

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



Digest No. 5/58 – 10 October 2023

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



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

ISSN: 1448-6954

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

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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. Animal Research Amendment \(Prohibition of Forced Swim Tests and Forced Smoke Inhalation Experiments\) Bill 2023*](#)

No issues identified

[2. Appropriation Bill 2023; Appropriation \(Parliament\) Bill 2023; Treasury and Revenue Legislation Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Absolute liability offence and additional punishment	Noted
Lack of clarity – referral to a publication or instrument	Noted

[3. Criminal Procedure Amendment \(Child Sexual Offence Evidence\) Bill 2023](#)

Issue identified	Conclusion of Committee
Procedural fairness rights and good administration of justice	No further comment
Commencement by proclamation	No further comment

[4. Electoral Amendment \(Voter ID and Electronic Mark Off\) Bill 2023*](#)

Issue identified	Conclusion of Committee
Access to voting – right to participate in public elections	Referred

[5. Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2023](#)

Issue identified	Conclusion of Committee
Personal insolvency status under NSW laws	Referred
Retrospective application of repealing provision	Referred
Statutory rule expressed to commence before publication on NSW legislation website	Referred

[6. Work Health and Safety Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Offence regime – extension of criminal liability, significant increases to penalties	Referred
Absolute liability offence – monetary penalty	No further comment
Extension of criminal liability to the body corporate	No further comment
Privacy rights – providing sensitive information	Referred
Penalty notice offences – right to a fair trial	Referred

PART TWO – REGULATIONS**1. Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023**

Issue identified	Conclusion of Committee
Privacy rights – body-worn recording devices	Referred

Summary of Conclusions

PART ONE – BILLS

1. Animal Research Amendment (Prohibition of Forced Swim Tests and Forced Smoke Inhalation Experiments) Bill 2023*

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

2. Appropriation Bill 2023; Appropriation (Parliament) Bill 2023; Treasury and Revenue Legislation Amendment Bill 2023

Appropriation Bill 2023

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

Appropriation (Parliament) Bill 2022

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

Treasury and Revenue Legislation Amendment Bill 2023

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

Absolute liability offence and additional punishment

The Bill amends the *Duties Act 1997* by setting out requirements for the registration of wholesale unit trust schemes. Under section 157AG, the Bill introduces an offence for responsible entities of unit trust schemes which do not provide the Chief Commissioner with written notice of a 'disqualifying circumstance' within 28 days. Under the new provisions, a disqualifying circumstance would make the unit trust scheme no longer eligible for registration. This offence carries a monetary penalty of \$55 000 and additional penalties under subsections 157AG(3) and (4).

Therefore, the Bill may establish an absolute liability offence. Absolute liability offences depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that an entity who has already paid a penalty for not providing notice of a disqualifying circumstance may have to pay additional monetary penalties. This may amount to additional punishment for the same offending conduct.

The Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. However, the Committee notes that this new offence applies to a responsible entity of a unit trust scheme, which may include a trustee where there is no responsible entity for the scheme. The Committee also notes that the Chief Commissioner may unilaterally change the conditions of registration for a wholesale unit trust scheme. This unilateral change may give rise to an absolute liability offence, as non-compliance with the conditions of a unit trust scheme registration constitutes a 'disqualifying circumstance'.

For these reasons, the Committee would usually refer this matter to Parliament for its consideration. However, as the Bill has passed both Houses of Parliament, it instead notes this matter for Parliament's consideration.

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

Lack of clarity – referral to a publication or instrument

The Bill inserts section 157AA into the *Duties Act 1997*, which includes a definition for an 'investor directed portfolio service' that refers to a Guide or any publication which may replace that Guide from time to time. An investor directed portfolio service may amount to a qualified investor under section 157AB, which is relevant to one criterion for a wholesale unit trust scheme.

The Committee notes that, if the existing Guide is replaced, there appears to be no provisions setting out how notice may be given of these replacement publications. As only the existing Guide is referenced in the legislation, individuals may find it difficult to understand if they meet the definition of an investor directed portfolio service under the legislation. The Committee also notes that an absolute liability offence applies to a wholesale unit trust scheme under the amendments, which carries a maximum penalty of \$55 000 and additional penalties relating to duties payable. The Committee would usually refer this matter to Parliament for its consideration. However, as the Bill has passed both Houses of Parliament, it instead notes this matter for Parliament's consideration.

3. Criminal Procedure Amendment (Child Sexual Offence Evidence) Bill 2023

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

Procedural fairness rights and good administration of justice

The Bill inserts provisions into the *Criminal Procedure Act 1986* to establish a scheme for pre-recorded evidence hearings in relation to prescribed sexual offences where the alleged victim was a child. This includes processes for cross-examining, re-examining and re-calling these witnesses. Section 294I makes provisions concerning the rights of the accused person in these pre-recording hearings, including being present and able to see and hear proceedings, as well as communicate with a legal practitioner. Section 294I(7) also clarifies that the judge presiding over the pre-recording hearing is not also required to preside over the proper criminal trial.

The Committee notes that pre-recording evidence of child complainants and other witnesses may impact on an accused's right to a fair trial. As the accused is required to cross-examine the witness at this pre-recorded hearing before the proper criminal trial, this may mean that the accused will have to prepare and disclose their case in advance unlike in other conventional criminal proceedings. While there are provisions for re-calling a witness that has given pre-recorded evidence, this requires leave of the Court, which may further delay the trial. Additionally, as different judges may preside over the pre-recording hearing and proper the criminal trial, the lack of continuity in the independent presiding judge may also impact the good administration of justice.

However, the Committee recognises that there are already existing provisions in the Act which allow for vulnerable witnesses to give evidence outside of the court, and that the scheme largely continues the pilot program which has been conducted in New South Wales since 2016. The Committee also acknowledges that the pre-recording of evidence for child complainants and other

vulnerable witnesses in prescribed sexual offences is intended to reduce stress and trauma. 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

Commencement by proclamation

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

However, the Committee notes that a flexible start date may assist with the implementation of administrative arrangements necessary for the effective operation and extension of the scheme for pre-recording evidence hearings. In the circumstances, the Committee makes no further comment.

4. Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2023*

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

Access to voting – right to participate in public elections

The Bill amends the *Electoral Act 2017* to introduce a requirement to show a current identification document to an election official when voting. It also inserts subsection 127(3)(d) which requires an election official to refuse a person's claim to vote if they fail or refuse to show a relevant identification document. By requiring a person to produce identification documents in order to vote, the Bill may infringe on a person's access to voting and thereby impact on their right to vote and participate in public elections.

The Committee acknowledges that the amendments are intended to protect the integrity of the election process. However, the Committee notes that every person entitled to vote is constitutionally obligated to vote in each election and the Act establishes an offence for failing to do so. By potentially limiting access to voting, a person may be at greater risk of committing an electoral offence. For these reasons, the Committee refers the matter to Parliament for its consideration.

5. Statute Law (Miscellaneous Provisions) Bill (No 2) 2023

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

Personal insolvency status under NSW laws

The Bill inserts a new definition of 'personally insolvent' into the *Interpretation Act 1987*. An individual will be considered personally insolvent if they are bankrupt or meet other related criteria under the *Bankruptcy Act 1966* (Cth), have a 'similar status' under the law of another country, or 'applies to take the benefit of a law for relief of bankrupt or insolvent debtors'.

The Committee notes that there appears to be no provisions which clarifies what may amount to a 'substantially similar' status under a foreign law or what may amount to a 'benefit of a law' for the relief of bankrupt or insolvent debtors. Therefore, it may be difficult for an individual to determine the potential impact of the new definition on their rights or obligations relating to personal insolvency.

The Committee acknowledges that inserting the new definition of 'personally insolvent' into the Act will create consistency and certainty across other NSW statutes. However, the Committee notes that a person's personal insolvency status may have implications under NSW laws, as a bankrupt individual may be subject to certain restrictions and obligations regarding entering into transactions or ownership of assets. The Committee also notes that the definition may have a broad application as the Interpretation Act will apply to all NSW statutes unless the term is otherwise defined in the legislation. For these reasons, the Committee refers the matter to Parliament for its consideration.

Retrospective application of repealing provision

Schedule 5 of the Bill repeals the *Workers Compensation Amendment Act 2015* which amends the *Workers Compensation Act 1987*. Schedule 6 of the Bill states that if a Bill makes an amendment to a legislative provision amending a primary Act, it will be considered effective from the commencement of the provision amending the primary Act, regardless of whether it has been repealed or not.

The repeal of the *Workers Compensation Amendment Act 2015* would be considered effective from the date of the Act's commencement. Therefore, the Bill may lead to uncertainty about the validity of rights and effectiveness of actions taken in accordance with the amendments made by the Act. This may infringe the rule of law principle that a person is entitled to understand the law that applies to them at any given time.

The Committee acknowledges that the provisions are intended to repeal a single un-commenced provision. However, the *Workers Compensation Amendment Act* deals with the compensation rights of injured workers and the uncertainties arising from the repeal may make it more difficult for injured workers and employers to understand their rights or obligations during that period. For these reasons, the Committee refers the matter to Parliament for its consideration.

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

Statutory rule expressed to commence before publication on NSW legislation website

Schedule 6, clause 3(1) of the Bill provides a regulation-making power to make provisions of a savings or transitional nature consequent on the enactment of the Bill as an Act. Clause 3(4) provides that those provisions may take effect on a date earlier than the date of publication of those regulations.

This conflicts with section 39(2A) of the *Interpretation Act 1987*. Under this section, provisions of statutory rules are required to commence on the day they are published on the NSW legislation website or at a later specified date. The Committee acknowledges that the Bill prohibits any regulation enabling the retrospective commencement of regulations from prejudicially affecting a person's pre-existing rights or impose liabilities.

However, the Committee notes that retrospective commencement may make it difficult for individuals to understand when regulations made under this Bill commence or what laws apply to them at a certain point in time. This is contrary to the rule of law principle that people are entitled to know the law to which they are subject at any given time. For these reasons, the Committee refers the matter to Parliament for its consideration.

6. Work Health and Safety Amendment Bill 2023

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

Offence regime – extension of criminal liability, significant increases to penalties

The Bill amends section 31 of the *Work Health and Safety Act 2011* by expanding Category 1 offences relating to gross negligence or reckless conduct. These amendments clarify that offending conduct of a person who is an officer of someone conducting a business or undertaking is also a Category 1 offence. It also increases the maximum monetary and custodial penalties for a Category 1 offence, including doubling the maximum imprisonment to 10 years.

The term 'officer' is also defined to have the same meaning under section 9 of the *Corporations Act 2001* (Cth) which broadly defines 'officer' to mean a number of roles within a corporation. This includes any person who makes decisions, participates in decision-making, has the 'capacity' to significantly affect its financial standing, or whose instructions/wishes are typically followed. Therefore, the Bill may broadly extend criminal liability for a Category 1 offence to a class of persons acting for a person conducting a business or undertaking .

The Committee recognises that the prosecution still bears the burden of proving that an accused person engaged in the offending conduct without reasonable excuse. The Committee also acknowledges that the increase in penalties are intended to deter behaviour that exposes workers and others to risk of death or serious injury or illness. However, these increases to the maximum penalty for these offences includes a custodial penalty of up to 10 years imprisonment. Given the potential custodial penalty and extension of criminal liability, the Committee refers the matter to Parliament for its consideration.

Absolute liability offence – monetary penalty

Section 197D inserted into the *Work Health and Safety Act 2011* by the Bill establishes a new offence for individuals who do not comply with a prohibited asbestos notice. This offence carries a maximum penalty of \$132 600 (1 206 penalty units).

Therefore, the Bill may establish an absolute liability offence for failure to comply with a prohibited asbestos notice. Absolute liability offences depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. The Committee also recognises that the offences are intended to deter the unlawful presence of asbestos which poses a risk to public health and safety. Further, the maximum penalties for the offences are monetary, not custodial. In these circumstances, the Committee makes no further comment.

Extension of criminal liability to the body corporate

The Bill inserts more detailed provisions into the *Work Health and Safety Act 2011* to expand how conduct of individuals may be imputed to body corporates. These provisions would extend what conduct or state of mind may be imputed to a corporation, to include the board of directors or a person acting under directions or with the agreement of a relevant person. The Bill may therefore extend criminal liability of individuals to body corporates, including for absolute liability offences.

The Committee acknowledges that these provisions are intended to strengthen compliance by companies with their work health and safety duties. The Committee further notes that the

imputation provisions apply to body corporates that owe work health and safety duties. In the circumstances, the Committee makes no further comment.

Privacy rights – providing sensitive information

The Bill inserts Division 1A into Part 14 of the *Work Health and Safety Act 2011* to establish a silica worker register. These provisions require that a person conducting a business or undertaking must provide information to SafeWork NSW for inclusion on the silica worker register. Failure to do so is an offence for an individual or body corporate. Therefore, the Bill may establish an absolute liability offence for not providing information which may include sensitive information, to SafeWork NSW. Absolute liability offences depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. However, the Committee notes that the absolute liability offence applies to a business which does not provide 'information for inclusion' on the register. It is unclear whether this information includes sensitive health information. Further, although not publicly available, the Committee notes that any sensitive health information of a worker included in the silica worker register may be tracked by government agencies without their consent. For these reasons, the Committee refers the matter to Parliament for its consideration.

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

Penalty notice offences – right to a fair trial

The Bill amends section 243 of the *Work Health and Safety Act 2011* to amend the definition of an authorised officer. This amendment would allow a person prescribed by the regulations to issue penalty notice offences.

The Committee notes that penalty notices allow an individual to pay a specified amount in lieu of electing to have the matter heard by a Court. This may impact a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. The Committee acknowledges that individuals retain the right to elect to have their matter dealt with before a Court, and that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including cost effectiveness and ease of administration.

The Committee also recognises that the amendment would enable police officers to issue penalty notice offences for an offence in the regulation intended to protect the work health and safety of food delivery riders. However, the Committee notes that the regulation-making power to prescribe 'authorised officers' is broadly worded and not limited to certain classes of persons like police officers. The provisions may allow private individuals to be authorised to issue penalty notices. Unlike public officials such as police officers, private employees are not subject to the same obligations, duties and safeguards under law. For these reasons, the Committee refers the matter to Parliament for its consideration.

PART TWO – REGULATIONS

1. Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023

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

Privacy rights – body-worn recording devices

The Regulation amends both the *Court Security Regulation 2021* and the *Surveillance Devices Regulation 2022* to permit sheriff's officers to use body-worn recording devices during a one-year trial period from 1 December 2023. It also amends these Regulations so that sheriff's officers are exempt from certain requirements and prohibitions under the *Court Security Act 2005* and *Surveillance Devices Act 2007*. These provisions would permit sheriff's officers to record people in court using body-worn devices if the officer believes there is a 'significant risk of harm', or the recording is 'inadvertent or unexpected'. Therefore, the Regulation may permit the broad use of body-worn recording devices which may infringe on a person's privacy rights. Sheriff's officers are likely to interact with vulnerable members of the public in their capacity as court security officers, including victims of crime.

The Committee acknowledges that these provisions and exemptions are time-limited and associated with a trial period. It also recognises the public interest in deterring violence and anti-social behaviour towards these officers in the course of their duties, which may include executing court warrants and monitoring and securing court proceedings. However, the Committee notes that the length of the trial period is significant. Further, the Committee notes that there does not appear to be provisions in regulations or the parent Act limiting how recordings by body-worn devices may be stored, or how they may be used. For these reasons, the Committee refers the matter to Parliament for its consideration.



Part One – Bills

1. Animal Research Amendment (Prohibition of Forced Swim Tests and Forced Smoke Inhalation Experiments) Bill 2023*

Date introduced	20 September 2023
House introduced	Legislative Council
Member responsible	The Hon. Emma Hurst MLC
	*Private Members Bill

Purpose and description

- 1.1 The object of this Bill is to prohibit the carrying out of forced smoke inhalation experiments and forced swim tests.

Background

- 1.2 The *Animal Research Act 1985* (the **Act**) establishes a regulatory framework for authorising organisations to undertake animal research, and to protect the welfare of those animals being subjected to recognised research activities.
- 1.3 The Bill proposes to insert subsection 26(2A) into the Act to prohibit an animal research authority from allowing forced smoke inhalation experiments and forced swim tests to be carried out. The Bill also inserts definitions of the experiment and test in the Act.
- 1.4 During her second reading speech, the Hon. Emma Hurst MLC explained that the proposed amendments would prohibit these tests by providing that:
- They can never be approved by an animal care and ethics committee as such an approval would be invalid under this Bill.
- 1.5 The Bill also seeks to include a transitional provision under the Act that clarifies the proposed prohibition in section 26(2A) would not apply to a current animal research authority, but it would apply to the renewal of a current animal research authority.

Issues considered by the Committee

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

2. Appropriation Bill 2023; Appropriation (Parliament) Bill 2023; Treasury and Revenue Legislation Amendment Bill 2023

Date introduced	19 September 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Minns MP
Minister introducing	The Hon. Paul Scully MP
Portfolio	Premier

Purpose and description

Appropriation Bill 2023

- 2.1 The object of this Bill is to appropriate from the Consolidated Fund various sums of money required for the 2023-24 financial year for the services of the Government, including:
- (a) Department of the Public Service
 - (b) various special offices.
- 2.2 The Consolidated Fund largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.
- 2.3 This Bill:
- (a) appropriates a single sum for the services of each agency, including capital works and services, recurrent services and the repayment of debt
 - (b) contains an additional appropriation that allocates revenue raised in connection with gaming machine taxes to the Minister for Health for spending on health-related services
 - (c) contains provision for transfer payments from the Commonwealth to non-government schools and local government
 - (d) provides for appropriation for the whole of the 2023-24 financial year.

Appropriation (Parliament) Bill 2023

- 2.4 The object of this Bill is to appropriate from the Consolidated Fund a sum for the services of the Legislature for the 2023-24 financial year, including capital works and services, recurrent services and the repayment of debt.

Treasury and Revenue Legislation Amendment Bill 2023

- 2.5 The objects of this Bill are as follows:
- (a) to increase the duty payable on certain transactions attracting fixed or nominal duty
 - (b) to reduce the threshold for the acquisition of a significant interest in a landholder belonging to a class of private unit trust scheme
 - (c) to provide for the registration of private unit trust schemes that meet certain criteria
 - (d) to reduce the value of the property of an entity that a principal entity would need to be entitled to receive in the event of a distribution of all the property of the other entity in order for the other entity to be a linked entity of the principal entity for the purposes of duty
 - (e) to remove an exemption from duty in relation to certain electric vehicles
 - (f) to remove exemptions from duty for corporate reconstruction transactions and corporate consolidation transactions and to replace the exemptions with a 90% reduction in duty otherwise chargeable
 - (g) to provide for the road user charges payable for electric vehicle from 1 January 2024
 - (h) to set out the method for calculating the tax threshold and premium rate threshold for land tax and to set out and validate previous amounts for the thresholds
 - (i) to remove the ability to claim a principal place of residence exemption in relation to land unless the persons who use and occupy the land as a principal place of residence together own at least a 25% interest in the land
 - (j) to re-enact a power of the Chief Commissioner of State Revenue to remit interest and include a new power for the Chief Commissioner to issue guidelines about how interest must be remitted
 - (k) to transfer unspent money from 3 funds in the Special Deposits Account to the Consolidated Fund
 - (l) to make minor statute-law type amendments.

Background

- 2.6 These Bills give effect to the 2023-24 NSW State Budget.
- 2.7 The Hon. Paul Scully MP introduced the Bills in the Legislative Assembly, however the Hon. Daniel Mookhey MLC, Treasurer, was invited into the Assembly to give the budget speech which outlined the proposed budget and policies which the Bills seek to implement.
- 2.8 Although they are separate Acts when operative, the *Appropriation Bill 2023*, *Appropriation (Parliament) Bill 2023*, and the *State Revenue Legislation Amendment*

Bill 2023 are cognate bills and were introduced together. Therefore, all three bills are considered in this one report.

- 2.9 These Bills passed Parliament on 21 September 2023 prior to the tabling of this Digest and therefore before the Committee could report on the Bill. The *Treasury and Revenue Legislation Amendment Bill 2023* was amended before passing. Section 8A(2) of the *Legislation Review Act 1987* permits the Committee to report on a Bill which has passed or become an Act. In accordance with its usual practice, the Committee has considered the Bill as introduced.

Issues considered by the Committee

Appropriation Bill 2023

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

Appropriation (Parliament) Bill 2022

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

Treasury and Revenue Legislation Amendment Bill 2023

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

Absolute liability offence and additional punishment

- 2.10 The Bill introduces provisions for the registration of wholesale unit trust schemes by inserting Division 2 into Chapter 4, Part 2 of the *Duties Act 1997*. Section 157AF allows the Chief Commissioner to cancel the registration of a unit trust scheme at any time, if the Commissioner is satisfied that a disqualifying circumstance has occurred.
- 2.11 Section 157AG(1) provides that non-compliance with the conditions of the registration of a wholesale unit trust scheme is a disqualifying circumstance. Under section 157AD(4), the Chief Commissioner may vary the conditions of registration at any time, by giving written notice to the responsible entity for the scheme.
- 2.12 Section 157AH(1) requires the Chief Commissioner to make an assessment about the duty payable as a result of a disqualifying circumstance. Subsection (1) also sets out further consequences of a disqualifying circumstance, including a possible tax default for failure to pay the duty assessed. However, under subsection 157AH(2), the Chief Commissioner does not have to make this assessment of duty payable, if they are satisfied that it would not be just or reasonable to do so in the circumstances.
- 2.13 Subsection 157AG(2) requires a responsible entity of a unit trust scheme to give notice to the Chief Commissioner of a disqualifying circumstance within 28 days. An entity which fails to do so commits an offence and may be liable to pay the following penalties, in addition to any duty assessed payable:
- (a) a maximum penalty of \$55 000 (500 penalty units), under section 157AG(2)
 - (b) an amount equal to twice the duty payable, as assessed by the Chief Commissioner, under section 157AG(3)

- 2.14 If a unit trust scheme does not have a responsible entity, the trustee of the scheme is treated as the responsible entity under section 157AA.

The Bill amends the *Duties Act 1997* by setting out requirements for the registration of wholesale unit trust schemes. Under section 157AG, the Bill introduces an offence for responsible entities of unit trust schemes which do not provide the Chief Commissioner with written notice of a 'disqualifying circumstance' within 28 days. Under the new provisions, a disqualifying circumstance would make the unit trust scheme no longer eligible for registration. This offence carries a monetary penalty of \$55 000 and additional penalties under subsections 157AG(3) and (4).

Therefore, the Bill may establish an absolute liability offence. Absolute liability offences depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that an entity who has already paid a penalty for not providing notice of a disqualifying circumstance may have to pay additional monetary penalties. This may amount to additional punishment for the same offending conduct.

The Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. However, the Committee notes that this new offence applies to a responsible entity of a unit trust scheme, which may include a trustee where there is no responsible entity for the scheme. The Committee also notes that the Chief Commissioner may unilaterally change the conditions of registration for a wholesale unit trust scheme. This unilateral change may give rise to an absolute liability offence, as non-compliance with the conditions of a unit trust scheme registration constitutes a 'disqualifying circumstance'.

For these reasons, the Committee would usually refer this matter to Parliament for its consideration. However, as the Bill has passed both Houses of Parliament, it instead notes this matter for Parliament's consideration.

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

Lack of clarity – referral to a publication or instrument

- 2.15 The Bill inserts section 157AA into the *Duties Act 1997*. Under this section, an 'investor directed portfolio service' has the same meaning as in either:
- (a) the *Regulatory Guide 148: Platforms that are managed investment schemes and nominee and custody services (Guide)* published by the Australian Securities and Investments Commission (ASIC), or
 - (b) another publication of ASIC that the Chief Commissioner of ASIC approves for this definition, 'from time to time'.
- 2.16 Under section 157AB(k), a 'qualified investor' includes a custodian or trustee for an investor directed portfolio service. Further, section 157AC defines a 'wholesale unit trust scheme', which includes a criterion concerning the proportion of units held by

'qualified investors'. As discussed above, an entity or trustee may be subject to penalties for non-compliance with the requirements of a wholesale unit trust scheme.

The Bill inserts section 157AA into the *Duties Act 1997*, which includes a definition for an 'investor directed portfolio service' that refers to a Guide or any publication which may replace that Guide from time to time. An investor directed portfolio service may amount to a qualified investor under section 157AB, which is relevant to one criterion for a wholesale unit trust scheme.

The Committee notes that, if the existing Guide is replaced, there appears to be no provisions setting out how notice may be given of these replacement publications. As only the existing Guide is referenced in the legislation, individuals may find it difficult to understand if they meet the definition of an investor directed portfolio service under the legislation. The Committee also notes that an absolute liability offence applies to a wholesale unit trust scheme under the amendments, which carries a maximum penalty of \$55 000 and additional penalties relating to duties payable. The Committee would usually refer this matter to Parliament for its consideration. However, as the Bill has passed both Houses of Parliament, it instead notes this matter for Parliament's consideration.

3. Criminal Procedure Amendment (Child Sexual Offence Evidence) Bill 2023

Date introduced	20 September 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 3.1 The object of this Bill is to amend the *Criminal Procedure Act 1986* (the **Act**) to:
- (a) allow a child who is a complainant or prosecution witness in proceedings for a prescribed sexual offence in the District Court, wherever sitting, to give evidence in a pre-recorded evidence hearing in the absence of the jury, if any
 - (b) provide for the appointment by the District Court, wherever sitting, of a witness intermediary whose role is to facilitate the communication of, and with, a witness if the witness is less than 16 years of age, or is 16 or more years of age and the Court is satisfied the witness has difficulty communicating.

Background

- 3.2 The Bill seeks to amend the Act, including inserting Division 1A into Chapter 6. The proposed amendments largely mirrors provisions in the *Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act 2015* (the **Pilot Act**).
- 3.3 The Pilot Act provided for the conduct of the 'Child Sexual Offence Evidence Program' from 2016 (the **Pilot program**) as part of the Government's implementation of recommendations by the Joint Select Committee on Sentencing of Child Sexual Assault Offenders.¹ The pilot program enabled child complainants in certain sexual offence proceedings to pre-record their evidence before the trial and outside of the court. The Committee reported on the *Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Bill 2015* in its Digest No. 9/56 (27 October 2015).²
- 3.4 In his second reading speech, the Hon. Michael Daley MP, Attorney General described the Pilot program as:

... a key initiative aimed at reducing the stress and trauma experienced by child complainants and child prosecution witnesses in sexual offence proceedings. It also aims to help those witnesses give their best evidence.

¹ Joint Select Committee on Sentencing of Child Sexual Assault Offenders, *Every Sentence Tells a Story*, report 1/55, Parliament of New South Wales, October 2014.

² Legislation Review Committee, *Legislation Review Digest No. 9/56*, Parliament of New South Wales, 27 October 2015, pp 7-8.

- 3.5 The Pilot program had an initial duration period of 3 years with extensions prescribed by regulation. The pilot program was evaluated in 2017 by the University of New South Wales.³ The Royal Commission into Institutional Responses to Child Sexual Abuse also made recommendations in its 2017 report to allow for pre-recording of evidence and the use of witness intermediaries.⁴
- 3.6 The Bill further proposes to amend references to 'children's champion' in the Act to 'witness intermediary'. Subdivision 3 proposed by the Bill would establish the role, appointment and use of a witness intermediary. Currently, a witness intermediary cannot have acted for the vulnerable witness previously in a professional capacity. Section 294M(6) would expand appointments of an intermediary to permit exceptions to this prohibition at the Court's discretion, if it is in the interests of justice.
- 3.7 The Bill also seeks to insert section 294E which expands the definition of a 'witness' under proposed Division 1A to include an adult complainant who was a child when the accused person was committed for trial or sentence.
- 3.8 Finally, the Pilot program started in Sydney and Newcastle District Courts with trained Judges. The Bill would apply the scheme provided to all District Courts, including expanding it to police investigative stages.

Issues considered by the Committee

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

Procedural fairness rights and good administration of justice

- 3.9 The Bill inserts Division 1A into Chapter 6 of the Act. This Division provides for the pre-recording of the evidence of a complainant or prosecution witness under Subdivision 2. Section 294G(4) provides that the Court may consider the following factors when deciding whether to make an order for a pre-recorded evidence hearing:
- (a) the availability of the Court and Court facilities
 - (b) the sufficiency of preparation time
 - (c) the continuity and availability of counsel for the pre-recording hearing and the proper criminal trial
 - (d) other relevant matters.
- 3.10 Section 306U of the Act already entitles vulnerable persons to give evidence in chief in the form of a recording. The Bill expands this at section 294I by providing that this vulnerable witness is entitled to give 'other evidence' via audiovisual link. Section 294I(6) provides for safeguards mirroring section 306U of the Act, by clarifying that 'other evidence' includes cross-examination and re-examination.

³ J Cashmore, I Katz, R Shackel & K Valentine, ['Evaluation of the Child Sexual Offence Evidence Pilot – Process Evaluation Report'](#), University of New South Wales, Social Policy Research Centre, July 2017.

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, [Criminal Justice Report](#), 2017.

- 3.11 Section 294I(7) clarifies that the judge presiding at a pre-recorded evidence hearing does not have to be the same judge presiding at the proceeding in which the recording is viewed or heard by the court.
- 3.12 Section 294K provides an opportunity for the accused or the prosecution to seek the court's leave to re-call a witness under Division 1A to give further evidence. Under subsection 294K(3), the court can grant leave only if satisfied that:
- (a) the party has become aware of a matter of which they could not 'reasonably' have been aware at the time of the pre-recording hearing, or
 - (b) it is otherwise in the interests of justice.
- 3.13 The Attorney General highlighted in his second reading speech that this scheme is intended to 'reduce trauma for children who provide evidence in child sexual offence matters'. He further said:

It is well recognised that children face significant difficulties as complainants and witnesses in these cases due to their young age and the nature of the evidence they must give. Providing this evidence to police and the court can be a highly stressful and traumatic experience.

The Bill inserts provisions into the *Criminal Procedure Act 1986* to establish a scheme for pre-recorded evidence hearings in relation to prescribed sexual offences where the alleged victim was a child. This includes processes for cross-examining, re-examining and re-calling these witnesses. Section 294I makes provisions concerning the rights of the accused person in these pre-recording hearings, including being present and able to see and hear proceedings, as well as communicate with a legal practitioner. Section 294I(7) also clarifies that the judge presiding over the pre-recording hearing is not also required to preside over the proper criminal trial.

The Committee notes that pre-recording evidence of child complainants and other witnesses may impact on an accused's right to a fair trial. As the accused is required to cross-examine the witness at this pre-recorded hearing before the proper criminal trial, this may mean that the accused will have to prepare and disclose their case in advance unlike in other conventional criminal proceedings. While there are provisions for re-calling a witness that has given pre-recorded evidence, this requires leave of the Court, which may further delay the trial. Additionally, as different judges may preside over the pre-recording hearing and proper the criminal trial, the lack of continuity in the independent presiding judge may also impact the good administration of justice.

However, the Committee recognises that there are already existing provisions in the Act which allow for vulnerable witnesses to give evidence outside of the court, and that the scheme largely continues the pilot program which has been conducted in New South Wales since 2016. The Committee also acknowledges that the pre-recording of evidence for child complainants and other vulnerable witnesses in prescribed sexual offences is intended to reduce stress and trauma. 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**

Commencement by proclamation

- 3.14 Clause 2 of the Bill provides that the Bill commences (as an Act) on a day or days to be appointed by proclamation.
- 3.15 In his second reading speech, the Attorney General explained that the Government will work with agencies and the District Court to 'settle a commence date' and that this this would:

...provide participant agencies in the Child Sexual Offence Evidence Program with time to implement these measures across the State.

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

However, the Committee notes that a flexible start date may assist with the implementation of administrative arrangements necessary for the effective operation and extension of the scheme for pre-recording evidence hearings. In the circumstances, the Committee makes no further comment.

4. Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2023*

Date introduced	21 September 2023
House introduced	Legislative Assembly
Member responsible	Mr Gareth Ward MP
	*Private Members Bill

Purpose and description

- 4.1 The object of this Bill is to amend the *Electoral Act 2017* (the **Act**) to provide that:
- (a) voters must show evidence of their identity to be eligible to vote
 - (b) election officials must use an electronic authorised roll kept on a networked computer system to record the distribution of ballot papers.

Background

- 4.2 The Bill proposes to amend the Act to introduce requirements that a person show an identification document in order to vote, and prescribes a list of identification documents that may be accepted.
- 4.3 Schedule 1.2 of the Bill also proposes to introduce a process for electronic mark off requirements by replacing provisions of the Act to require that the roll of electors be in both an electronic and printed form and also that an election official record that the ballot has been received on an electronic authorised roll.
- 4.4 During his second reading speech, Mr Gareth Ward MP said that these amendments would 'make the democratic processes on voting day more efficient and legitimate, and promote trust in those processes.'

Issues considered by the Committee

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

Access to voting – right to participate in public elections

- 4.5 The Bill inserts subsection 127(2A) into the Act which requires an election official to ask each person claiming to vote in an election to show a current identification document to establish their identity.
- 4.6 Subsection 127(3) of the Act sets out mandatory grounds for an election official to reject a person's claim to vote. The Bill inserts subsection 127(3)(d) to provide an additional ground for refusal or failure to show a current identification document to an official.
- 4.7 The Bill also applies a requirement to show identification documents to absent and for provisional voting, by inserting subsections 135(2A) and (2B) and 137(6) respectively.

The Bill amends the *Electoral Act 2017* to introduce a requirement to show a current identification document to an election official when voting. It also inserts subsection 127(3)(d) which requires an election official to refuse a person's claim to vote if they fail or refuse to show a relevant identification document. By requiring a person to produce identification documents in order to vote, the Bill may infringe on a person's access to voting and thereby impact on their right to vote and participate in public elections.

The Committee acknowledges that the amendments are intended to protect the integrity of the election process. However, the Committee notes that every person entitled to vote is constitutionally obligated to vote in each election and the Act establishes an offence for failing to do so. By potentially limiting access to voting, a person may be at greater risk of committing an electoral offence. For these reasons, the Committee refers the matter to Parliament for its consideration.

5. Statute Law (Miscellaneous Provisions) Bill (No 2) 2023

Date introduced	21 September 2023
House introduced	Legislative Council
Minister responsible	The Hon. John Graham MLC
Portfolio	Special Minister of State

Purpose and description

- 5.1 The objects of this Bill are as follows:
- (a) to make minor amendments to legislation (Schedule 1)
 - (b) to make general statute law revision amendments to legislation (Schedule 2)
 - (c) to make statute law revision amendments to legislation consequential on the commencement of the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* (Schedule 3)
 - (d) to make statute law revision amendments to legislation consequential on machinery of government changes (Schedule 4)
 - (e) to repeal certain legislation (Schedule 5)
 - (f) to make savings and transitional provisions and other provisions of a consequential or ancillary nature in relation to the matters in the other schedules to the proposed Act (Schedule 6).

Background

- 5.2 In his second reading speech, the Hon. John Graham MLC, Special Minister of State, noted that the Bill would continue the State's long-running statute law revision program. He described that statute law bills as 'an effective method for making minor policy changes' and 'significant in maintaining the quality of the New South Wales statute book'.
- 5.3 The Bill proposes various amendments to a number of unrelated Acts. These amendments are grouped according to the nature of the amendments into Schedules, which the Minister outlined as follows:
- (a) Schedule 1 contains proposed amendments to 21 Acts and one instrument which would implement policy changes that the Minister described as of a 'minor and non-controversial nature' and 'too inconsequential to warrant the introduction of a separate amending bill'
 - (b) Schedule 2 proposes amendments that are minor technical legislative changes which the Minister noted were considered by the Parliamentary Counsel to be 'appropriate for inclusion in the bill', including updating references to renamed portfolios and positions and removing references to dissolved bodies

- (c) Schedule 3 proposes amendments that are consequential on the enactment of the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018*
- (d) Schedule 4 proposes consequential amendments due to administrative arrangement orders such as the *Administrative Arrangements (58th Parliament) Order 2023*
- (e) Schedule 5 repeals three Acts that are 'redundant or are spent and have no ongoing effect', including the *Workers Compensation Amendment Act 2015* which contained a provision that was not commenced
- (f) Schedule 6 contains general savings and transitional provisions, as well as provisions dealing with the effect of amendments on amending provisions. It also includes a provision that allows regulations to be made for transitional or savings matters.

5.4 The Minister addressed some of the amendments proposed by Schedule 1 of the Bill in his second reading speech. These include proposed amendments to:

- (a) the *Interpretation Act 1987* (the **Interpretation Act**) to clarify what is meant by references in legislation to the Minister administering another Act and to insert a standard definition of 'personally insolvent'
- (b) the *Community Land Development Act 2021* and the *Conveyancing Act 1919* to require electronic lodgement of certain court orders
- (c) the *Animal Research Act 1985* to replace references to the Minister to avoid future changes to ministerial titles affecting the operations of the Act
- (d) the *Coastal Management Act 2016* to correct outdated cross-references and to correct references to former local government areas that may have now been amalgamated or perhaps renamed.

Issues considered by the Committee

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

Personal insolvency status under NSW laws

5.5 The Bill amends the Interpretation Act to insert a new definition for 'personally insolvent'. Specifically, it inserts the following definition into the Dictionary under Schedule 4 of the Act:

personally insolvent, for an individual, means the individual:

- (a) under the *Bankruptcy Act 1966* of the Commonwealth:
 - (i) is bankrupt, or
 - (ii) is a party to a debt agreement as a debtor; or
 - (iii) is a party to a personal insolvency agreement as a debtor and the obligations created by the agreement remains uncharged; or

- (iv) authorises a controlling trustee to control the individual's property, whether or not the individual has entered into a personal insolvency agreement as a debtor, or
- (b) has a status under a law of a foreign country substantially similar to an individual referred to in paragraph (a), or
- (c) otherwise applies to take the benefit of a law for the relief of bankrupt or insolvent debtors.

5.6 In his second reading speech, the Minister said that this new definition:

... removes the need for the term to be separately defined, where an Act or instrument does not already define the term, to ensure consistency and certainty in the interpretation of the term across the statute book.

The Bill inserts a new definition of 'personally insolvent' into the *Interpretation Act 1987*. An individual will be considered personally insolvent if they are bankrupt or meet other related criteria under the *Bankruptcy Act 1966* (Cth), have a 'similar status' under the law of another country, or 'applies to take the benefit of a law for relief of bankrupt or insolvent debtors'.

The Committee notes that there appears to be no provisions which clarifies what may amount to a 'substantially similar' status under a foreign law or what may amount to a 'benefit of a law' for the relief of bankrupt or insolvent debtors. Therefore, it may be difficult for an individual to determine the potential impact of the new definition on their rights or obligations relating to personal insolvency.

The Committee acknowledges that inserting the new definition of 'personally insolvent' into the Act will create consistency and certainty across other NSW statutes. However, the Committee notes that a person's personal insolvency status may have implications under NSW laws, as a bankrupt individual may be subject to certain restrictions and obligations regarding entering into transactions or ownership of assets. The Committee also notes that the definition may have a broad application as the Interpretation Act will apply to all NSW statutes unless the term is otherwise defined in the legislation. For these reasons, the Committee refers the matter to Parliament for its consideration.

Retrospective application of repealing provision

- 5.7 Clause 1, Schedule 6 of the Bill provides that any amendment by the Bill to an 'amending provision' will be considered effective from the commencement of the amending provision, regardless of whether the amending provision has been repealed or not. An 'amending provision' is defined as any legislative provision in an Act or instrument that amends another Act or instrument.
- 5.8 Schedule 5 of the Bill repeals the *Workers Compensation Amendment Act 2015* (the **Workers Compensation Amendment Act**), which is an 'amending provision' that amends the *Workers Compensation Act 1987* (the **Workers Compensation Act**).
- 5.9 The Workers Compensation Act makes provisions intended to protect the rights and interests of injured workers and ensure a safer working environment for employees.

That Act was amended by the Workers Compensation Amendment Act to reform the scheme, including amendments addressing 'death benefits', medical expenses, establishing 'return to work assistance' and weekly and lump sum compensation payments.

- 5.10 In his second reading speech, the Minister spoke about the effect of this repeal and noted that the Workers Compensation Amendment Act:

...contained a single un-commenced provision, to insert proposed regulation-making powers in the Workers Compensation Act 1987. The proposed regulation-making power has now been provided under section 32A(2) of the Workers Compensation Act 1987.

Schedule 5 of the Bill repeals the *Workers Compensation Amendment Act 2015* which amends the *Workers Compensation Act 1987*. Schedule 6 of the Bill states that if a Bill makes an amendment to a legislative provision amending a primary Act, it will be considered effective from the commencement of the provision amending the primary Act, regardless of whether it has been repealed or not.

The repeal of the *Workers Compensation Amendment Act 2015* would be considered effective from the date of the Act's commencement. Therefore, the Bill may lead to uncertainty about the validity of rights and effectiveness of actions taken in accordance with the amendments made by the Act. This may infringe the rule of law principle that a person is entitled to understand the law that applies to them at any given time.

The Committee acknowledges that the provisions are intended to repeal a single un-commenced provision. However, the *Workers Compensation Amendment Act* deals with the compensation rights of injured workers and the uncertainties arising from the repeal may make it more difficult for injured workers and employers to understand their rights or obligations during that period. For these reasons, the Committee refers the matter to Parliament for its consideration.

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

Statutory rule expressed to commence before publication on NSW legislation website

- 5.11 Schedule 6, clause 3(1) of the Bill provides that regulations may make provisions of a savings or transitional nature. Subclause 3(2) states that provisions of those regulations may be taken to have effect from the date of assent of the Bill as an Act, or a later date. Subclause 3(5) limits the effect of such provisions which take effect from a date before its publication on the NSW legislation website by prohibiting them operating in a way that would either:

- (a) prejudicially affect any pre-existing rights of a person, or
- (b) impose liabilities on a person in respect to actions or omissions done before publication.

- 5.12 Section 39(2A) of the *Interpretation Act 1987* provides that all or part of a statutory rule, which includes regulations, will be invalid if any relevant provisions are expressed to commence on a day before it was published on the NSW legislation website. It further provides that, where this is the case, 'that or those provisions

commence on the day the statutory rule is published on the NSW legislation website, instead of on the earlier day.'

Schedule 6, clause 3(1) of the Bill provides a regulation-making power to make provisions of a savings or transitional nature consequent on the enactment of the Bill as an Act. Clause 3(4) provides that those provisions may take effect on a date earlier than the date of publication of those regulations.

This conflicts with section 39(2A) of the *Interpretation Act 1987*. Under this section, provisions of statutory rules are required to commence on the day they are published on the NSW legislation website or at a later specified date. The Committee acknowledges that the Bill prohibits any regulation enabling the retrospective commencement of regulations from prejudicially affecting a person's pre-existing rights or impose liabilities.

However, the Committee notes that retrospective commencement may make it difficult for individuals to understand when regulations made under this Bill commence or what laws apply to them at a certain point in time. This is contrary to the rule of law principle that people are entitled to know the law to which they are subject at any given time. For these reasons, the Committee refers the matter to Parliament for its consideration.

6. Work Health and Safety Amendment Bill 2023

Date introduced	20 September 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

Purpose and description

- 6.1 The objects of this Bill are as follows:
- (a) to amend the *Work Health and Safety 2011* (the **Act**) to incorporate amendments to the *Model Work, Health and Safety Act* (the **model Act**)⁵ relating to the following:
 - (i) penalty amounts
 - (ii) liability of bodies corporate for the conduct of officers, employees and agents
 - (iii) the powers and responsibilities of inspectors
 - (iv) prohibited asbestos notices
 - (v) prohibiting a person from taking out insurance for penalties imposed under the Act
 - (b) to amend the Act to make provision for the establishment of a register to monitor the health of workers exposed to silica dust
 - (c) to amend the *Work Health and Safety Regulation 2017* (the **Regulation**) to incorporate increased penalty amounts in line with penalty increases incorporated in the *Model Work Health and Safety Regulations* (the **model Regulations**).

Background

- 6.2 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, advised that the Bill's proposed amendments to the Act would:
- (a) implement some of the outstanding recommendations of the 2018 review of the model work health and safety laws⁶
 - (b) make miscellaneous amendments to address ambiguities
 - (c) set up a framework for a silica worker register in order to monitor the health of workers exposed to silica dust
 - (d) ensure there are sufficient regulation-making powers under the Act.

⁵ [Safe Work Australia, *Model Work Health and Safety Bill*](#), August 2023.

⁶ Safe Work Australia, [Review of the model WHS laws: Final report](#), December 2018.

- 6.3 She further emphasised that a strong focus of the Bill is to address work, health and safety issues relating to asbestos and silica dust.
- 6.4 The Bill also proposes a number of legislative changes to align work health and safety laws in NSW with the Model Act. The Minister highlighted that this is intended to achieve consistency across the Australian jurisdictions that have adopted the model work health and safety laws. This includes increases to the maximum penalties for a number of offences to bring them in line with the Model Act

Issues considered by the Committee.

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

Offence regime – extension of criminal liability, significant increases to penalties

- 6.5 Under section 31(1) of the Act, a person commits a Category 1 offence if they:
- have a health and safety duty
 - engage in conduct that, without reasonable excuse, exposes an individual to a risk of death or serious injury or illness, and
 - are grossly negligent or reckless to the risk to an individual.
- 6.6 The Bill amends subsection 31(1)(b) of the Act, which expands what conduct constitutes a Category 1 offence. Under the amendments, a person also commits a Category 1 offence if:
- they are an 'officer' of somebody conducting a business or undertaking, and
 - they owe an individual a health and safety duty and, without reasonable excuse, expose that individual to a risk of death, or serious injury or illness.
- 6.7 Under section 4 of the Act, an 'officer' has the same meaning as section 9 of the *Corporations Act 2001* (Cth). Section 9 of the *Corporations Act 2001* (Cth) defines 'officer' to mean a broad number of roles within a corporation.
- 6.8 In her second reading speech, the Minister noted that a person conducting a business or undertaking has always been liable under section 31. However, she clarified that the amendment 'removes the ambiguity and makes it clear that an officer may commit a category 1 offence'.
- 6.9 The Bill also amends section 31 to significantly increase the maximum penalties for a Category 1 offence. Under these amendments, the maximum penalty for an individual under this offence increases to:
- \$2 068 550 (18 805 penalty units) from 6 925 penalty units if they are conducting a business or undertaking (or an officer of such a person), or \$994 180 (9 038 penalty units) from 3 465 penalty units otherwise, and/or
 - 10 years imprisonment from 5 years imprisonment.
- 6.10 The Minister explained that the increase in penalties is intended as 'a clear message to people who place workers' lives at risk that they will be held to account.'

The Bill amends section 31 of the *Work Health and Safety Act 2011* by expanding Category 1 offences relating to gross negligence or reckless conduct. These amendments clarify that offending conduct of a person who is an officer of someone conducting a business or undertaking is also a Category 1 offence. It also increases the maximum monetary and

custodial penalties for a Category 1 offence, including doubling the maximum imprisonment to 10 years.

The term 'officer' is also defined to have the same meaning under section 9 of the *Corporations Act 2001* (Cth) which broadly defines 'officer' to mean a number of roles within a corporation. This includes any person who makes decisions, participates in decision-making, has the 'capacity' to significantly affect its financial standing, or whose instructions/wishes are typically followed. Therefore, the Bill may broadly extend criminal liability for a Category 1 offence to a class of persons acting for a person conducting a business or undertaking .

The Committee recognises that the prosecution still bears the burden of proving that an accused person engaged in the offending conduct without reasonable excuse. The Committee also acknowledges that the increase in penalties are intended to deter behaviour that exposes workers and others to risk of death or serious injury or illness. However, these increases to the maximum penalty for these offences includes a custodial penalty of up to 10 years imprisonment. Given the potential custodial penalty and extension of criminal liability, the Committee refers the matter to Parliament for its consideration.

Absolute liability offence – monetary penalty

- 6.11 The Bill introduces Division 2A into Part 10 the Act which empowers the Work Health and Safety regulator to direct the removal of illegally installed asbestos. It also provides compliance powers that allow the regulator to issue a prohibited asbestos notice under Division 2A. In her second reading speech, the Minister referred to the 2003 ban on the manufacture, use and importation of asbestos in Australia but highlighted that asbestos is still being found in Australian workplaces.
- 6.12 Under section 197B of Division 2A, the regulator must issue a prohibited asbestos notice to a relevant person, if the regulator reasonably believes prohibited asbestos is present in the workplace. Section 197C also sets out what must be stated in the prohibited asbestos notice, including directions on specific measures the relevant person must take to remove the prohibited asbestos.
- 6.13 Under section 197D, failure to comply with a prohibited asbestos notice carries a maximum penalty of \$132 600 (1,206 penalty units) for an individual.

Section 197D inserted into the *Work Health and Safety Act 2011* by the Bill establishes a new offence for individuals who do not comply with a prohibited asbestos notice. This offence carries a maximum penalty of \$132 600 (1 206 penalty units).

Therefore, the Bill may establish an absolute liability offence for failure to comply with a prohibited asbestos notice. Absolute liability offences depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. The Committee also recognises that the offences are intended to deter the unlawful presence of asbestos which poses a risk to public health and safety. Further, the maximum penalties for the offences are monetary, not custodial. In these circumstances, the Committee makes no further comment.

Extension of criminal liability to the body corporate

6.14 The Bill replaces section 244 of the Act, which makes provisions that imputes certain conduct to body corporates, with sections 244 to 244D. In her second reading speech, the Minister explained that imputation:

... enables the conduct of a company's officers, agents or employees to be considered as a whole in determining whether the company has committed an offence, where intention, knowledge or recklessness is the required state of mind.

6.15 The Bill inserts section 244A which specifies that conduct engaged in by any of the following persons is treated to be conduct engaged in by the body corporate:

- its board of directors
- any 'authorised person'
- any person acting at the direction, or with the express or implied agreement of, either the board of directors or an authorised person.

6.16 Sections 244B to 244D of the Bill make provisions for establishing a body corporate's state of mind, when a body corporate can rely on mistake of fact, and proving that a body corporate failed to take reasonable precautions.

6.17 The Minister explained that these imputation provisions are intended to:

... address expectations that exist in the wider community that companies should be held accountable for meeting their work health and safety duties, and prosecuted for failure to uphold their work health and safety duties in the same way that individuals are.

The Bill inserts more detailed provisions into the *Work Health and Safety Act 2011* to expand how conduct of individuals may be imputed to body corporates. These provisions would extend what conduct or state of mind may be imputed to a corporation, to include the board of directors or a person acting under directions or with the agreement of a relevant person. The Bill may therefore extend criminal liability of individuals to body corporates, including for absolute liability offences.

The Committee acknowledges that these provisions are intended to strengthen compliance by companies with their work health and safety duties. The Committee further notes that the imputation provisions apply to body corporates that owe work health and safety duties. In the circumstances, the Committee makes no further comment.

Privacy rights – providing sensitive information

6.18 The Bill inserts provisions into the Act which establishes a silica worker register.

6.19 Under section 273A, a person conducting a business or undertaking must give information to SafeWork NSW for inclusion on the silica worker register. Failure to do so carries a maximum penalty of \$26 730 (243 penalty units) for individuals.

6.20 Section 273B provides that the silica worker register must not be publicly available but may be accessed by listed agencies which includes 'a government sector agency prescribed by the regulations'. Under subsection 273B(3), the information on the

register may be used to track the health and safety of a worker with information on the register, including to conduct epidemiological research.

- 6.21 In her second reading speech, the Minister explained that this provision is intended to ensure that appropriate government agencies can 'track and trace' workers exposed to respirable crystalline silica. She further said that this would ensure that workers can access 'appropriate health screening' by enabling the monitoring of their condition over time.

The Bill inserts Division 1A into Part 14 of the *Work Health and Safety Act 2011* to establish a silica worker register. These provisions require that a person conducting a business or undertaking must provide information to SafeWork NSW for inclusion on the silica worker register. Failure to do so is an offence for an individual or body corporate. Therefore, the Bill may establish an absolute liability offence for not providing information which may include sensitive information, to SafeWork NSW. Absolute liability offences depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. However, the Committee notes that the absolute liability offence applies to a business which does not provide 'information for inclusion' on the register. It is unclear whether this information includes sensitive health information. Further, although not publicly available, the Committee notes that any sensitive health information of a worker included in the silica worker register may be tracked by government agencies without their consent. For these reasons, the Committee refers the matter to Parliament for its consideration.

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

Penalty notice offences – right to a fair trial

- 6.22 Section 243 of the Act provides that an authorised officer may issue a penalty notice to a person, if it appears to the officer that the person has committed a penalty notice offence. The Bill amends the definition of authorised officer under subsection 243(6) to include 'a person prescribed by the regulations'.

- 6.23 In her second reading speech, the Minister explained that this amendment would enable police officers to enforce compliance by issuing penalty notices to delivery riders under clause 184U of the Regulation. Under clause 184U, it is an absolute liability offence for a food delivery rider to not:

- (a) make their training verification record available for inspection 'by an inspector or a police officer', or
- (b) use or wear high-vis personal protective equipment.

The Bill amends section 243 of the *Work Health and Safety Act 2011* to amend the definition of an authorised officer. This amendment would allow a person prescribed by the regulations to issue penalty notice offences.

The Committee notes that penalty notices allow an individual to pay a specified amount in lieu of electing to have the matter heard by a Court. This may impact a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. The

Committee acknowledges that individuals retain the right to elect to have their matter dealt with before a Court, and that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including cost effectiveness and ease of administration.

The Committee also recognises that the amendment would enable police officers to issue penalty notice offences for an offence in the regulation intended to protect the work health and safety of food delivery riders. However, the Committee notes that the regulation-making power to prescribe 'authorised officers' is broadly worded and not limited to certain classes of persons like police officers. The provisions may allow private individuals to be authorised to issue penalty notices. Unlike public officials such as police officers, private employees are not subject to the same obligations, duties and safeguards under law. For these reasons, the Committee refers the matter to Parliament for its consideration.

Part Two – Regulations

1. Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023

Date tabled	LA: 19 September 2023 LC: 19 September 2023
Disallowance date	LA: 5 December 2023 LC: 5 December 2023
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 1.1 The objects of this regulation are as follows:
- (a) to provide for the trial of body-worn recording devices by sheriff's officers, including while in a court
 - (b) to permit the use of body-worn video by police officers in court premises
 - (c) to permit the transmission and distribution of recordings of court proceedings obtained from the use of body-worn video by police officers in certain circumstances
 - (d) to provide that a person entering court premises may be required to surrender remotely piloted aircraft.
- 1.2 The trial of body-worn recording devices by sheriff's officers will commence on 1 December 2023 and end on 30 November 2024.
- 1.3 The Regulation amends the *Court Security Regulation 2021* (the **Court Security Regulation**) and the *Surveillance Devices Regulation 2022* (the **Surveillance Devices Regulation**).

Issues considered by the Committee

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

Privacy rights – body-worn recording devices

- 1.4 The Regulation inserts subsection 5(c) and section 5A into the Court Security Regulation to permit a police officer and a sheriff's officer to use body-worn recording devices in court premises. Under section 21 of the *Court Security Act 2005*, a sheriff's officer can be appointed as a security officer to undertake security activities in a court.

- 1.5 Section 5A sets out the requirements for use of a body-worn recording device, including how the recording device must be displayed. Recording by a body-worn device is only permitted if at least one of the following circumstances applies:
- before making a recording, the officer made a reasonable attempt to ensure the person likely to be recorded was aware the device was capable of recording images, sound, or both
 - in the opinion of the officer, there is a significant risk of harm to the officer or another person
 - the recording of images, sound, or both by the device is inadvertent or unexpected.
- 1.6 The Regulation also inserts section 6A into the *Court Security Regulation 2021*, and section 6B into the *Surveillance Devices Regulation 2022* to exempt the use of body-worn recording devices by a sheriff's officer from the prohibitions under the *Court Security Act 2005* and the *Surveillance Devices Act 2007* respectively.
- 1.7 These provisions concerning sheriff's officers inserted by the Regulation are repealed at the end of 30 November 2024.

The Regulation amends both the *Court Security Regulation 2021* and the *Surveillance Devices Regulation 2022* to permit sheriff's officers to use body-worn recording devices during a one-year trial period from 1 December 2023. It also amends these Regulations so that sheriff's officers are exempt from certain requirements and prohibitions under the *Court Security Act 2005* and *Surveillance Devices Act 2007*. These provisions would permit sheriff's officers to record people in court using body-worn devices if the officer believes there is a 'significant risk of harm', or the recording is 'inadvertent or unexpected'. Therefore, the Regulation may permit the broad use of body-worn recording devices which may infringe on a person's privacy rights. Sheriff's officers are likely to interact with vulnerable members of the public in their capacity as court security officers, including victims of crime.

The Committee acknowledges that these provisions and exemptions are time-limited and associated with a trial period. It also recognises the public interest in deterring violence and anti-social behaviour towards these officers in the course of their duties, which may include executing court warrants and monitoring and securing court proceedings. However, the Committee notes that the length of the trial period is significant. Further, the Committee notes that there does not appear to be provisions in regulations or the parent Act limiting how recordings by body-worn devices may be stored, or how they may be used. For these reasons, the Committee refers the matter to Parliament for its 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. Fire and Rescue NSW Regulation 2023

The object of this Regulation is to remake, with changes, the *Fire Brigades Regulation 2014*, which is repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation makes provision for the following matters:

- (a) the appointment and conditions of service of firefighters,
- (b) the functions and duties of firefighters,
- (c) misconduct by firefighters,
- (d) disciplinary action in relation to firefighters
- (e) the awarding of bravery and service awards by the Commissioner
- (f) the charges payable for certain services performed by the Commissioner or by firefighters.

The Regulation is a remake and, although it makes minor changes, those changes do not engage with the matters under section 9(1)(b) of the *Legislation Review Act 1987*.

2. Law Enforcement Conduct Commission Regulation 2023

The object of this Regulation is to repeal and remake, with changes, the *Law Enforcement Conduct Commission Regulation 2017*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (g) provides for the disclosure of pecuniary interests and other matters, including conflicts of interest, by officers of the Law Enforcement Conduct Commission (the Commission), and
- (h) enables the Chief Commissioner of the Commission, for the purposes of carrying out security checks, to require officers of the Commission, and applicants for appointment, employment or engagement as an officer of the Commission, to provide certain documents and information, and
- (i) gives the Inspector of the Commission the same power to require certain matters to be disclosed, and certain documents and information provided, by members of staff of the Inspector and applicants for employment or engagement as a member of staff of the Inspector.

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

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

Section 12 may be made under a Henry VIII provision because the section impliedly amends the *Law Enforcement Conduct Commission Act 2016* by affecting the application of the Act.

This Regulation clarifies and provides a definition for "associate" along with a slight modification detailing what constitutes a conflict of interest, but does not raise any issues under section 9(1)(b) of the *Legislation Review Act 1987*.

3. Pipelines Regulation 2023

The object of this Regulation is to remake, with minor amendments, the *Pipelines Regulation 2013*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation makes provision for the following:

- (a) applying for authorities and licences under the *Pipelines Act 1967*,
- (b) the design, construction, operation and maintenance of pipelines, including the requirement for pipeline management systems and pipeline management plans,
- (c) reporting about incidents and other matters relating to pipelines,
- (d) modifying the application of the *Land Acquisition (Just Terms Compensation) Act 1991* to claims for compensation by persons holding interests in land affected by pipelines,
- (e) making applications for directions as to conveyance of substances,
- (f) marking the route of a pipeline,
- (g) the terms of certain standard easements related to pipelines,
- (h) fees for applications, registrations and other matters,
- (i) surveying pipelines,
- (j) the service of documents,
- (k) savings.

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

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

The Regulation is a remake and, although it makes minor changes, those changes do not engage with the matters under section 9(1)(b) of the *Legislation Review Act 1987*.

Appendix Three – Unconfirmed extracts of minutes

Meeting no. 5

TIME & DATE: 3.00PM, 9 OCTOBER 2023 LOCATION: ROOM 1136 AND WEBEX

MEMBERS PRESENT

Lynda Voltz (**Chair**), Donna Davis, Nathan Hagarty (**by Webex**), Sue Higginson, Jacqui Munro and Cameron Murphy.

APOLOGIES

Maryanne Stuart and Dave Layzell.

OFFICERS PRESENT

Sam Griffith, Ashley Kim, Kayaneh Mouradian, Nicolle Gill and Caitlin Bailey.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 18 September 2023 be confirmed.

2. Correspondence

...

3. Consideration of Bills with comment for Legislation Review Digest 5/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the following draft bill reports *in globo* with minor typographic errors corrected:

- a. Appropriation Bill 2023; Appropriation (Parliament) Bill 2023; Treasury and Revenue Legislation Amendment Bill 2023
- b. Criminal Procedure Amendment (Child Sexual Offence Evidence) Bill 2023
- c. Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2023
- d. Statute Law (Miscellaneous Provisions) Bill (No 2) 2023
- e. Work Health and Safety Amendment Bill 2023.

4. Consideration of Bills without comment for Legislation Review Digest 5/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the draft report regarding the Animal Research Amendment (Prohibition of Forced Swim Tests and Forced Smoke Inhalation Experiments) Bill 2023.

5. Consideration of Regulations for Legislation Review Digest 5/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the draft report regarding the *Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023*.

6. Regulations without comment for Legislation Review Digest 5/58 (Appendix Two)

Resolved, on the motion of Ms Davis: That the Committee adopts the regulations without comment as Appendix Two to Digest 5/58.

7. Legislation Review Digest 5/58

Resolved, on the motion of Ms Munro:

- That appropriate minute extracts of this meeting be published as Appendix Three to the Digest.
- That the Committee adopts the Legislation Review Digest 5/58 and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

The Committee noted the table attached listing the status of regulations and statutory instruments to be reviewed.

9. General business

...

10. Next Meeting

The meeting adjourned at 3.04pm until 16 October 2023 at 3.00pm.