastern Harbour City.

This Regulation, section 4 amends the *Greater Cities Commission Act 2022* under that Act, section 4, a Henry VIII provision.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) direct amendments
- (b) matters of a savings or transitional nature.

This Regulation is made under the *Greater Cities Commission Act 2022*.

68. [Greyhound Racing Amendment \(Sample Collection Officers\) Regulation 2023](#)

The object of this Regulation is to prescribe certain persons who collect biological samples from greyhounds at greyhound race meetings as greyhound racing industry participants.

This Regulation is made under the *Greyhound Racing Act 2017*.

69. [Health Practitioner Regulation \(Adoption of National Law\) Amendment Regulation 2023](#)

The object of this Regulation is to modify an amendment to the Health Practitioner Regulation National Law made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* of Queensland in relation to the guiding principles of the national registration and accreditation scheme for the purpose of applying the amendment as an amendment to the *Health Practitioner Regulation National Law (NSW)*.

This Regulation is made under a Henry VIII provision that enables the making of regulations to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009*, Schedule 1.

70. [Health Practitioner Regulation \(Adoption of National Law\) Regulation 2022](#)

The object of this Regulation is to apply certain amendments to the Health Practitioner Regulation National Law, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009*



of Queensland, made by the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* of Queensland (the **Queensland Amendment Act**) as amendments to the *Health Practitioner Regulation National Law (NSW)*. Also, this Regulation:

- (a) modifies certain amendments made by the Queensland Amendment Act by amending the *Health Practitioner Regulation (Adoption of National Law) Act 2009*, Schedule 1
- (b) amends the *Health Practitioner Regulation (Adoption of National Law) Act 2009*, Schedule 1, for the purpose of applying an amendment to the *Health Practitioner Regulation National Law (NSW)*.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters arising under legislation that is substantially uniform or complementary with legislation of another State.

This Regulation is made under a Henry VIII provision in the *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

71. [Health Practitioner Regulation National Law Amendment \(Paramedicine Qualification\) Regulation 2022](#)

This Regulation amends the *Health Practitioner Regulation National Law Regulation 2018* to insert a new prescribed qualification for general registration in paramedicine.

The Ministerial Council has made this Regulation under section 245 of the *Health Practitioner Regulation National Law* as applied by the law of the States and Territories.

72. [Health Practitioner Regulation National Law Amendment Regulation 2022](#)

This Regulation amends the *Health Practitioner Regulation National Law Regulation* to update references to agencies to which certain Commonwealth Acts apply.

The Ministerial Council has made this Regulation under section 245 of the *Health Practitioner Regulation National Law* as applied by the law of the States and Territories.

73. [Health Records and Information Privacy Amendment \(Disclosure of Health Information\) Regulation 2022](#)

The object of this Regulation is to extend an exemption authorising the disclosure of health information to immediate family members for compassionate reasons so that it applies to health information about persons who are deceased.

This Regulation is made under the *Health Records and Information Privacy Act 2002*, including section 75, the general regulation-making power, and Schedule 1, clause 11(1)(l).

74. [Heavy Vehicle \(Vehicle Standards\) National Amendment Regulation 2023](#)

This Regulation is made under the *Heavy Vehicle National Law* as applied by the *Heavy Vehicle National Law Act 2012* (Qld) and by the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW). The amendments primarily relate to vehicle standards relating to Australian Design Rules applying to single heavy vehicles.

75. [Home Building Amendment \(Insurance Cover\) Regulation 2023](#)

The objects of this Regulation are to amend the *Home Building Regulation 2014* to:

- (a) provide exemptions from home building insurance for building work undertaken:
  - (i) on behalf of a registered community housing provider
  - (ii) on behalf of a Local Aboriginal Land Council, providing rental accommodation under a community benefits scheme
  - (iii) under a build to rent scheme
  - (iv) on behalf of a developer that is a council under the *Local Government Act 1993*
- (b) require the establishment of a public register of the persons and projects exempted from insurance requirements under the *Home Building Act 1989*.

This Regulation is made under the *Home Building Act 1989*.

76. [Home Building Amendment \(Miscellaneous\) Regulation 2022](#)

The object of this Regulation is to amend the *Home Building Regulation 2014* to align the work falling within the specialist work category of mechanical services and medical gas work with the definition of mechanical services and medical gas work contained in the *Home Building Act 1989*.

This Regulation is made under the *Home Building Act 1989*, including section 140 (the general regulation-making power).

77. [Human Tissue Amendment \(Blood Donor Certificate\) Regulation 2022](#)

The object of this Regulation is to amend the question on the blood donor certificate relating to previous blood transfusions.

This Regulation is made under the *Human Tissue Act 1983*, including sections 20D and 39, the general regulation-making power.

78. [Industrial Relations Commission Rules 2022](#)

The object of these Rules is to repeal and replace, with some amendments, the *Industrial Relations Commission Rules 2009*.

These Rules are made by the Rule Committee of the Industrial Relations Commission made under the *Industrial Relations Act 1996*.

79. [Justices of the Peace Amendment \(Court Appointed Questioner\) Regulation 2022](#)

The object of this Regulation is to amend the *Justices of the Peace Regulation 2020* to provide that:

- (a) the function of being a court appointed questioner under the Criminal Procedure Act 1986, section 289VA is conferred on justices of the peace but only if appointed by a court under that section
- (b) if a justice of a peace exercises the function of being a court appointed questioner, the justice of the peace may be paid a fee despite the general prohibition on charging fees or accepting gifts for providing justice of the peace services.

This Regulation is made under the *Justices of the Peace Act 2002*.

80. [Law Enforcement \(Powers and Responsibilities\) Amendment \(Organised Crime\) Regulation 2023](#)

The objects of this Regulation are as follows:

- (a) to provide for the records that an issuing officer must keep in relation to an application for a digital evidence access order and that a Magistrate must keep in relation to a dedicated encrypted criminal communication device access order (**DECCD access order**)
- (b) to prescribe the forms for a digital evidence access order and DECCD access order
- (c) to require a description of the use of a digital evidence access order to be included in a report to an issuing officer on the execution of certain search warrants or a crime scene warrant.

This Regulation is made under the *Law Enforcement (Powers and Responsibilities) Act 2002*, including sections 66(1), 76AF(1)(f), 80F(1)(d) and 238(1) and (3)(a) and (c).

81. [Liquor Amendment \(Miscellaneous\) Regulation 2022](#)

The objects of this Regulation are to:

- (a) enable individuals who have completed an approved interstate Responsible Service of Alcohol (**RSA**) training course to work in New South Wales for the period starting on the day the Regulation is notified and ending at the end of 31 January 2023
- (b) enable individuals whose principal place of residence is in a State or Territory other than New South Wales and who have completed an approved interstate RSA training course to work in New South Wales from 1 February 2023
- (c) require individuals whose principal place of residence is in a State or Territory other than New South Wales and who have completed an approved interstate RSA training course to provide evidence to police officers or inspectors on request
- (d) extend the term of approved training providers to 5 years
- (e) provide extended trading for hotels and clubs for special events in 2023
- (f) make minor amendments consequential on the *Gaming Machines Amendment (Responsible Conduct of Gaming Training) Regulation 2022*.

This Regulation is made under the *Liquor Act 2007*, including sections 13, 114F(2) and 159, the general regulation-making power.

82. [Liquor Amendment \(Special Events Extended Trading\) Regulation 2022](#)

The object of this Regulation is to enable certain hotels and clubs to trade during extended hours for the 2022 Rugby League World Cup Final that will be held on Sunday 20 November 2022.

This Regulation is made under the *Liquor Act 2007*, including sections 13 and 159, the general regulation-making power.

83. [Liquor Amendment \(Special Events Extended Trading\) Regulation 2023](#)

The object of this Regulation is to provide extending trading periods for hotels and registered clubs during certain cultural and sporting events in 2023.

This Regulation is made under the *Liquor Act 2007*, sections 13 and 159, the general regulation-making power.

84. [Local Court \(Amendment No 12\) Rule 2022](#)

The object of this Rule is to amend the *Local Court Rules 2009* to provide for the transfer of proceedings from the Local Court's General Division to the Court's Small Claims Division.

This Rule is made under the *Local Court Act 2007*.

85. [Local Government \(General\) Amendment \(Minimum Amounts of Rate\) Regulation 2023](#)

The object of this Regulation is to increase the limit on the minimum amount of ordinary council rates under the *Local Government Act 1993*, section 548(3)(a) from \$569 to \$590.

This Regulation is made under the *Local Government Act 1993*.

86. [Local Government \(General\) Amendment \(Tendering\) Regulation 2023](#)

The objects of this Regulation are to:

- (a) provide that councils are not required to publish amounts that appear to be tendered in tender submissions on the council's website
- (b) enable councils to omit that information from the council's website if published before the commencement of this Regulation.

This Regulation is made under the *Local Government Act 1993*.

87. [Local Government \(General\) Amendment Regulation \(No 2\) 2022](#)

The object of this Regulation is to amend the *Local Government (General) Regulation 2021* to:

- (a) update the processes for submitting and receiving tenders and notifying acceptance of a successful tender
- (b) discontinue transmission by fax as an accepted means of submitting tender documents
- (c) make further provision for the counting of votes for the election of members of county councils
- (d) make other minor amendments.

This Regulation is made under the *Local Government Act 1993*, including sections 55(2), 390(3) and 748, the general regulation-making power, and Schedule 6.

88. [Mining Amendment \(Royalties for Rejuvenation Fund\) Regulation 2022](#)

The objects of this Regulation are to:

- (a) provide that a Royalties for Rejuvenation Expert Panel (an Expert Panel) established for an affected coal mining region has the function of advising the Minister about certain matters in relation to the region
- (b) provide for the operation, constitution and procedure of Expert Panels, including requirements for Panel members to disclose certain pecuniary interests

- (c) prescribe areas of the State as affected coal mining regions.

This Regulation amends the *Mining Regulation 2016* and is made under the *Mining Act 1992*.

89. [Mining Amendment Regulation 2022](#)

The object of this Regulation is to make further provision for matters under the *Mining Act 1992* (the **Act**), mainly as a consequence of the enactment of the *Mining and Petroleum Legislation Amendment Act 2022*.

This Regulation makes provision about applications under the Act, including the following:

- (a) the way in which an application must be made
- (b) information that must accompany an application
- (c) the time within which the information must be lodged
- (d) publishing notice of an application.

This Regulation also makes other miscellaneous amendments to the *Mining Regulation 2016*, including about the following:

- (a) use of the Map Grid of Australia 2020 and Geocentric Datum of Australia 2020
- (b) fossicking with hand-held metal detectors
- (c) the content of work programs
- (d) fees, charges, levies and security deposits
- (e) declarations about persons not fit and proper
- (f) prescribing additional minerals as a group of minerals for the Act
- (g) activities taken not to be prospecting or mining
- (h) the definitions of activities and mining area for the purposes of the standard conditions of mining leases
- (i) the issue of penalty notices.

This Regulation is made under the *Mining Act 1992*.

90. [Motor Accident Guidelines - Version 9](#)

These Guidelines are made under section 10.2 of the *Motor Accident Injuries Act 2017* (the **Act**), which enables the Authority to issue Motor Accident Guidelines with respect to any matter that is authorised or required by the Act.

These Guidelines substantially remake the previous iteration (version 8.2), including in respect to the obligations and responsibilities of insurers in providing psychosocial supports, managing personal risks and fraud, health practitioners authorised to give evidence in personal injury claim proceedings, and the approach in respect to vulnerable people and other psychological or trauma risks.

91. [Motor Accident Guidelines – Version 9.1](#)

These Guidelines are made under section 10.2 of the *Motor Accident Injuries Act 2017* (the **Act**), which enables the State Insurance Regulatory Authority to issue Motor Accident Guidelines with respect to any matter that is authorised or required by the Act.

Provisions in each individual Part of the Guidelines are also made under relevant powers in the Act.

These Guidelines are substantially the same as the previous iteration (version 9). They make provision for premium determination, market practice, business plans, claims, threshold injury, permanent impairment, dispute resolution and health practitioners authorised to give evidence in court and other dispute resolution proceedings.

92. [Motor Accident Guidelines: CTP Care \(version 1.0\)](#)

The Guidelines support the delivery of the objects of the *Motor Accident Injuries Act 2017* (the **Act**) and the *Motor Accident Injuries Regulation 2017* (the **Regulation**) by establishing clear processes and procedures, scheme objectives and compliance requirements. These Guidelines replace clauses 4.103-4.105 and Part 9 of the Motor Accident Guidelines v 8.2, and commenced 25 November 2022.

People injured in a motor accident on and from 1 December 2017 who require treatment and care statutory benefits more than five years after the relevant motor accident will, for the purposes of the payment of treatment and care benefits be transferred to the Lifetime Care and Support Authority (**LCSA**) as the relevant insurer as provided for under sections 3.2 and 3.45 of the Act.

Broadly these Guidelines set out the required procedures for the transition of the payment of statutory benefits for treatment and care from a licenced insurer to the LCSA in accordance with the Act. It largely duplicates those clauses of the version 8.2 that the Guidelines replaced.

93. [Motor Accident Guidelines: Determination of Insurance Premiums for Taxis and Hire Vehicles](#)

The Guidelines set out the special provisions applicable for the determination and payment of premiums including additional premium payments by instalments for certain taxis and hire vehicles.

The Guidelines are made under sections 2.19, 2.26, 9.16 and 10.2 of the *Motor Accident Injuries Act 2017*.

94. [Motor Accident Injuries Amendment \(Claim for Statutory Benefits\) Regulation 2023](#)

The objects of this Regulation are to:

- (a) permit payment of weekly payments of statutory benefits in certain circumstances where a claim for statutory benefits is made under the *Motor Accident Injuries Act 2017* within 3 months, but not within 28 days, after the date of the motor accident
- (b) make further provision in relation to the determination by the Lifetime Care and Support Authority of amounts to be paid from the Motor Accident Injuries Treatment and Care Benefits Fund for the exercise of the functions of that Authority as the relevant insurer
- (c) make a minor correction to a savings and transitional provision in the Act.

This Regulation is made under the *Motor Accident Injuries Act 2017*, including sections 6.13(2), 10.15(2) and (3), 11.12, the general regulation-making power, and Schedule 4, Part 1, clause 1.

95. [Motor Sports Events Amendment Regulation 2023](#)

The objects of this Regulation are to amend the *Motor Sports Events Regulation 2022* to:

- (a) require the government coordinating agency to consult Transport for NSW before giving a works approval for the Newcastle 500
- (b) to prescribe a range of offences as offences for which a penalty notice may be issued and the amount payable for the penalty notice.

This Regulation is made under the *Motor Sports Events Act 2022*.

96. [Motor Sports Events Regulation 2022](#)

The object of this Regulation is to provide for the following matters under the *Motor Sports Events Act 2022*:

- (a) exempting motor races held on part of the Mount Panorama circuit from requiring a motor race authorisation
- (b) prescribing certain offences as penalty notice offences
- (c) providing for the payment of a fee and the indexing of the fee.

This Regulation is made under the *Motor Sports Events Act 2022*, and is therefore a matter not requiring a regulatory impact statement.

97. [Motor Vehicles Taxation Amendment \(CPI Adjustment\) Regulation 2022](#)

The object of this Regulation is to amend the *Motor Vehicles Taxation Regulation 2016* to adjust motor vehicle tax amounts for the 2023 calendar year.

This Regulation is made under the *Motor Vehicles Taxation Act 1988*.

98. [Museums of History NSW Regulation 2022](#)

The object of this Regulation is to provide for the continued membership of certain members of the Board of the State Archives and Records Authority of New South Wales for the balance of each member's term of office.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters of a savings or transitional nature.

This Regulation is made under the *Museums of History NSW Act 2022*.

99. [National Electricity \(New South Wales\) Amendment \(Regulated Stand-Alone Power Systems\) Regulation 2022](#)

This Regulation provides that, for the *National Electricity (NSW) Law*, a stand-alone power system consisting of a distribution system owned, controlled or operated, or proposed to be owned, controlled or operated, by Ausgrid, Essential Energy or Endeavour Energy is a regulated stand-alone power system that forms part of the national electricity system.

The Regulation is made under the *National Electricity (New South Wales) Act 1997*.

100. [National Energy Retail Law \(Adoption\) Amendment Regulation 2022](#)

This Regulation applies the *National Energy Retail Law (NSW)* (the **NERL**) to the sale of electricity to customers whose premises are connected to the national electricity system. Currently, the NERL applies to the sale of electricity to customers whose premises are connected to the interconnected national electricity system, which is only part of the national electricity system.

This Regulation is made under the *National Energy Retail Law (Adoption) Act 2012*, including section 12, the general regulation-making power.

101. [Notice of Reservation of a Historic Site \(n2023-0327\)](#)

This notice reserves land to be incorporated as part of the below listed historic sites under the provisions of section 30A(1)(b) of the *National Parks and Wildlife Act 1974*:

- (c) Davidson Whaling Station Historic Site (n2023-0327).

102. [Notice of Reservation of a National Park \(n2022-2145; n2023-0322, -0330\)](#)

These notices reserve land to be incorporated as part of the below listed national parks under the provisions of section 30A(1)(a) of the *National Parks and Wildlife Act 1974*:

- (d) Royal National Park (n2022-2145)
- (e) Bundjalung National Park (n2023-0330, n2023-0322)

103. [Notice of Reservation of a National Park \(n2022-2407; n2023-0332\)](#)

These notices reserve land and assign the name of the below lists national parks under the provisions of sections 30A(1)(a) and 30A(2) of the *National Parks and Wildlife Act 1974*:

- (f) Brindigabba National Park (n2022-2407)
- (g) Yiraaldiya National Park (n2023-0332).

104. [Notice of Reservation of a Nature Reserve \(n2023-0321, -0323, -0325, -0326, -0328, -0331\)](#)

These notices reserve land to be incorporated as part of the below listed nature reserves under the provisions of section 30A(1)(f) of the *National Parks and Wildlife Act 1974*:

- (h) Bungawalbin Nature Reserve (n2023-0321)
- (i) Lake Innes Nature Reserve (n2023-0323)
- (j) Cudgera Creek Nature Reserve (n2023-0325)
- (k) Killabakh Nature Reserve (n2023-0326)
- (l) Ngambaa Nature Reserve (n2023-0328)
- (m) Mulgoa Nature Reserve (n2023-0331).



105. [Notice of Reservation of a Regional Park \(n2022-2143; n2023-0324\)](#)

This notice reserves land to be incorporated as part of the below listed regional parks under the provisions of section 30A(1)(d) of the *National Parks and Wildlife Act 1974*:

- (n) Murrumbidgee Valley Regional Park (n2022-2143)
- (o) Wolli Creek Regional Park (n2023-0324).

106. [Notice of Reservation of a State Conservation Area \(n2022-2144; n2023-0329\)](#)

These notices reserve land to be incorporated as part of the below listed state conservation areas under the provisions of sections 30A(1)(c) of the *National Parks and Wildlife Act 1974*:

- (p) Medowie State Conservation Area (n2022-2144)
- (q) Nombinnie State Conservation Area (n2023-0329).

107. [Notice of Reservation of Nature Reserve \(n2022-2146, 2147, 2148\)](#)

These notices reserve land and assigns the name of the below listed nature reserves under the provisions of sections 30A(1)(f) and 30A(2) of the *National Parks and Wildlife Act 1974*:

- (r) Tangory Nature Reserve (n2022-2146)
- (s) Tiraki Nature Reserve (n2022-2147)
- (t) Warrawolong Nature Reserve (n2022-2148).

108. [Notice to alter the name of a National Park \(n2022-1919\)](#)

This notice alters the name of a national park under the provisions of section 30A(2) of the *National Parks and Wildlife Act 1974*, from Ben Boyd National Park to Beowa National Park.

109. [Notification of Fisheries Management \(Dusky Flathead Possession Limit\) Order 2022](#)

The Order provides that, notwithstanding Part 1 of Schedule 1 to the *Fisheries Management (General) Regulation 2019*, a recreational fisher is prohibited from possessing any Dusky Flathead with a measurement of more than 70 cm, at any time.

Part 1 of Schedule 1 to the Regulation provides a possession limit of 10 Dusky Flathead, 1 of which can be longer than 70 cm.

The Order is made by the Deputy Director General Fisheries, with delegated authority under sections 227 and 228 of the *Fisheries Management Act 1994*, under section 17C of the Act.

110. [Notification of Fisheries Management \(Possession Limit\) \(Mulloway\) Order 2022](#)

The Order provides that the possession limit for Mulloway for a recreational fisher is 1 fish, and the possession limit for an endorsement holder authorised to take fish in the Ocean hauling fishery is 500 kg whole weight.

The Order is made by the Deputy Director General Fisheries, with delegated authority under sections 227 and 228 of the *Fisheries Management Act 1994*, under section 17C of the Act.

111. [Notification of Fisheries Management \(Thompsons Creek Dam – Possession Limit\) Order 2023](#)

The Order provides that a person is prohibited from taking any species of fish except a permitted species from the waters of Thompsons Creek Dam and its tributaries.

The Order was made by the Deputy Director General Department Primaries Industry Fisheries with the delegated authority of the Minister and Secretary under sections 8 and 11 of the *Fisheries Management Act*.

112. [Notification of Fisheries Management \(Trout and Salmon – Possession Limit\) Order 2023](#)

The Order prescribes the possession limits from particular species and the relevant waters where that limit applies.

The Order was made by the Deputy Director General Fisheries Department of Primary Industries Fisheries with the delegated authority of the Minister and Secretary under section 17C of the *Fisheries Management Act 1994*.

113. [NSW Admission Board Amendment \(Fees\) Rule 2023](#)

This Rule sets the fees for admission as a lawyer and student services commencing on 1 April 2023.

This Rule is made under the *Legal Profession Uniform Law Application Act 2014*.

114. [NSW Reconstruction Authority Regulation 2023](#)

The objects of this Regulation are as follows:

- (a) to prescribe actions in relation to which the NSW Reconstruction Authority may direct relevant entities
- (b) to require relevant entities and the NSW Reconstruction Authority to have regard to the State disaster mitigation plan and any relevant disaster adaptation plan in exercising prescribed functions
- (c) to prescribe exceptional circumstances in which the Minister may authorise the undertaking of development without:
  - (i) approvals or assessments under the *Environmental Planning and Assessment Act 1979*, or
  - (ii) consent,
- (d) to provide for the determination and payment of fees under the *NSW Reconstruction Authority Act 2022*.

This Regulation is made under the *NSW Reconstruction Authority Act 2022*.

115. [Personal Injury Commission \(Amendment No 2\) Rule 2023](#)

The object of this Rule is to amend the *Personal Injury Commission Rules 2021* as a consequence of amendments made to the *Motor Accident Injuries Act 2017* by the *Motor Accident Injuries Amendment Act 2022*.

This Regulation is made under the *Personal Injury Commission Act 2020*.

116. [Petroleum \(Onshore\) Amendment Regulation 2022](#)

The object of this Regulation is to specify the meaning of a well-head of petroleum.

The Regulation is made under the *Petroleum (Onshore) Act 1991*.

117. [Photo Card Amendment \(Release of Information\) Regulation 2022](#)

The object of this Regulation is to enable Transport for NSW to release information contained in the Photo Card Register, and photographs taken or provided in relation to applications for the issue of Photo Cards, to Service NSW in certain circumstances.

This Regulation is made under the *Photo Card Act 2005*.

118. [Planning Legislation Amendment \(National Construction Code\) Regulation 2023](#)

The object of this Regulation is to make minor amendments to the following regulations consequent on changes to the *National Construction Code* and the publication of an associated addendum to *Planning for Bush Fire Protection*, prepared by the NSW Rural Fire Service in cooperation with the Department of Planning and Environment:

- (a) the *Building and Development Certifiers Regulation 2020*
- (b) the *Design and Building Practitioners Regulation 2021*
- (c) the *Environmental Planning and Assessment Regulation 2021*
- (d) the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*
- (e) the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*
- (f) the *Plantations and Reafforestation (Code) Regulation 2001*
- (g) the *Plumbing and Drainage Regulation 2017*
- (h) the *Rural Fires Regulation 2022*
- (i) the *Strata Schemes Development Regulation 2016*
- (j) the *Strata Schemes Management Regulation 2016*.

This Regulation is made under the following Acts:

- (a) the *Building and Development Certifiers Act 2018*
- (b) the *Design and Building Practitioners Act 2020*
- (c) the *Environmental Planning and Assessment Act 1979*
- (d) the *Local Government Act 1993*
- (e) the *Plantations and Reafforestation Act 1999*
- (f) the *Plumbing and Drainage Act 2011*
- (g) the *Rural Fires Act 1997*

- (h) the *Strata Schemes Development Act 2015*
- (i) the *Strata Schemes Management Act 2015*.

119. [Poisons and Therapeutic Goods Amendment Regulation 2022](#)

This Regulation amends the *Poisons and Therapeutic Goods Regulation 2008* for the following purposes:

- (a) to permit the supply of a restricted substance or drug of addiction to be directed orally, including by telephone, or by email or fax, in urgent circumstances in addition to in an emergency
- (b) to make permanent certain arrangements for the issue of prescriptions for restricted substances and drugs of addiction by email or fax in public health organisations
- (c) to continue, for a limited period, certain arrangements for the issue of prescriptions for restricted substances by email or fax in private health facilities
- (d) to extend the number of days' treatment that may be supplied by a pharmacist in an emergency and without the direction of a health practitioner from 3 days to 7 days
- (e) to clarify the circumstances under which prescriptions for type C unregistered drugs of addiction may be issued for the purposes of clinical trials
- (f) to update provisions relating to synthetic local anaesthetics
- (g) to make other minor amendments.

The Regulation is made under the *Poisons and Therapeutic Goods Act 1966*.

120. [Police Amendment Regulation 2022](#)

The object of this Regulation is to amend the *Police Regulation 2015* for the following purposes:

- (a) to make it clear that the reasons notified for a decision on the review of a promotion decision made on integrity grounds must not disclose the existence, nature or content of ongoing criminal, professional standards or Law Enforcement Conduct Commission investigations
- (b) to allow the Commissioner of Police to charge fees for the following services:
  - (i) providing police event information in relation to an insurance claim or a motor vehicle accident
  - (ii) providing information about criminal proceedings commenced against a person
- (c) to increase the charge payable for police responding to false security alarms
- (d) to update the form of oaths and affirmations to refer to the King
- (e) to update a reference to the King's Birthday public holiday.

This Regulation is made under the *Police Act 1990*.

121. [Port of Newcastle \(Extinguishment of Liability\) Regulation 2023](#)

The objects of this Regulation are to:

- (a) prescribe the period in which the determination of compensation payable by the operator of the Port of Newcastle to the State under the *Port of Newcastle (Extinguishment of Liability) Act 2022*, section 7(1) (the **determination**) must be made
- (b) prescribe the way in which the adjustment of the compensation for inflation must be calculated
- (c) provide for the payment of the remuneration of the person appointed to make the determination
- (d) prescribe matters the appointed person must consider in making the determination
- (e) require the appointed person to publish the determination on a publicly available website
- (f) provide for the compulsory production of information to the appointed person for the purposes of making the determination
- (g) regulate the way in which the appointed person may use and disclose information the appointed person obtains for the purposes of making the determination.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under the *Port of Newcastle (Extinguishment of Liability) Act 2022*.

122. [Ports and Maritime Administration Amendment \(Management of Dangerous Goods\) Regulation 2022](#)

The object of this Regulation is to provide that the Minister for Transport is a relevant authority in relation to the management of dangerous goods at certain ports.

This Regulation is made under the *Ports and Maritime Administration Act 1995*, including section 110(2).

123. [Practice Note 11 Youth Koori Court](#)

This Practice Note sets out the procedure that applies to the Youth Koori Court for young Aboriginal and Torres Strait Islander people who are before the Children's Court for criminal offences.

This Practice Note is made under the *Children's Court Act 1987*.

124. [Practice Note 17 Designated agencies in Children's Court care proceedings \(issued 2 December 2022\)](#)

This Practice Note applies where a child is, or has been, the subject of care proceedings before the Children's Court and primary case responsibility for the care of that child has been transferred to a designated agency (**DA**). It is subject to any direction made by the Court.

The purpose of this Practice Note is to ensure the Children's Court has the best available evidence when making decisions regarding the care and protection of children. It identifies the processes for a DA to access evidence filed in proceedings regarding a child for whom they have primary

case responsibility, to provide relevant information to the Court and to contribute to court proceedings.

The Practice Note is made under the *Children's Court Act 1987*.

125. [Practice Note 17 Designated agencies in Children's Court care proceedings \(issued 2 December 2022, amended 17 March 2023\)](#)

This Practice Note applies where a child is, or has been, the subject of care proceedings before the Children's Court and primary case responsibility for the care of that child has been transferred to a designated agency (DA). It is subject to any direction made by the Court.

This purpose of this Practice Note is to ensure the Children's Court has the best available evidence when making decisions regarding the care and protection of children. This Practice Note identifies the processes for a designated agency to access evidence filed in proceedings regarding a child for whom they have primary case responsibility, to provide relevant information to the Court and to contribute to court proceedings where the designated agency is not a party.

This Practice Note is made under the *Children's Court Act 1987*.

126. [Private Health Facilities Amendment \(Birthing on Country Demonstration Facilities\) Regulation 2023](#)

The object of this Regulation is to make provision for the establishment of a type of maternity class private health facility to provide Birthing on Country care in the area served by Illawarra Shoalhaven Local Health District.

This Regulation is made under the *Private Health Facilities Act 2007*.

127. [Property and Stock Agents Amendment \(Solicited Rent Bidding\) Regulation 2022](#)

The object of this Regulation is to prevent a real estate agent or stock and station agent:

- (a) advertising a residential property for rent unless the advertisement specifies a rental price
- (b) soliciting or inviting a person to offer to pay an amount of fixed rent for a residential property that is higher than a currently advertised rental price.

This Regulation is made under the *Property and Stock Agents Act 2002*, including sections 37 and 230, the general regulation-making power.

128. [Property and Stock Agents Regulation 2022](#)

The object of this Regulation is to remake, without substantial changes, the *Property and Stock Agents Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation makes provision for the following:

- (a) requirements relating to the conduct of agency businesses, including the following:
  - (i) the functions of agents and assistant agents
  - (ii) the rules of conduct to be observed by licensees and holders of certificates of registration in the exercise of their functions
  - (iii) the content of agency agreements

- (iv) the warnings and information to be given by real estate agents when giving financial advice
  - (v) the scope of professional indemnity insurance
- (b) requirements for the conduct of auctions, including the following:
  - (i) the making and keeping of the Bidders Record required in connection with auctions of residential property or rural land
  - (ii) the conditions of sale that apply to a sale by auction
  - (iii) the notification at an auction of the conditions of sale
  - (iv) the warnings to be given at an auction about the obligations of bidders
- (c) requirements relating to the keeping of trust accounts, including the following
  - (i) the banking of trust money
  - (ii) the keeping of records of trust money and trust account transactions
  - (iii) computer systems controls
  - (iv) the payment of trust money
- (d) the making and keeping of records by licensees, including the following:
  - (i) special requirements for records to be kept by stock and station agents
  - (ii) special requirements for records to be kept by strata managing agents
- (e) the requirements that remain applicable to a suspended licence or certificate of registration
- (f) various exemptions from provisions of the *Property and Stock Agents Act 2002*, including the following:
  - (i) providing for the matters to be taken into account by the Secretary in considering whether to grant an exemption from the provisions that prevent a licensee from exercising functions or providing services on behalf of 2 or more licensees not in partnership with one another
  - (ii) exemptions from requirements to share commission, the requirement that subagency agreements be in writing and certain other obligations
- (g) requirements for levy notices
- (h) the particulars to be recorded in the Register
- (i) prescribing offences as penalty notice offences and setting the penalties for the offences
- (j) prescribing the fees and Compensation Fund contributions to be paid
- (k) other miscellaneous matters.

The Regulation is made under the *Property and Stock Agents Act 2002*.

129. [Protection of the Environment Operations \(Clean Air\) Regulation 2022](#)

The object of this Regulation is to repeal and remake, with amendments, the Protection of the Environment Operations (Clean Air) Regulation 2021.

This Regulation makes provision about the following:

- (a) domestic solid fuel heaters
- (b) the control of burning
- (c) emissions from motor vehicles
- (d) emissions from activities and plant
- (e) the control of volatile organic liquids from:
  - (i) tanks and large loading plant
  - (ii) large tanker trucks
- (f) petrol
- (g) limits on the sulfur content of liquid fuel
- (h) savings and formal matters.

The Regulation is made under the *Protection of the Environment Operations Act 1997*.

130. [Protection of the Environment Operations \(Waste\) Amendment \(Waste Contributions\) Regulation 2023](#)

The object of this Regulation is to amend the *Protection of the Environment Operations (Waste) Regulation 2014* to make further provisions about the following matters:

- (a) calculation of the amount of waste at a waste facility for the purpose of determining when the occupier of the facility must pay the EPA a contribution for waste received at the facility (a **waste contribution**)
- (b) requiring the occupier to have an audit of information conducted in connection with a waste contribution
- (c) exemptions, and operational purpose deductions, from a waste contribution
- (d) estimation by the EPA of the amount of waste at, or waste received at, a waste facility in connection with a waste contribution
- (e) the definition of **scheduled waste disposal facility**, and consequently the application of provisions that use the term.

This Regulation in part addresses the outcome of *Weston Aluminium Pty Ltd v Environment Protection Authority* [2002] NSWCA 236.

This Regulation is made under the *Protection of the Environment Operations Act 1997*.



131. [Protection of the Environment Operations Amendment \(Waste Storage\) Regulation 2023](#)

The object of this Regulation is to provide that waste storage is not a scheduled activity in certain circumstances relating to community recycling centres and household chemical clean-out events.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 5 and 323, the general regulation-making power.

132. [Protection of the Environment Operations Legislation Amendment \(Miscellaneous\) Regulation 2023](#)

The objects of this Regulation are as follows:

- (a) to remove the prescribed noise level permissible for ride-on mowers and the prohibition on the sale of ride-on mowers without approved noise labels
- (b) to remove the method for determining the noise level of domestic air conditioners and the prohibition on the sale of new domestic air conditioners without approved noise labels
- (c) to provide that certain waste is not clinical waste or sharps waste if it is treated by a method approved by the EPA, previously the method was required to be approved by the Health Secretary
- (d) to correct cross-references.

This Regulation is made under the *Protection of the Environment Operations Act 1997* including sections 5 and 323, the general regulation-making power and Schedule 2, clause 3.

133. [Public Spaces \(Unattended Property\) Regulation 2022](#)

The object of this Regulation is to prescribe, consequent on the enactment of the *Public Spaces (Unattended Property) Act 2021* (the **Act**), matters that are required or permitted to be prescribed under the Act. In particular, this Regulation makes provision about the following:

- (a) key concepts of the Act
- (b) dealing with unattended property
- (c) dealing with property taken into possession by authorities or authorised officers
- (d) other miscellaneous matters, including savings and transitional provisions.

This Regulation is made under the Act.

134. [Rail Safety \(Adoption of National Law\) Amendment \(Oral Fluid Analysis\) Regulation 2022](#)

The object of this Regulation is provide that Shimadzu High Performance Liquid Chromatography Mass Spectrometer LCMS-8060 is an approved oral fluid analysing instrument for the purposes of drug testing.

This Regulation is made under the *Rail Safety (Adoption of National Law) Act 2012*, including sections 8 and 10, the general regulation-making power.

135. [Referable Debt Order \(2023-122\)](#)

Pursuant to section 7(2) of the *State Debt Recovery Act 2018*, amounts required to be repaid under the conditions of a shared equity scheme or by the Chief Commissioner of State Revenue under Part 4 of the *First Home Owner Grant and Shared Equity Act 2000* to Revenue NSW, are declared to be referable debts.

136. [Referable Debt Order \(2023-33\)](#)

Pursuant to section 7(2) of the *State Debt Recovery Act 2018*, expenses incurred by a council under section 678(6) of the *Local Government Act 1993* payable to the General Manager of the council to which the amount is payable, are declared to be referable debts.

137. [Referable Debt Order \(n2022-658\)](#)

Pursuant to section 7(2) of the *State Debt Recovery Act 2018*, acts of grace payments made by the Government recoverable under section 5.7(3) of the *Government Sector Finance Act 2018* for the purpose of the Northern Rivers Commercial Property – Return to Business Support Grant program payable to Service NSW, are declared to be referable debts.

138. [Reissued Practice Note SC EQ 3 – Commercial List and Technology & Construction List](#)

This Practice Note commences on 4 April 2023 and substantially remakes its previous iteration which commenced on 23 September 2019.

This Practice Note makes the changes regarding:

- (a) the commencement time and procedure for matters listed for directions for live hearings
- (b) the commencement time of directions in the Technology and Construction List
- (c) the provision of electronic versions of the Court Book
- (d) a right of any party to apply to the Court for an order limiting the documents to be included in the hard copy versions of the Court Book
- (e) the time limit for filing the folder of all affidavits, statements and reports to be relied upon at trial including the index, from 10 working days to 2 working days before the hearing
- (f) lay affidavits, to include a requirement that they include cross reference to where documents referred to can be found in the Court Book.

This Practice Note is made under the *Supreme Court Act 1970*.

139. [Reissued Supreme Court Practice Note SC EQ 13 – Adoptions](#)

This Practice Note commences on 3 April 2023 and, subject to the transitional provisions in paragraph 63, substantially remakes its previous iteration which commenced on 1 July 2016.

This Practice Note replaces the previous version of SC Eq 13 and makes changes to :

- (a) the formal requirements of hearings including preliminary hearings:
- (b) in person attendance at preliminary hearing in person
- (c) the procedure for listing return of subpoenas

- (d) access to subpoenaed documents
- (e) the itemisation of evidence that may be put before the Court in relation to an Aboriginal child or a Torres Strait Islander child, to include documented oral statements of community elders, historical materials dependent on oral tradition, and others.

This Practice Note is made under the *Supreme Court Act 1970*.

140. [Report and Determination Pursuant to Section 14\(2\) of the Statutory and other Offices Remuneration Act 1975 – Chairperson, Deputy Chairperson and Member of Independent Liquor Gaming Authority](#)

Pursuant to section 14 of the *Statutory and Other Offices Remuneration Tribunal Act 1975*, the Minister directed the Tribunal to make a special determination regarding the remuneration for the office of the Chairperson Independent Liquor and Gaming Authority Deputy Chairperson Independent Liquor and Gaming Authority and Member Independent Liquor and Gaming Authority. The Report and Determination sets out the Tribunal's determination of the annual salary for the Chairperson, Deputy Chairperson and Member, with effect from 5 September 2022.

141. [Report and Determination Pursuant to Section 14\(2\) of the Statutory and Other Offices Remuneration Act 1975 – Chief Commissioner and Commissioner NSW Independent Casino Commission](#)

Pursuant to section 14 of the *Statutory and Other Offices Remuneration Tribunal Act 1975*, the Minister directed the Tribunal to make a special determination regarding the remuneration for the office of the Chief Commissioner NSW Independent Casino Commission, and Commissioner of NSW Independent Casino Commission. The Report and Determination sets out the Tribunal's determination of the annual salary for the Chief Commissioner and Commissioner, with effect from 5 September 2022.

142. [Report and Determination Pursuant to Section 14\(2\) of the Statutory and Other Offices Remuneration Act 1975 – Independent Review Officer](#)

Pursuant to section 14 of the *Statutory and Other Offices Remuneration Tribunal Act 1975*, the Minister directed the Tribunal to make a special determination regarding the remuneration for the office of the Independent Review Officer. The Report and Determination sets out the Tribunal's determination of the annual salary for the Independent Review Officer, with effect from 1 March 2021.

143. [Report and Determination Pursuant to Section 14\(2\) of the Statutory and Other Offices Remuneration Act 1975 – Commissioner Health Care Complaints Commission](#)

Pursuant to section 14 of the *Statutory and Other Offices Remuneration Tribunal Act 1975*, the Minister directed the Tribunal to make a special determination regarding the remuneration for the office of the Commissioner Health Care Complaints Commission. The report and determination sets out the Tribunal's determination of the annual salary for the Commissioner, with effect from the date of determination.

144. [Residential Apartment Buildings \(Compliance and Enforcement Powers\) Amendment \(Penalty Notices\) Regulation 2022](#)

The object of this Regulation is to:

- (a) increase the amount payable under a penalty notice issued for an offence against the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**), section 7
- (b) prescribe the Act, section 27 as a penalty notice offence.

This Regulation is made under the Act, sections 57(2) and (4) and 68(1), the general regulation-making power.

145. [Retail Leases Regulation 2022](#)

The objects of this Regulation are:

- (a) to prescribe businesses at premises as retail shops for the purposes of the *Retail Leases Act 1994*
- (b) to provide for transitional arrangements for premises that become retail shops
- (c) to make a consequential amendment to the *Retail Leases Act 1994*.

This Regulation is made under the *Retail Leases Act 1994*, including sections 3(1), definition of **retail shop**, paragraph (a), 84B(2) and 85, the general regulation-making power, and Schedule 3, clause 17(2).

Schedule 2 is made under the *Retail Leases Act 1994*, Schedule 3, clause 17(2), a Henry VIII provision.

146. [Retirement Villages Amendment \(Miscellaneous\) Regulation 2022](#)

The objects of this Regulation are to:

- (a) specify what constitutes relevant village information, changes to which the Secretary must be notified of within 21 days by operators of retirement villages
- (b) allow the Secretary to publish relevant village information on the Department of Customer Service website
- (c) repeal the requirement for retirement villages in the Central Coast or City of Lake Macquarie local government areas to provide additional relevant village information regarding residential premises that are for sale or sold.

The Regulation is made under the *Retirement Villages Act 1999*.

147. [Road Transport \(Driver Licensing\) Amendment \(Points Disclosure Agreement\) Regulation 2023](#)

The object of this Regulation is to authorise Transport for NSW to release to the State Insurance Regulatory Authority information from the demerit points register about the holder of a driver licence.

This Regulation is made under the *Road Transport Act 2013*.

148. [Road Transport \(Driver Licensing\) Amendment \(Visiting Drivers\) Regulation 2022](#)

The object of this Regulation is to modify the way the existing exemption from driver licensing requirements applies to certain visiting drivers who hold a temporary visa under the *Migration Act 1958* of the Commonwealth (**temporary visiting drivers**).

A temporary visiting driver will cease to be exempt from driver licensing requirements if the driver:

- (a) has resided in New South Wales for a continuous period of 6 or more months after being granted a temporary visa, or
- (b) is suspended or disqualified from driving, or
- (c) incurs 13 or more demerit points within a 3-year period, or
- (d) is convicted of certain offences.

This Regulation is made under the *Road Transport Act 2013*, including sections 21, 23, the general statutory rule-making power, and 24 and Schedule 1.

149. [Road Transport \(Vehicle Registration\) Amendment \(CPI Adjustment\) Regulation 2022](#)

The object of this Regulation is to amend *the Road Transport (Vehicle Registration) Regulation 2017* to adjust the registration charge amounts for primary producer's vehicles for the 2023 calendar year.

The Regulation is made under the *Road Transport Act 2013*.

150. [Road Transport \(Vehicle Registration\) Amendment \(Offensive Advertising\) Regulation 2022](#)

The object of this Regulation is to amend the definition of **Ad Standards** to reflect a change in the company's details.

This Regulation is made under the *Road Transport Act 2013*, Schedule 1, clause 3A.

151. [Road Transport Legislation Amendment \(Dimension Requirement Offences\) Regulation 2022](#)

The objects of this Regulation are to:

- (a) increase the maximum penalty for an offence against the *Road Rules 2014*, rule 102, which prohibits a driver from driving past a clearance sign if the driver's vehicle is higher than the height indicated by the sign
- (b) increase the amount payable under a penalty notice issued for an alleged offence against the rule
- (c) increase the number of demerit points incurred for an offence against the rule if the driver drives, or attempts to drive, through or under a tunnel, bridge or other structure
- (d) increase the periods for which Transport for NSW may vary, suspend or cancel a person's driver licence, or suspend the registration of a heavy vehicle, in relation to an offence against the rule or certain similar dimension requirement offences
- (e) increase the maximum period for which a visiting driver ceases to be exempt from a requirement to hold a NSW driver licence if Transport for NSW considers it could vary, suspend or cancel a NSW driver licence held by the driver, if the driver were to hold a NSW driver licence.

This Regulation is made under the *Road Transport Act 2013*, including section 23, the general regulation-making and rule-making power, sections 24(1), 26(1) and (2), 32(1)(b) and 195(4) and Schedule 1, clauses 1(1) and (2)(b), 2(1) and 5, paragraph (a).

152. [Road Transport Legislation Amendment \(Electric Skateboards and Bicycles\) Regulation 2023](#)

The object of this Regulation is to amend the *Road Rules 2014* to:

- (a) define an ***electric skateboard***
- (b) provide that a person riding an electric skateboard is a pedestrian if:
  - (i) the person has a disability that impairs the person's mobility and the electric skateboard is used solely for the conveyance of the person
  - (ii) the person carries a medical certificate or health practitioner certificate for this purpose
  - (iii) the electric skateboard is not used at a speed of more than 10 kilometres per hour on roads and road related areas
- (c) amend the definition of ***bicycle*** to extend to certain electrically power-assisted bicycles.

The regulation also amends the *Road Transport (Driver Licensing) Regulation 2017* and the *Road Transport (Vehicle Registration) Regulation 2017* to:

- (a) ensure that a person riding an electric skateboard is taken to be a pedestrian in particular circumstances for the purpose of licensing and registration requirements
- (b) provide that certain registration requirements do not apply to electrically power-assisted bicycles
- (c) provide that the Light Vehicle Standards and licensing requirements do not apply to electrically power-assisted bicycles.

This Regulation is made under the *Road Transport Act 2013*.

153. [Road Transport Legislation Amendment Regulation \(No 2\) 2022](#)

The objects of this Regulation are:

- (a) to amend the *Road Transport (Vehicle Registration) Regulation 2017* as follows:
  - (i) ensure Transport for NSW (**TfNSW**) has the power to effectively address improper behaviour by authorised inspection station proprietors (**AIS proprietors**) who are licensed under the *Motor Dealers and Repairers Act 2013* in the same way as for other AIS proprietors
  - (ii) allow police officers to undertake the functions of an authorised officer without requiring a separate authorisation from TfNSW
  - (iii) allow authorised vehicle examiners to clear vehicle defect notices
  - (iv) allow TfNSW to cancel the registration of a conditionally registered vehicle that is used contrary to the conditions of registration
  - (v) allow TfNSW to release a vehicle's registration number details to a toll operator or a toll service provider if the vehicle's number plate is transferred to another vehicle or otherwise changed
  - (vi) update references to a repealed Act
  - (vii) correct an error in clause 108

- (b) to amend the *Road Transport (Driver Licensing) Regulation 2017* to update a reference to a repealed Act.

This Regulation is made under the *Road Transport Act 2013*.

154. [Road Transport Legislation Amendment Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to amend the *Road Rules 2014*:
  - (i) to implement, with minor changes, amendments made to the *Australian Road Rules* by the *Australian Road Rules Amendment 2019*
  - (ii) to clarify that rule 300–1, which regulates the use of mobile phones by drivers who hold learner or provisional licences, applies only to motor vehicles
  - (iii) to prescribe prohibited areas where the driver of a dangerous goods transporter must not use the transporter
  - (iv) to explain the meaning of a reference, on or with a traffic control device, to emergency vehicles
- (b) to amend the *Road Transport (Driver Licensing) Regulation 2017*:
  - (i) to provide that 3 wheeled motor vehicles with twinned wheels are motor bikes not motor trikes
  - (ii) to allow Transport for NSW to, in exceptional circumstances, exempt the holder of a learner or provisional licence from the prohibition on driving motor bikes and motor trikes that are not approved motorcycles for novice riders
- (c) to amend the *Road Transport (General) Regulation 2021* to prescribe offences as penalty notice offences and set penalties for the offences
- (d) to make other minor or consequential amendments to the *Road Rules 2014*, the *Road Transport (Driver Licensing) Regulation 2017*, the *Road Transport (General) Regulation 2021* and the *Road Transport (Vehicle Registration) Regulation 2017*.

This Regulation is made under the *Road Transport Act 2013*, including sections 23, the general statutory rule-making power, and 24–26 and Schedule 1.

155. [Roads Amendment \(Neighbourhood Activity\) Regulation 2022](#)

The object of this Regulation is to prescribe a neighbourhood activity, of a kind specified in the *Neighbourhood Activity Guidelines*, as a road event for which a roads authority may grant a road event permit.

This Regulations is made under the *Roads Act 1993*.

156. [Roads Amendment \(Toll Relief Rebate\) Regulation 2022](#)

The object of this Regulation is to amend the *Roads Regulation 2018* to enable the provision of information by toll service providers to the Chief Executive Officer of Service NSW for the purpose of administering the toll relief rebate scheme.

This Regulation is made under the *Roads Act 1993*, including section 264(1)(e).

157. [Security Industry \(Transitional Provisions\) Amendment Regulation 2022](#)

The object of this Regulation is to provide for transitional arrangements consequent on the amendments made to the *Security Industry Act 1997* by the *Security Industry Amendment Act 2022*.

This Regulation is made under the *Security Industry Act 1997*, including section 48, the general regulation-making power and Schedule 2, clause 1.

158. [Security Industry Amendment \(Exempt Persons\) Regulation 2022](#)

The object of this Regulation is to exempt qualified accountants and corporations providing accounting services from the obligation to be licensed under the *Security Industry Act 1997*.

The Regulation is made under the *Security Industry Act 1997*.

159. [Service NSW \(One-stop Access to Government Services\) Regulation 2022](#)

The object of this Regulation is to repeal and remake, with no significant amendments, the provisions of the *Service NSW (One-stop Access to Government Services) Regulation 2018*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (a) prescribes persons to whom the Chief Executive Officer of Service NSW may sub-delegate customer service functions
- (b) prescribes certain functions of the NRMA as customer service functions that may be exercised by the Chief Executive Officer of Service NSW
- (c) prescribes certain companies as approved persons for the *Service NSW (One-stop Access to Government Services) Act 2013*, section 12 to enable the companies to enter into agreements with Service NSW to act as Service NSW's agent.

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

The Regulation is made under the *Service NSW (One-stop Access to Government Services) Act 2013*.

160. [State Insurance and Care Governance Amendment Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to prescribe the relevant service providers and relevant services in relation to which the State Insurance Regulatory Authority may give directions under the *State Insurance and Care Governance Act 2015* (the **Act**)
- (b) to make further provision in relation to the directions, including provision for service and internal review of directions
- (c) to prescribe the amounts payable for certain penalty notice offences under the Act
- (d) to prescribe a class of authorised officers who may issue penalty notices under the Act.



This Regulation is made under the *State Insurance and Care Governance Act 2015*, including sections 26A, definitions of **relevant service** and **relevant service provider**, 26D(4), 26G(2), 29B(2), (4) and (6), definition of **authorised officer**, and 30, the general regulation-making power.

161. [Strata Schemes Management Amendment \(COVID-19\) Regulation \(No 2\) 2022](#)

The objects of this Regulation are to:

- (a) set out procedures relating to voting on a matter by electronic means for a meeting of an owners corporation or strata committee and, in certain circumstances, for pre-meeting voting by electronic means
- (b) provide for the ways of voting, other than in person, that may be specified in a notice given for a meeting of an owners corporation or strata committee
- (c) provide for what may constitute reasonable steps to be taken by the secretary of an owners corporation or strata managing agent to ensure each person entitled to vote at a meeting can participate in and vote at the meeting if the voting is not to be carried out in person
- (d) prescribe requirements for affixing the seal of an owners corporation electronically to an instrument or document.

This Regulation is made under the *Strata Schemes Management Act 2015*.

162. [Strata Schemes Management Amendment \(Miscellaneous\) Regulation 2022](#)

This Regulation:

- (a) extends, from 30 September 2022 to 31 December 2022, the initial reporting date for an owners corporation for a strata scheme if the first annual general meeting of the owners corporation was held on or before 30 June 2022
- (b) clarifies the information about a strata scheme that the Secretary may disclose publicly and to particular persons.

This Regulation is made under the *Strata Schemes Management Act 2015*, including section 271(1), (2)(o) and (2A), the general-regulation-making power.

163. [Superannuation Administration \(Cbus Transitional Provisions\) Regulation 2022](#)

The object of this Regulation is to facilitate a successor fund transfer of members and benefits from the electricity industry superannuation scheme to the Cbus superannuation fund.

This Regulation is made under the *Superannuation Administration Act 1996*, including sections 127B, 128, 128A and 129, the general regulation-making power.

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

164. [Superannuation Regulation 2022](#)

The object of this Regulation is to repeal and remake, with some changes, the *Superannuation Regulation 2016*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (c) the reduction of benefits payable in relation to contributors or former contributors to whom a benefit has been released on the grounds of severe financial hardship or on compassionate grounds
- (d) the reduction of benefits if a contributor fails to provide a tax file number to STC
- (e) matters relating to the superannuation contributions surcharge
- (f) the making of family law superannuation payments in relation to spouses or former spouses of contributors or former contributors
- (g) the cancellation of breakdown pensions at the direction of the pensioner to whom the pension would have been paid
- (h) savings and formal matters.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory
- (c) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation was made under the *Superannuation Act 1916*.

165. [Teacher Accreditation Amendment Regulation 2022](#)

The object of this Regulation is to make amendments to the *Teacher Accreditation Regulation 2015* consequent on amendments made by the *Teacher Accreditation Amendment Act 2021*.

This Regulation is made under the *Teacher Accreditation Act 2004*, including section 52, the general regulation-making power.

166. [Tow Truck Industry Amendment \(Signage\) Regulation 2022](#)

The object of this Regulation is to correct a provision requiring signs about storage fees to be displayed by licensed tow truck operators.

This Regulation is made under the *Tow Truck Industry Act 1998*, including section 105(2)(f).

167. [Uniform Civil Procedure \(Amendment No 99\) Rule 2022](#)

The object of this Rule is to amend the *Uniform Civil Procedure Rules 2005* to update cross-references to repealed legislation.

This Rule is made under the *Civil Procedure Act 2005*.

168. [University of New South Wales Amendment By-law 2022](#)

The object of this By-law is to update provisions about the qualifications required for election to the Council of the University of New South Wales including to require a person standing for election to be a fit and proper person.

The By-law was made under the *University of New South Wales Act 1989*.

169. [Waste Avoidance and Resource Recovery \(Container Deposit Scheme\) Amendment \(Miscellaneous\) Regulation 2023](#)

The object of this Regulation is to amend the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* as follows:

- (a) to specify that an alternative waste treatment plant operator includes a person who holds an environment protection licence under the *Protection of the Environment Operations Act 1997* that authorises waste processing (non-thermal treatment)
- (b) to apply the container deposit scheme to containers used for fermented milk and milk with added cultures
- (c) to exclude glass containers used, rather than designed, to contain only wine or spirituous liquor from the container deposit scheme
- (d) to require the holder of a collection point arrangement approval to apply to the EPA to vary a condition of approval and to specify the process for a variation application
- (e) to make it clear that the EPA may impose certain conditions in relation to collection point arrangement approvals and to create an offence for contravening a condition
- (f) to specify that the EPA may refuse to grant a container approval on the ground that the containers concerned will not comply with certain conditions
- (g) to make it clear that the holder of a collection point arrangement approval includes the network operator and the collection point operator for the approval
- (h) to specify that the EPA may suspend or revoke a container approval on the grounds that the EPA considers the material forming part of the container, including labelling, is not suitable for recycling or reuse or, considering the objects of the Act, another appropriate method of disposal
- (i) to enable an application for the transfer of a container approval to be made in the same way as an application for a container approval
- (j) to make it an offence for a collection point operator to fail to cause payment of a refund amount payable to a person by electronic funds transfer within 3 days after a container is counted by a machine used by the collection point operator to count, verify and sort containers
- (k) to declare certain laws of other jurisdictions to be corresponding laws for the container deposit scheme.

This Regulation is made under the *Waste Avoidance and Resource Recovery Act 2001*, including sections 20, definition of **corresponding law**, 21, 22, 26(3), 40, 42(3) and 56, the general regulation-making power.

170. [Water Management \(General\) Amendment \(Floodplain Harvesting Access Licences\) Regulation 2023](#)

The Regulation amends the Water Management (General) Regulation 2018 to provide for replacement floodplain harvesting access licences, including by:

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

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

The Regulation is made under the *Water Management Act 2000*.

171. [Water Management \(General\) Amendment \(Specific Purpose Access Licences\) Regulation 2023](#)

The object of this Regulation is to amend the *Water Management (General) Regulation 2018* to extend the purposes for which an application for an aquifer access licence of subcategory "Temporary dewatering for construction" may be made to include the extraction of water from the Metropolitan Coastal Sands groundwater source to facilitate excavation required for the construction of a building, road or infrastructure to establish a mixed-use development for the purposes of a health services facility, and associated commercial purposes, at Manly.

This Regulation is made under the *Water Management Act 2000*.

172. [Water Management \(General\) Amendment \(Temporary Offence Exemptions\) Regulation 2023](#)

The object of this Regulation is to temporarily exempt the holders of access licences and water supply work approvals from certain offences under the *Water Management Act 2000* relating to alternatives to water supply works impacted by floodwaters.

This Regulation is made under the *Water Management Act 2000*, including section 400(2).

173. [Water Management \(General\) Amendment Regulation \(No 3\) 2022](#)

The objects of this Regulation are:

- (a) to provide additional time for water access licence holders in certain parts of the State to comply with mandatory metering equipment conditions
- (b) to make transitional arrangements for the metering of water taken under a floodplain harvesting (regulated river) access licence or a floodplain harvesting (unregulated river) access licence.

This Regulation is made under the *Water Management Act 2000*.

174. [Water Management \(General\) Amendment Regulation 2023](#)

The object of this Regulation is to amend the *Water Management (General) Regulation 2018* to ensure that an access licence is not required for the transfer of water between storages in a pumped hydro-electricity generation scheme provided the water used was originally taken in accordance with an access licence or a basic landholder right.

This Regulation is made under the *Water Management Act 2000*.

175. [Water NSW Amendment \(Wingecarribee Special Area-Part\) Regulation 2023](#)

The object of this Regulation is to list the Wingecarribee Special Area-Part as Schedule 1 land for the purposes of regulating conduct on the land under the *Water NSW Regulation 2020*, Part 3, Division 4.

This Regulation is made under the *Water NSW Act 2014*, including sections 51 and 114, the general regulation-making power.

176. [Work Health and Safety \(Mines and Petroleum Sites\) Amendment Regulation \(No 2\) 2022](#)

The object of this Regulation is to make minor amendments to the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022*, including:

- (a) to specify dollar amounts instead of penalty units for the amounts payable for penalty notices issued for offences against the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* or the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022*
- (b) to make amendments of a law revision nature.

This Regulation is made under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, including sections 4 and 76, the general regulation-making power. See also the *Work Health and Safety Act 2011*, including sections 243 and 276, the general regulation-making power.

177. [Work Health and Safety Amendment \(Demolition Licensing\) Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to establish, under the *Work Health and Safety Act 2011*, a licensing regime for demolition work
- (b) to require workers undertaking demolition work to be properly trained
- (c) to require workers undertaking demolition work to be supervised by appropriately qualified persons.

This Regulation is made under the *Work Health and Safety Act 2011*.

178. [Work Health and Safety Amendment \(Demolition Licensing\) Regulation 2023](#)

The object of this Regulation is to amend the *Work Health and Safety Amendment (Demolition Licensing) Regulation 2022* to provide that on commencement of that Regulation:

- (a) the holder of a restricted demolition licence can apply to be authorised to undertake 1 or more activities (a restricted demolition activity) ordinarily undertaken by the holder of an unrestricted demolition licence
- (b) the Regulator can amend a restricted demolition licence to vary or delete an authorisation given to the licence holder to carry out a restricted demolition activity.

This Regulation is made under the *Work Health and Safety Act 2011*.

179. [Work Health and Safety Amendment \(Penalty Notices\) Regulation 2022](#)

The object of this Regulation is to prescribe certain offences for which a penalty notice may be issued.

This Regulation is made under the *Work Health and Safety Act 2011*.

180. [Workers Compensation Amendment \(Penalty Notice Offences\) Regulation 2023](#)

The object of this Regulation is to increase the amounts payable for penalty notices issued for certain offences against workers compensation legislation.

This Regulation is made under the *Workers Compensation Act 1987*, section 280, the general regulation-making power, and the *Workplace Injury Management and Workers Compensation Act 1998*, sections 246 and 248, the general regulation-making power.

181. [Workers Compensation Amendment Regulation 2022](#)

The objects of this Regulation are as follows:

- (a) to prescribe additional compensation fees payable by employers in relation to lump sum death benefits managed by the NSW Trustee
- (b) to specify the details relating to contract cleaning industry employers the State Insurance Regulatory Authority may disclose to the Long Service Corporation
- (c) to prescribe the manner in which a notice may be served under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*
- (d) to make other minor amendments of a statute law nature.

This Regulation is made under the *Workers Compensation Act 1987*, including sections 25(1A) and 280, the general regulation-making power.

This Regulation is also made under the *Workplace Injury Management and Workers Compensation Act 1998*, including sections 127(4), 236(b), 246 and 248, the general regulation-making power.