

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



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

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# Membership

<b>Chair</b>	Ms Lynda Voltz MP, Member for Auburn
<b>Deputy Chair</b>	Ms Maryanne Stuart MP, Member for Heathcote
<b>Members</b>	Ms Donna Davis MP, Member for Parramatta Mr Nathan Hagarty MP, Member for Leppington Ms Sue Higginson MLC Mr Dave Layzell MP, Member for Upper Hunter The Hon. Jacqui Munro MLC The Hon. Cameron Murphy MLC
<b>Contact details</b>	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
<b>Telephone</b>	(02) 9230 2144 / (02) 9230 2151
<b>E-mail</b>	<a href="mailto:Legislation.Review@parliament.nsw.gov.au">Legislation.Review@parliament.nsw.gov.au</a>
<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# Guide to the Digest

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. 24-Hour Economy Legislation Amendment \(Vibrancy Reforms\) Bill 2023; 24-Hour Economy Commissioner Bill 2023](#)

Issue identified	Conclusion of Committee
Right to privacy and use of property – power to photograph, film or video	No further comment
Absolute liability offence – application of law to minors	Referred

### [2. Biosecurity Amendment \(Independent Biosecurity Commissioner\) Bill 2023](#)

No issues identified

### [3. Centennial Park and Moore Park Trust Amendment \(Public Transport\) Bill 2023](#)

No issues identified

### [4. Crime and Criminal Procedure Legislation Amendment Bill 2023](#)

No issues identified

### [5. Independent Commission Against Corruption Amendment \(Ministerial Diary Disclosure\) Bill 2023\\*](#)

Issue identified	Conclusion of Committee
Privacy rights – providing personal information	No further comment

### [6. Jury Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Procedural fairness right– Right for an accused for a fair trial	Referred

### [7. Prevention of Cruelty to Animals Amendment \(Independent Office of Animal Welfare\) Bill 2023\\*](#)

Issue identified	Conclusion of Committee
Regulations may incorporate extrinsic material and absolute liability offences	No further comment

### [8. Road Transport Legislation Amendment \(Automated Seatbelt Enforcement\) Bill 2023](#)

Issue identified	Conclusion of Committee
Right to presumption of innocence – reversal of onus of proof	Referred

### [9. Sheriff and Court Security Amendment Bill 2023](#)

No issues identified

### [10. Water Management Amendment \(Water Access Licence Register\) Bill 2023\\*](#)

<b>Issue identified</b>	<b>Conclusion of Committee</b>
Uncertain application of offence prescribed by regulation	Referred

## **PART TWO – REGULATIONS**

### **1. Practice Note District Court (Civil) No.1 Case Management in the General List**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
Access to justice	Referred

# Summary of Conclusions

## PART ONE – BILLS

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### 1. 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023; 24-Hour Economy Commissioner Bill 2023

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#### 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023

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

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##### *Right to privacy and use of property – power to photograph, film or video*

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The Bill inserts subsection 26(2)(b1) into the *Gaming and Liquor Administration Act 2007*. This would allow an inspector or police officer who has lawfully entered premises to photograph, film or video a part of the premises or an object in the premises.

By permitting inspectors and police officers to photograph, film or video property, the Bill may impact an individuals' right to privacy and use of property as this power may be exercised without the consent of the owner. This may also occur in circumstances where the inspector or police officer has entered into the premises using reasonable force.

However, the Committee notes that there are already provisions in the Act which allow inspectors or police officers to exercise certain powers upon entry, including powers to seize certain articles. In the circumstances, the Committee makes no further comment.

##### *Absolute liability offence – application of law to minors*

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The Bill inserts subsection 123(1)(c)(ii) into the *Liquor Act 2007*. This would create an offence for a minor to enter or remain in an area related to a packaged liquor licence or an area where liquor is sold in sealed containers without a responsible adult.

Under this provision, there is no requirement to establish that the minor understands that they are committing an offence in order to establish criminal liability. The maximum penalty for this offence is \$2 200 (20 penalty units). The Committee generally comments on strict and absolute liability offences as they depart from the common law principle that a mental element of 'fault' should be proven to establish criminal liability.

The Committee notes the this new offence is intended to prevent minors entering or being in liquor sales areas. The Committee further recognises that section 123 of the Liquor Act already contains a number of offences applicable to minors and that a number of defences are available to minors under that section.

However, the Committee notes that the offence provision would still apply to a minor who has immediately left a liquor sales area. The Committee further notes that children and young people under 18 years of age may lack the capacity to understand the consequences of breaching an absolute liability offence. For these reasons, the Committee refers the matter to Parliament for its consideration.

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## 24-Hour Economy Commissioner Bill 2023

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

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## 2. Biosecurity Amendment (Independent Biosecurity Commissioner) Bill 2023

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

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## 3. Centennial Park and Moore Park Trust Amendment (Public Transport) Bill 2023

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

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## 4. Crime and Criminal Procedure Legislation Amendment Bill 2023

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

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## 5. Independent Commission Against Corruption Amendment (Ministerial Diary Disclosure) Bill 2023\*

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

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#### *Privacy rights – providing personal information*

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The Bill inserts section 22B into the *Independent Commission Against Corruption Regulation 2017*, which requires a summary of relevant meetings attended by a Minister with external persons to be published on the Cabinet Office website. The summary must include information such as the names of each individual who attended the meeting, even if an individual is representing an organisation.

The Committee notes that the Bill may impact individuals' right to privacy by requiring personal information, such as individual names, to be published on a public website without consent. However, the Committee acknowledges that Ministers are already required to disclose certain details, including names, in relation to meetings with external persons. Given that the Bill legislates already existing requirements, the Committee makes no further comment.

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## 6. Jury Amendment Bill 2023

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

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#### *Procedural fairness right– Right for an accused for a fair trial*

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The Bill amends section 55F of the *Jury Act 1977* to reduce the requirement for juries to deliberate from 8 hours to 4 hours before a majority verdict can be accepted by the court. This change to the minimum time for deliberation may result in more convictions based on majority verdicts of guilt because juries are under less pressure to return a unanimous verdict.

This may impact and undermine an accused persons rights to have their criminal charges determined fairly and independently by a jury of their peers. Further, these changes may impact an accused person's right to a fair trial, including the right to be presumed innocent unless proven guilty beyond reasonable doubt.

The Committee acknowledges that this amendment is intended to allow courts to hear criminal matters efficiently and expeditiously. The Committee also acknowledges that the reduced deliberation times may save costs and reduce trial backlogs along with the pressure placed on jurors who do not agree with their peers. However, the Committee notes that the rights to a fair trial and to be presumed innocent unless proven guilty beyond a reasonable doubt are fundamental minimum guarantees to accused persons in criminal matters. For these reasons, the Committee refers this matter to Parliament for its consideration.

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## 7. Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2023\*

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

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#### *Regulations may incorporate extrinsic material and absolute liability offences*

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The Bill inserts section 34A into the *Prevention of Cruelty to Animals Act 1979* which provides a regulation-making power to prescribe or adopt animal welfare guidelines. The regulations may also prescribe provisions of these guidelines are 'mandatory provisions'. Subsection 34A(6) establishes an absolute liability offence for breaching a mandatory provision, which carries a maximum penalty up to \$5 500 (50 penalty units).

The Committee generally comments on regulation-making powers to incorporate external materials like the animal welfare guidelines, which may not be subject to disallowance by the Parliament. Additionally, the Committee generally prefers that substantive matters like prescribing provisions which may attract criminal penalties to be in primary legislation.

In this case, regulations prescribing a 'mandatory provision' may attract a criminal penalty, as breaching this provision is an absolute liability offence. The Committee also generally comments on absolute liability offences as they depart from the common law principle that a mental element of 'fault' should be proven to establish criminal liability.

However, the Committee recognises that any regulation proposing to incorporate external guidelines must first be reviewed by the Advisory Committee. The Committee also acknowledges that any regulation incorporating animal welfare guidelines or prescribing a 'mandatory provision' is still required to be tabled in Parliament. Therefore, it would also be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

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## 8. Road Transport Legislation Amendment (Automated Seatbelt Enforcement) Bill 2023

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

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#### *Right to presumption of innocence – reversal of onus of proof*

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The Bill amends the *Road Transport Act 2013* to allow the detection of seatbelt offences in the *Road Rules 2014* by a traffic enforcement camera. It provides that a photograph taken by an



approved traffic enforcement device can be used as prima facie evidence in court. The Bill extends this provision to photographs taken by other approved detection cameras, such as red-light speed cameras.

The Committee notes that it is a principle of common law that a person charged with a criminal offence has a right to be presumed innocent until proven guilty. However, it notes that the Bill undermines this principle in relation to seatbelt offences by reversing the burden of proof onto the accused driver to demonstrate their innocence where photographic evidence is taken by a detection camera. The Committee also notes that there are certain circumstances under the rules where a driver or a passenger is exempt from the requirement of wearing a seatbelt.

The Committee acknowledges the community safety objectives of the Bill and that the relevant offences do not attract custodial sentences. It also recognises that reversing the onus of proof may sometimes be justified in circumstances where it relates to an issue that is peculiarly within the knowledge of the accused. However, the Committee notes that the Bill undermines the presumption of innocence by relying on accurate technology to help determine guilt or innocence. For this reason, the Committee refers the matter to Parliament for its consideration.

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## **9. Sheriff and Court Security Amendment Bill 2023**

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

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## **10. Water Management Amendment (Water Access Licence Register) Bill 2023\***

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

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#### *Uncertain application of offence prescribed by regulation*

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The Bill amends the *Water Management Act 2000* to allow regulations to create an offence for failing to comply with a code of conduct prescribed by regulations under the Act. Proposed section 400(3A) allows regulations to create an offence with a maximum penalty of 100 penalty units (\$11 000) for failing to comply with a code of conduct or specific provision of a code of conduct.

Section 400(3) of the Act provides that regulations can create offences under the Act with penalties not exceeding 20 penalty units (\$2 200). The amendment would create an exception to section 400(3) under the Act and increase the allowable penalty that regulations can impose. Further, it is not clear what would constitute an offence under section 400(3A) nor the class of persons that it would apply to because no code of conduct has been prescribed yet. Therefore, the Committee is concerned that the Bill would delegate a significant issue to regulations with unknown application and effect. For these reasons, the Committee refers this matter to Parliament for its consideration.

## **PART TWO – REGULATIONS**

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### **1. Practice Note District Court (Civil) No.1 Case Management in the General List**

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The Practice Note inserts paragraph 7.3, which requires parties to use the Online Court Request if their proceedings are eligible for the Online Court. The Online Court Request would address

case management orders, any adjournment requests, readiness of a motion, and whether a special fixture hearing is required. Case management is a way for courts to set hearing dates and make directions. Failing to comply with these directions may have negative consequences for a person appearing before the court e.g. they could be held in contempt by the court.

The Practice Note does not define the types of proceedings that may be 'eligible' for the Online Court. The Committee acknowledges that the website of the Department of Communities and Justice sets out some circumstances that are suitable for the Online Court. However, the Committee is concerned that it may be unclear to whom the requirements to commence an Online Court Request apply. The Committee also notes that the provisions may impact access to justice by affecting the case management process. For these reasons, the Committee refers the matter to Parliament for its consideration.



# Part One – Bills

# 1. 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023; 24-Hour Economy Commissioner Bill 2023

Date introduced	19 October 2023
House introduced	Legislative Council
Minister with carriage	The Hon. John Graham MLC
Portfolio	Gaming and Racing

## Purpose and description

### 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023

- 1.1 The objects of this Bill are to amend the *Gaming and Liquor Administration Act 2007* (the **Gaming and Liquor Act**), the *Liquor Act 2007* (the **Liquor Act**) and the *Liquor Regulation 2018* (the **Liquor Regulation**) to make miscellaneous amendments to increase the vibrancy of the night-time economy and to make consequential amendments to other legislation.

### 24-Hour Economy Commissioner Bill 2023

- 1.2 The objects of this Bill are to:
- (a) provide for the establishment and appointment of a 24-Hour Economy Commissioner (the **Commissioner**)
  - (b) prescribe the functions and powers of the Commissioner
  - (c) set out the employment conditions of the Commissioner.

## Background

- 1.3 In his second reading speech, the Hon. John Graham MLC, Minister for Music and the Night-time Economy said that the legislative changes proposed by the 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023 and the 24-Hour Economy Commissioner Bill 2023 are intended to:

... support venues and festivals, make entertainment economically viable and give venues in particular an alternative to relying simply on income from poker machines and alcohol sales.

- 1.4 The 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023 seeks to amend various Acts. The Bill groups these proposed amendments into four schedules.
- 1.5 Schedule 1 proposes numerous amendments to the Gaming and Liquor Act, including:

- (a) allowing the Secretary and the Authority to enter into an arrangement with the Commissioner of Police for the supply of information
  - (b) providing an inspector or police with the power to require a person to attend a specified place or by audio visual link to answer questions
  - (c) permitting the Secretary to give written directions to a gaming and liquor licensee or agent to the licensed premises
  - (d) imposing a limitation period of 12 months to commence proceedings for an offence that has allegedly taken place.
- 1.6 Schedule 2 would amend the Liquor Act by making various changes to trading practices. These include:
- (a) extending the trading period for certain prescribed venues
  - (b) allowing certain licensees to sell liquor for consumption away from the premises
  - (c) clarifying requirements regarding applications for authorisation of certain trading practices
  - (d) setting out the mechanisms for individuals and authorities to make and deal with disturbance complaints
  - (e) providing that the Secretary may accept enforceable undertakings from businesses who have been in breach of the Act.
- 1.7 The proposed amendments to the Liquor Regulation under Schedule 3 include:
- (a) prescribing circumstances in which a venue may apply for an authorisation to sell liquor for consumption away from the premises
  - (b) clarifying the orders that the Authority may make in relation to the suspension or revocation of recognised competency card endorsements
  - (c) making changes consequent to the amendments in Schedule 2.
- 1.8 Schedule 4 proposes to make consequential amendments to various Acts and regulations.
- 1.9 The 24-Hour Economy Commissioner Bill 2023 seeks to establish a 24-Hour Economy Commissioner and set out the functions and powers of the Commissioner.
- 1.10 Although these Bills are separate Acts when operative, the 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023 and the 24-Hour Economy Commissioner Bill 2023 are cognate. As a result, they were introduced and will be considered together. Therefore, in accordance with the Committee's usual practice, both Bills have been considered in the one report.

## Issues considered by the Committee

### 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023

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

##### *Right to privacy and use of property – power to photograph, film or video*

- 1.11 Section 24 of the Gaming and Liquor Administration Act provides that an inspector or police officer may enter any premises at any time for a purpose specified in section 18. These purposes under section 18 are:
- (a) for determining whether there has been compliance with or a contravention of gaming and liquor legislation
  - (b) for obtaining information about the administration of gaming and liquor legislation
  - (c) in connection with exercising the functions of an inspector under the gaming and liquor legislation, and
  - (d) generally for administering the gaming and liquor legislation and promoting its objects.
- 1.12 Under subsection 24(2), inspectors or police officers may enter a premises with the use of reasonable force.
- 1.13 The Bill inserts subsection 26(2)(b1) into the Gaming and Liquor Administration Act. This empowers an inspector or police officer who has lawfully entered any premises under the Act to photograph, film or video a part of the premises or an article or thing on the premises.

**The Bill inserts subsection 26(2)(b1) into the *Gaming and Liquor Administration Act 2007*. This would allow an inspector or police officer who has lawfully entered premises to photograph, film or video a part of the premises or an object in the premises.**

**By permitting inspectors and police officers to photograph, film or video property, the Bill may impact an individuals' right to privacy and use of property as this power may be exercised without the consent of the owner. This may also occur in circumstances where the inspector or police officer has entered into the premises using reasonable force.**

**However, the Committee notes that there are already provisions in the Act which allow inspectors or police officers to exercise certain powers upon entry, including powers to seize certain articles. In the circumstances, the Committee makes no further comment.**

##### *Absolute liability offence – application of law to minors*

- 1.14 The Bill inserts subsection 123(1)(c)(ii) into the Liquor Act, which provides that a minor must not enter or remain in an area related to a packaged liquor licence or an area where liquor is sold in sealed containers. This offence is subject to a maximum penalty of \$2 200 (20 penalty units).

- 1.15 In his second reading speech, the Minister noted that minors are currently allowed to legally enter bottle shops in NSW without a responsible adult and said that the Bill will address this by 'restricting minors in bottle shops or liquor sales areas of supermarkets without a responsible adult'.

**The Bill inserts subsection 123(1)(c)(ii) into the *Liquor Act 2007*. This would create an offence for a minor to enter or remain in an area related to a packaged liquor licence or an area where liquor is sold in sealed containers without a responsible adult.**

**Under this provision, there is no requirement to establish that the minor understands that they are committing an offence in order to establish criminal liability. The maximum penalty for this offence is \$2 200 (20 penalty units). The Committee generally comments on strict and absolute liability offences as they depart from the common law principle that a mental element of 'fault' should be proven to establish criminal liability.**

**The Committee notes the this new offence is intended to prevent minors entering or being in liquor sales areas. The Committee further recognises that section 123 of the Liquor Act already contains a number of offences applicable to minors and that a number of defences are available to minors under that section.**

**However, the Committee notes that the offence provision would still apply to a minor who has immediately left a liquor sales area. The Committee further notes that children and young people under 18 years of age may lack the capacity to understand the consequences of breaching an absolute liability offence. For these reasons, the Committee refers the matter to Parliament for its consideration.**

### **24-Hour Economy Commissioner Bill 2023**

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

## 2. Biosecurity Amendment (Independent Biosecurity Commissioner) Bill 2023

Date introduced	19 October 2023
House introduced	Legislative Council
Minister with carriage	The Hon. Tara Moriarty MLC
Portfolio	Agriculture

### Purpose and description

- 2.1 The object of this Bill is to establish an Independent Biosecurity Commissioner (the **Commissioner**) to provide independent and expert advice, conduct reviews and make recommendations to the Government on issues relating to pests and weeds.

### Background

- 2.2 In her second reading speech, the Hon. Tara Moriarty MLC, Minister for Agriculture, explained that the Bill intends to address 'stakeholder concerns about pests and weeds, and complement and enhance the existing biosecurity framework'.
- 2.3 The Bill proposes to insert Part 21A to establish the role of the Commissioner to cover issues relating to pests and weeds:
- (a) Division 1 inserts relevant definitions
  - (b) Division 2 establishes the Commissioner as an independent officer of the Crown and provides that the Governor appoints the Commissioner
  - (c) Division 3 sets out the functions of the Commissioner, including the Commissioner's general functions to advise on, monitor and review issues relating to pests and weeds
  - (d) Division 4 sets out the powers of the Commissioner, including powers to require documents and information from certain Public Service agencies and state owned corporations
  - (e) Division 5 sets out the term of the office of the Commissioner and provides for the employment conditions and salary of the Commissioner
  - (f) Division 6 makes miscellaneous changes, including in relation to annual reports and the reviewing the operations of the Commissioner.
- 2.4 The Bill also makes consequential amendments to other legislation to provide that the Commissioner is a government officer of the Department of Regional NSW.



### Issues considered by the Committee

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

### 3. Centennial Park and Moore Park Trust Amendment (Public Transport) Bill 2023

Date introduced	17 October 2023
House introduced	Legislative Council
Minister with carriage	The Hon. Penny Sharpe MLC
Portfolio	Planning and Public Spaces

#### Purpose and description

- 3.1 The object of this Bill is to amend the *Centennial Park and Moore Park Trust Act 1983* (the **Act**) to confer on the Minister for Transport a permanent licence over certain land for public transport purposes and ancillary purposes.

#### Background

- 3.2 The Bill seeks to amend the Act to update the lots of land over which the Minister for Transport has a permanent licence, as well as clarifying ancillary matters.
- 3.3 In her second reading speech, the Hon. Penny Sharpe MLC, Leader of the Government in the Legislative Council, explained that the amendments aim to:
- ... accurately reflect all the land that makes up the area permanently licensed to the Minister for Transport, which is used specifically for bus and light rail operations and a public transport corridor.
- 3.4 The Bill would amend section 20B of the Act to clarify the relevant Minister under the Act and the land to which it applies. Proposed section 20B(2) clarifies that the land subject to the permanent licence is 'the site of a proposed easement for bus operation, light rail operation or public transport corridor'.
- 3.5 Section 20B of the Act confers a permanent licence to the Minister over four lots of land as a proposed easement for a public transport corridor. Schedule 4 of the Bill proposes to insert a list of further lots licensed for public transport purposes which would be subject to the permanent licence.
- 3.6 The Bill would commence as an Act at a later date by proclamation. The Minister indicated that this will follow the execution of a licence agreement detailing 'the terms and conditions, between Transport for NSW and the Centennial and Moore Park Trust'.

#### Issues considered by the Committee

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

## 4. Crime and Criminal Procedure Legislation Amendment Bill 2023

Date introduced	18 October 2023
House introduced	Legislative Assembly
Minister with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

4.1 The object of this Bill is to make various amendments to the following Acts relating to crime and criminal procedure:

- (a) *Children (Detention Centres) Act 1987* (the **Detention Centres Act**)
- (b) *Crimes (Administration of Sentences) Act 1999* (the **Administration of Sentences Act**)
- (c) *Crimes (Domestic and Personal Violence) Act 2007* (the **Domestic and Personal Violence Act**)
- (d) *Criminal Appeal Act 1912* (the **Criminal Appeal Act**)
- (e) *Criminal Procedure Act 1986* (the **Criminal Procedure Act**)
- (f) *Drug Misuse and Trafficking Act 1985* (the **Drug Misuse and Trafficking Act**)
- (g) *Law Enforcement (Powers and Responsibilities) Act 2002* (the **Law Enforcement Act**)
- (h) *Medicines, Poisons and Therapeutic Goods Act 2022* (the **Therapeutic Goods Act**).

### Background

4.2 The Bill proposes amendments across a number of Acts related to crime and criminal procedure. In his second reading speech, the Honourable Michael Daley MP, the Attorney General stated:

In particular, the amendments will support the operation of youth and adult correctional centres; improve and clarify existing protections for victims; add efficiency, clarity and consistency into criminal justice processes; and provide necessary updates to both the Drug Misuse and Trafficking Act 1985 and the Digital Evidence Access Order Scheme.

4.3 The proposed amendments are grouped into Schedules, each addressing specific areas of law, which the Attorney General outlined as follows:

- (a) Schedule 1 proposes to amend the Detention Centres Act to clarify provisions parole orders and the discharge of juvenile offenders at the end of their sentence. The amendment aims to prevent incorrect discharge from detention.
- (b) Schedule 2 proposes to make amendments to the Administration of Sentences Act to address issues including the delayed release of an inmate from, prison transfers, allowing a person with a connection to an offender to be registered as an interested person on the Victims Register.
- (c) Schedule 3 proposes to amend the Domestic and Personal Violence Act to strengthen procedural protections for victims of apprehended violence orders (AVOs) and update cross references to specific sexual offenders.
- (d) Schedule 4 proposes amendments to the Criminal Appeal Act to allow SafeWork NSW and the NSW Resources Regulator to commence appeals against a sentence of the Court of Criminal Appeal.
- (e) Schedule 5 proposes several amendments to the Criminal Procedure Act to address procedural issues relating to maximum sentences, guilty pleas and sensitive evidence from child complainants.
- (f) Schedule 6 proposes multiple amendments to the Drug Misuse and Trafficking Act to allow police to provide prohibited drugs to a person granted an authority by the Secretary NSW Health for the purposes of scientific research.
- (g) Schedule 7 proposes to amend the Law Enforcement Act to allow the NSW Crime Commission and the Law Enforcement Conduct Commission to apply for digital evidence access orders in connection with warrants issued under the *Criminal Assets Recovery Act 1990* or the *Law Enforcement Conduct Commission Act 2016*.
- (h) Schedule 8 proposes to amend the Therapeutic Good Act to allow a police officer to provide a prohibited drug to an authorised person.

4.4 The Attorney General stated that 'the amendments will enhance legislation by providing clarity and updates to the law where needed, rectifying inconsistencies and supporting the operation of agencies across the criminal justice system'.

### Issues considered by the Committee

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

## 5. Independent Commission Against Corruption Amendment (Ministerial Diary Disclosure) Bill 2023\*

Date introduced	12 October 2023
House introduced	Legislative Assembly
Member with carriage	Mr Gareth Ward MP
	*Private Members Bill

### Purpose and description

- 5.1 The object of this Bill is to amend the *Independent Commission Against Corruption Regulation 2017* (the **Regulation**) to require, under the NSW Ministerial Code of Conduct, the publication of information relating to certain meetings involving Ministers, including Parliamentary Secretaries, and external persons.

### Background

- 5.2 The Bill seeks to insert Part 4A into the Regulation to require ministerial diaries to be published on the Cabinet Office website on a quarterly basis.
- 5.3 In his second reading speech, Mr Gareth Ward MP explained that the proposed changes are based on 'recommendations made following ICAC's Operation Eclipse', which had investigated the regulation of lobbying and influence in NSW.<sup>1</sup>

### Issues considered by the Committee

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

##### *Privacy rights – providing personal information*

- 5.4 The Bill inserts section 22B into the Act to require a summary of every relevant meeting attended by a Minister with an external person be published on the Cabinet Office website. The summary must include information such as the names of each individual who attended the meeting.
- 5.5 Under subsection 22B(2)(d), if a Minister meets with an individual representing a third-party lobbyist, the Minister must publish the name of each person at the meeting, the capacity in which the person attended, as well as the details of the persons or organisations represented.
- 5.6 Currently, Ministers are already required to disclose certain details about their meetings with external stakeholders in accordance with the Premier's memorandum.<sup>2</sup>

<sup>1</sup> Independent Commission Against Corruption, [Operation Eclipse](#), June 2021.

<sup>2</sup> Department of Premier and Cabinet, [Premier's Memorandum M2015-05](#), Publication of Ministerial Diaries and Release of Overseas Travel Information.

**The Bill inserts section 22B into the *Independent Commission Against Corruption Regulation 2017*, which requires a summary of relevant meetings attended by a Minister with external persons to be published on the Cabinet Office website. The summary must include information such as the names of each individual who attended the meeting, even if an individual is representing an organisation.**

**The Committee notes that the Bill may impact individuals' right to privacy by requiring personal information, such as individual names, to be published on a public website without consent. However, the Committee acknowledges that Ministers are already required to disclose certain details, including names, in relation to meetings with external persons. Given that the Bill legislates already existing requirements, the Committee makes no further comment.**

## 6. Jury Amendment Bill 2023

Date introduced	19 October 2023
House introduced	Legislative Council
Minister introducing	The Hon. Mark Buttigieg MLC
Minister with carriage	The Hon. Daniel Mookhey MLC
Portfolio	Treasury

### Purpose and description

- 6.1 The object of this Bill is to make miscellaneous amendments to the Jury Act 1977 (the **Act**), including in response to a statutory review or amendments made to the Act by the *Jury Amendment (Verdicts) Act 2006*.

### Background

- 6.2 The Bill proposes a number of amendments to the Act that deal with jurors and their role in court proceedings. These amendments are grouped into the two schedules, with Schedule 2 proposing consequential amendments to the *Jury Regulation 2022* resulting from the changes to the Act proposed under Schedule 1.
- 6.3 In the second reading speech, the Honourable Mark Buttigieg MLC, Parliamentary Secretary, stated that the amendments are intended to:
- ...improve the efficiency of jury empanelment, provide enhanced support for jurors to perform their role and reduce the expenditure of resources on trial that are ultimately aborted or result in hung juries, where possible.
- 6.4 The Parliamentary Secretary explained that these amendments were a direct result of the recommendation made in a statutory review of the Act (the **Statutory Review**),<sup>3</sup> or 'were identified through a review of indictable processes in the District Court and the Supreme Court'.
- 6.5 Some amendments proposed by the Bill include:
- (a) clarifying what constitutes "good cause" when a person is seeking excusal from jury service and allowing a juror to make their request to be excused either verbally, not just in writing
  - (b) expanding the test for when a court may decide to empanel additional jurors
  - (c) allowing the court to empanel a replacement juror if a juror dies or is discharged prior to the judge or coroner commencing their opening remarks
  - (d) extending protections to jurors that are classed as 'part-time' employees
  - (e) extending the circumstances where a sheriff may investigate improper conduct

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<sup>3</sup> Department of Communities and Justice, [Statutory Review – Majority verdicts amendments](#), May 2023.

- (f) allowing a summons for jury service to be served by way of email.

## Issues considered by the Committee

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

#### *Procedural fairness right– Right for an accused for a fair trial*

- 6.6 The Bill seeks to amend section 55F of the Act by replacing the words "8 hours" with "4 hours". This would reduce the deliberation time for a jury before it can return a majority verdict. A majority verdict is defined under subsection (3) to mean a verdict agreed to by all but one juror.
- 6.7 Section 55F provides that, in criminal proceedings, a majority verdict can be returned if:
- (a) all the jurors are unable to unanimously agree on a verdict after deliberating for a reasonable time, and
  - (b) the court is satisfied that it is unlikely that the jurors will reach a unanimous verdict after further deliberation.
- 6.8 The Minister made reference to the Statutory Review that the Department of Communities and Justice conducted on the *Jury Amendment (Verdicts) Act 2006* which amended the Act including inserting section 55F. In his second reading speech, the Parliamentary Secretary referred to the one recommendation of the Statutory Review. He said that the review concluded:

...that requiring juries to deliberate for eight hours is inefficient, creates additional costs and contributes to trial backlogs. It can also cause issues related to juror safety and wellbeing, as extended periods of deliberation may lead to disagreements and undue pressure being placed on jurors who do not agree.

**The Bill amends section 55F of the *Jury Act 1977* to reduce the requirement for juries to deliberate from 8 hours to 4 hours before a majority verdict can be accepted by the court. This change to the minimum time for deliberation may result in more convictions based on majority verdicts of guilt because juries are under less pressure to return a unanimous verdict.**

**This may impact and undermine an accused persons rights to have their criminal charges determined fairly and independently by a jury of their peers. Further, these changes may impact an accused person's right to a fair trial, including the right to be presumed innocent unless proven guilty beyond reasonable doubt.**

**The Committee acknowledges that this amendment is intended to allow courts to hear criminal matters efficiently and expeditiously. The Committee also acknowledges that the reduced deliberation times may save costs and reduce trial backlogs along with the pressure placed on jurors who do not agree with their peers. However, the Committee notes that the rights to a fair trial and to be presumed innocent unless proven guilty beyond a reasonable doubt are fundamental minimum guarantees to accused persons in criminal matters. For these reasons, the Committee refers this matter to Parliament for its consideration.**



## 7. Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2023\*

Date introduced	18 October 2023
House introduced	Legislative Council
Member with carriage	Ms Abigail Boyd MLC
	*Private Members Bill

### Purpose and description

- 7.1 The object of this Bill is to amend the *Prevention of Cruelty to Animals Act 1979* (the **Act**) to:
- (a) provide that the Royal Society for the Prevention of Cruelty to Animals, New South Wales and the Animal Welfare League NSW are approved charitable organisations for the purposes of the principal Act
  - (b) establish and confer functions on the Independent Office of Animal Welfare, the office of Chief Animal Welfare Officer and the Independent Office of Animal Welfare Advisory Committee (the **Advisory Committee**)
  - (c) enable the regulations to prescribe or adopt guidelines relating to the welfare of an animal or class of animals if certain review and reporting requirements are satisfied
  - (d) make it an offence for a person to contravene a provision of the guidelines that is prescribed as a mandatory provision.

### Background

- 7.2 The Bill proposes to amend the Act to establish an independent statutory body responsible for ensuring the welfare of animals in the State. The Act sets out the legislative framework for the prevention of cruelty to animals and for the promotion of animal welfare.
- 7.3 In her second reading speech, Ms Abigail Boyd MLC said that this statutory body would 'undertake key regulatory and administrative responsibilities relating to animal welfare and protection' and 'ensure independent oversight and review of animal welfare in New South Wales in line with scientific knowledge, technological advances and community expectations'.
- 7.4 The Bill seeks to insert Part 2C into the Act to establish the Independent Office of Animal Welfare (the **Independent Animal Welfare Office**). It would also appoint a Chief Animal Welfare Officer and Chief Executive Officer and establish an Advisory Committee to be appointed by the Attorney General. The objects of the Independent Animal Welfare Office would include the promotion of animal welfare issues,

improving animal welfare outcomes, and ensuring the State's animal welfare policies and guidelines are independently reviewed and developed.

## Issues considered by the Committee

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

#### *Regulations may incorporate extrinsic material and absolute liability offences*

7.5 Section 34A inserted by the Bill provides that the regulations may prescribe or adopt guidelines relating to the welfare of an animal or class of animals. Under subsection 34A(5), the regulations may provide that a provision of the guidelines is a 'mandatory provision'. A breach of a mandatory provision is an offence which carries a maximum penalty of \$5 500 (50 penalty units) under subsection 34A(6).

7.6 Before a regulation prescribing or adopting guidelines can be made, the Advisory Committee must have an opportunity to review and comment on any proposed regulation and publish a report setting out its comments under subsection 34A(3).

**The Bill inserts section 34A into the *Prevention of Cruelty to Animals Act 1979* which provides a regulation-making power to prescribe or adopt animal welfare guidelines. The regulations may also prescribe provisions of these guidelines are 'mandatory provisions'. Subsection 34A(6) establishes an absolute liability offence for breaching a mandatory provision, which carries a maximum penalty up to \$5 500 (50 penalty units).**

**The Committee generally comments on regulation-making powers to incorporate external materials like the animal welfare guidelines, which may not be subject to disallowance by the Parliament. Additionally, the Committee generally prefers that substantive matters like prescribing provisions which may attract criminal penalties to be in primary legislation.**

**In this case, regulations prescribing a 'mandatory provision' may attract a criminal penalty, as breaching this provision is an absolute liability offence. The Committee also generally comments on absolute liability offences as they depart from the common law principle that a mental element of 'fault' should be proven to establish criminal liability.**

**However, the Committee recognises that any regulation proposing to incorporate external guidelines must first be reviewed by the Advisory Committee. The Committee also acknowledges that any regulation incorporating animal welfare guidelines or prescribing a 'mandatory provision' is still required to be tabled in Parliament. Therefore, it would also be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.**

## 8. Road Transport Legislation Amendment (Automated Seatbelt Enforcement) Bill 2023

Date introduced	18 October 2023
House introduced	Legislative Assembly
Minister with carriage	The Hon. Jenny Aitchison MP
Portfolio	Regional Transport and Roads

### Purpose and description

- 8.1 The objects of this Bill are to:
- (a) amend the *Road Transport Act 2013* (the **Road Transport Act**) to provide for the automated detection of seatbelt offences
  - (b) make consequential amendments to the *Transport Administration Act 1988* (the **Transport Administration Act**).

### Background

- 8.2 In introducing the Bill, the Hon. Jenny Aitchison MP, Minister for Regional Transport and Roads, described the purpose of the Bill as amending the Road Transport Act to enable automated camera detection of seatbelt offences.
- 8.3 The Minister stated that the Bill is part of the Government's 2026 Road Safety Action Plan that follows a series of stakeholder consultation and testing of systems. She stated that the provisions are 'building on the established legal framework we already have for our road safety cameras' and that the new regime:
- ...will enable us to better utilise transport enforcement cameras already being used across the state and support existing on-road police enforcement.
- 8.4 The Bill also amends the Transport Administration Act to provide that the fines collected from camera detected seatbelt offences, as well as mobile phone offences, will be paid into the Community Road Safety Fund 'to be used for road safety programs'.

### Issues considered by the Committee

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

##### *Right to presumption of innocence – reversal of onus of proof*

- 8.5 Under *Road Rules 2014* (the **Road Rules**) a driver of a motor vehicle can be fined and receive demerit points for offences of not wearing a seatbelt and for not ensuring that a passenger of the vehicle wears a seatbelt correctly. The Road Rules prescribe

certain exemptions for the driver or passenger to wear a seatbelt, including for medical reasons.

- 8.6 Under the current law, a driver who is accused of a seatbelt offence can elect to have the matter dealt with in the Local Court. It is a summary offence and occurs when a driver is pulled over by a police officer and issued with a penalty notice. To obtain a conviction, the prosecution must prove the driver's offence 'beyond reasonable doubt' which can be rebutted by the defendant.
- 8.7 The Bill amends the Road Transport Act to reverse the onus of proof by introducing provisions that enable automated camera detection of seatbelt offences. The Bill does this by expanding the definition of a 'detectable traffic offence' and 'camera recorded offence' to include a seatbelt offence under Road Rules. It then allows photographic evidence captured by fixed or moveable approved detection cameras to be used as prima facie evidence in court to establish the offence.
- 8.8 The Minister explained that this Bill 'provides the avenue for efficient, automated enforcement' and that:

It is not proposed to fine passengers directly, as the cameras will not be able to identify the passenger or their age. Under current law, passengers 16 and older could still be fined for not properly wearing a seatbelt if detected by a police officer – as will the driver.

**The Bill amends the *Road Transport Act 2013* to allow the detection of seatbelt offences in the *Road Rules 2014* by a traffic enforcement camera. It provides that a photograph taken by an approved traffic enforcement device can be used as prima facie evidence in court. The Bill extends this provision to photographs taken by other approved detection cameras, such as red-light speed cameras.**

**The Committee notes that it is a principle of common law that a person charged with a criminal offence has a right to be presumed innocent until proven guilty. However, it notes that the Bill undermines this principle in relation to seatbelt offences by reversing the burden of proof onto the accused driver to demonstrate their innocence where photographic evidence is taken by a detection camera. The Committee also notes that there are certain circumstances under the rules where a driver or a passenger is exempt from the requirement of wearing a seatbelt.**

**The Committee acknowledges the community safety objectives of the Bill and that the relevant offences do not attract custodial sentences. It also recognises that reversing the onus of proof may sometimes be justified in circumstances where it relates to an issue that is peculiarly within the knowledge of the accused. However, the Committee notes that the Bill undermines the presumption of innocence by relying on accurate technology to help determine guilt or innocence. For this reason, the Committee refers the matter to Parliament for its consideration.**

## 9. Sheriff and Court Security Amendment Bill 2023

Date introduced	18 October 2023
House introduced	Legislative Assembly
Member introducing	Dr Hugh McDermott MP
Minister with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

- 9.1 The object of this Bill is to make miscellaneous amendments to:
- (a) the *Sheriff Act 2005* (the **Sheriff Act**), including:
    - (i) to set out the functions of the Sheriff
    - (ii) to authorise Sheriff's officers to provide security services to judicial officers
    - (iii) to enable Sheriff's officers to provide emergency assistance to other agencies
  - (b) the *Court Security Act 2005* (the **Court Security Act**), including to authorise a security officer to provide reasonable assistance to a police officer or custodial officer in relation to court security.

### Background

9.2 The Bill seeks to amend the Sheriff Act and the Court Security Act to make changes to the functions of the Sheriff and extend the powers of sheriff's officers. The Bill groups these proposed amendments into two schedules.

9.3 In the second reading speech, Dr Hugh McDermott MP, Parliamentary Secretary to the Attorney General, stated that the amendments:

...clarify and update the role, function and structure of the Office of the Sheriff. It also introduces amendments to support the continued safety and security of all New South Wales courts, tribunals and, in fact, judicial officers. In addition, the bill introduces amendments to establish a process by which the sheriff may enter into an agreement for officers to assist other public sector agencies in an emergency such as a bushfire.

9.4 Schedule 1 seeks to amend the Sheriff Act to:

- (a) extend the Sheriff's functions to include safety and security of courts and tribunals, management and administration of the jury system, civil law enforcement, protective security to judicial officers, and any other function given to the Sheriff by the Act or another Act or law

- (b) extend the security service function of a sheriff's officer to include judicial officers outside court premises
- (c) allow the Sheriff to enter into agreements with other public service agencies to extend the duties of sheriff's officers to include assisting in emergency situations
- (d) extend the existing exclusion of personal liability provided to sheriff's officers.

9.5 Schedule 2 seeks to amend the Court Security Act to extend court security to include security officers (sheriff's officers) assisting police and custodial officers, including an extension of a security officer's powers of arrest. The amendments include changes to:

- (a) authorise a security officer to provide assistance inside or within the immediate vicinity of court premises to a police officer or custodial officer
- (b) extend the powers of arrest for a security officer under section 16(2) to outside a court premises, allowing them to pursue and arrest a person without warrant if they are attempting to escape lawful custody.

### Issues considered by the Committee

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

## 10. Water Management Amendment (Water Access Licence Register) Bill 2023\*

Date introduced	12 October 2023
House introduced	Legislative Assembly
Member with carriage	Mrs Helen Dalton MP
	*Private Members Bill

### Purpose and description

10.1 The object of this Bill is to amend the *Water Management Act 2000* (the **Water Management Act**), the *Constitution Act 1902* and *Constitution (Disclosures by Members) Regulation 1983* as follows:

- (a) to require holders and co-holders of water access licences to hold a UIN, a unique identification number allocated to a person for the Water Management Act
- (b) to make amendments relating to the Water Access Licence Register (the **Access Register**)
- (c) to impose requirements relating to the holders of rights to exercise entitlements conferred by an access licence, or a holding in an access licence, held by an irrigation corporation
- (d) to provide for a code of conduct for brokers
- (e) to require annual reporting of the foreign beneficiaries of trusts that have an interest in a water access licence
- (f) to require Members of Parliament to publicly disclose interests in water access licences held by the Member or the Member's spouse
- (g) to make other minor or consequential amendments
- (h) to insert provisions of a savings and transitional nature.

### Background

10.2 The Bill proposes to amend the Water Management Act, the *Constitution Act 1902* and the *Constitution (Disclosures by Members) Regulation 1983*. During her second reading speech, Mrs Helen Dalton MP, explained a key amendment proposed by the Bill will be to require NSW Members of Parliament to 'declare their water interests on the parliamentary pecuniary interest register.' The Bill seeks to introduce amendments that would require holders of a water access licence to provide specified information to the Minister for inclusion on a public Access Register.

- 10.3 The Bill seeks to introduce sub-section 61(6A) requiring applications for a water access licence to include an applicant's unique identification number. It then prescribes the information that must be provided to the Minister when applying for an unique identification number in proposed section 70B. Mrs Dalton stated that this would 'stop people and companies from hiding their identity when they apply for a licence'.
- 10.4 The Bill also proposes to add additional reporting requirements for corporations that hold a water access licence by introducing section 71AA.
- 10.5 It then seeks to replace the current public access requirements for the Access Register by introducing sections 71J and 71JA. These sections require the Access Register to be made publicly available through an accessible website and lists the information that the holder of a water access licence must include on the register.
- 10.6 The Bill also proposes to amend the *Constitution Act 1902* to require the interests of a Member's spouse to be included in the register of members' pecuniary interests.
- 10.7 Finally, the Bill proposes to amend the *Constitution (Disclosure by Members) Regulation 1983* to require Members to disclose the water access licence number of each licence they hold an interest in and the nature of that interest. The Bill also includes information about the form in which the disclosure must be made.

## Issues considered by the Committee

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

#### *Uncertain application of offence prescribed by regulation*

- 10.8 The Bill proposes to insert a regulation making power in section 400(3A). This would allow regulations to create offences for a failure to comply with a code of conduct prescribed under section 71ZA. The maximum penalty for the proposed offence is 100 penalty units (\$11 000).
- 10.9 A relevant code of conduct has not been prescribed by the regulations.
- 10.10 Existing sub-section 400(3) of the Water Management Act permits regulations to create offences with maximum penalties of 20 penalty units (\$2 200). Sub-section 400(3A) proposes to increase the penalty that can be imposed by the regulations by five times. The offence would apply to an unknown class of persons who would be subject to a code of conduct that does not yet exist.

**The Bill amends the *Water Management Act 2000* to allow regulations to create an offence for failing to comply with a code of conduct prescribed by regulations under the Act. Proposed section 400(3A) allows regulations to create an offence with a maximum penalty of 100 penalty units (\$11 000) for failing to comply with a code of conduct or specific provision of a code of conduct.**

**Section 400(3) of the Act provides that regulations can create offences under the Act with penalties not exceeding 20 penalty units (\$2 200). The amendment would create an exception to section 400(3) under the Act and increase the allowable penalty that regulations can impose. Further, it is not clear what would constitute an offence under section 400(3A) nor the class of persons that it would apply to because no code of conduct has been prescribed yet. Therefore, the Committee is concerned that the**



**Bill would delegate a significant issue to regulations with unknown application and effect. For these reasons, the Committee refers this matter to Parliament for its consideration.**

# Part Two – Regulations

# 1. Practice Note District Court (Civil) No.1 Case Management in the General List

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 Practice Note District Court (Civil) No. 1 Case Management in the General List (the **Practice Note**) is issued under sections 56 and 57 of the *Civil Procedure Act 2005* and is intended to facilitate the just, quick and cheap resolution of the real issues in all proceedings before the Court. It applies to all matters in the General List in the Sydney, Gosford and Newcastle registries commencing 18 September 2023. This Practice Note amends the previous Practice Note DC (Civil) No. 1 which commenced on 30 August 2020.

## Issues considered by the Committee

**The form or intention of the regulation calls for elucidation: s 9(1)(b)(vii) of the LRA**

### *Access to justice*

- 1.2 Paragraph 7.3 of the Practice Note requires parties to a proceeding to commence and complete an Online Court Request if the proceedings are eligible for the Online Court. The Online Court Request must address:
- (a) case management orders for the motion and an adjournment of the motion where appropriate,
  - (b) whether the motion is ready to be heard on the Friday listing and an estimate of the hearing time required, and
  - (c) whether a special fixture hearing of the motion is required.
- 1.3 Under subparagraph 7.3(c), parties that are not eligible for the Online Court may attend the motion listing to address any matters around case management orders or a request for a special fixture hearing.
- 1.4 Under the previous version of this paragraph, an Assistant Registrar and a Judicial Registrar considered similar requests, including requests for any consent orders, applications for adjournments of motions, calling through the list and allocation of a hearing date to any notice of motion.

- 1.5 The Practice Note does not provide a definition for proceedings that are eligible for the Online Court.
- 1.6 Further, the website of the Department of Communities and Justice provides that the Online Court is only available to legal practitioners who are representatives in a case and their nominated support staff. It also sets out that only some uncontested civil law matters are suitable for the Online Court.<sup>4</sup>

**The Practice Note inserts paragraph 7.3, which requires parties to use the Online Court Request if their proceedings are eligible for the Online Court. The Online Court Request would address case management orders, any adjournment requests, readiness of a motion, and whether a special fixture hearing is required. Case management is a way for courts to set hearing dates and make directions. Failing to comply with these directions may have negative consequences for a person appearing before the court e.g. they could be held in contempt by the court.**

**The Practice Note does not define the types of proceedings that may be 'eligible' for the Online Court. The Committee acknowledges that the website of the Department of Communities and Justice sets out some circumstances that are suitable for the Online Court. However, the Committee is concerned that it may be unclear to whom the requirements to commence an Online Court Request apply. The Committee also notes that the provisions may impact access to justice by affecting the case management process. For these reasons, the Committee refers the matter to Parliament for its consideration.**

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<sup>4</sup> NSW Communities and Justice, [Online Court](#), viewed 3 November 2023



# 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. [Practice Note SC Gen 20 Citation of Authority \(n2023-1685\)](#)

The Practice Note commenced on 1 October 2023 and amends the previous Practice Note SC Gen 20 Citation of Authority which commenced on 15 May 2015. The Practice Note applies to the citation of authorities in all proceedings in the Supreme Court of New South Wales, the Court of Appeal and the Court of Criminal Appeal, subject to Practice Note SC CA 1 Court of Appeal and SC CCA 1 Court of Criminal Appeal - General.

The object of the Practice Note is to provide practitioners and litigants with detailed guidance on the citation of authorities. Paragraph 3 of the Practice Note allows to use an available official medium neutral citation for the citing of any authorities. Paragraph 4 of the Practice Note requires the citation of reported judgements should also be noted in Lists of Authorities and written submissions.

This Practice Note does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.



# Appendix Three – Unconfirmed extracts of minutes

## Meeting no. 7

TIME & DATE: 3:02PM, 20 NOVEMBER 2023 LOCATION: ROOM 1136 AND WEBEX

### MEMBERS PRESENT

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

### APOLOGIES

Nil.

### OFFICERS PRESENT

Sam Griffith, Anna Tran, Kate McCorquodale, Kayaneh Mouradian, Alex Read, Mengyuan Chen, Nicolle Gill.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 16 October 2023 be confirmed.

#### 2. Correspondence

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#### 3. Consideration of Bills with comment for Legislation Review Digest 7/58

Resolved on the motion of Mr Murphy: That the Committee adopts the following draft bill reports *in globa*:

- a. *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023; 24-Hour Economy Commissioner Bill 2023*
- b. *Independent Commission Against Corruption Amendment (Ministerial Diary Disclosure) Bill 2023*
- c. *Jury Amendment Bill 2023*
- d. *Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2023*
- e. *Road Transport Legislation (Automated Seatbelt Enforcement) Bill 2023*
- f. *Water Management Amendment (Water Access Licence Register) Bill 2023.*

**4. Consideration of Bills without comment for Legislation Review Digest 7/58**

Resolved on the motion of Mr Murphy: That the Committee adopts the following draft bill reports *in globa*:

- a. *Biosecurity Amendment (Independent Biosecurity Commissioner) Bill 2023*
- b. *Centennial Park and Moore Park Trust Amendment (Public Transport) Bill 2023*
- c. *Crime and Criminal Procedure Legislation Amendment Bill 2023*
- d. *Sherriff and Court Security Amendment Bill 2023.*

**5. Consideration of Regulations for Legislation Review Digest No 7/58**

Resolved on the motion of Mr Murphy: That the Committee adopts the draft regulation report regarding the *Practice Note District Court (Civil) No. 1 Case Management in the General List.*

**6. Regulations without comment for Legislation Review Digest No 7/58 (Appendix Two)**

Resolved, on the motion of Mr Layzell: That the Committee adopts the regulations without comment as Appendix Two to Digest 7/58.

**7. Legislation Review Digest 7/58**

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 7/58 and that it be signed by the Chair and presented to the House.

**8. Regulations to be reviewed**

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

**9. General business**

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**10. Next Meeting**

The meeting adjourned at 3.11pm until 3.00pm on 27 November 2023.