

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".

Contents

Membership.....	4
Guide to the Digest.....	5
Digest Snapshot.....	12
Summary of Conclusions.....	14
PART ONE – BILLS.....	20
1. Ageing and Disability Commissioner Amendment Bill 2023.....	21
2. Constitution Amendment (Executive Council) Bill 2023.....	26
3. Constitution Amendment (Rights and Freedoms) Bill 2023; Constitution Amendment (Rights and Freedoms – Referendum) Bill 2023*.....	27
4. Constitution Amendment (Water NSW and Local Water Utilities) Bill 2023*.....	30
5. Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023.....	32
6. Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*.....	34
7. Institutions Legislation Amendment Bill 2023.....	35
8. Pill Testing Trial Bill 2023*.....	37
PART TWO – REGULATIONS.....	39
1. Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2023.....	40
2. Poisons and Therapeutic Goods Amendment (Voluntary Assisted Dying Substances) Regulation 2023.....	42
PART THREE – REGULATIONS WITHOUT COMMENT.....	45
APPENDICES.....	51
Appendix One – Functions of the Committee.....	52
Appendix Two – Unconfirmed extracts of minutes.....	54

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 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.

Part Three: Regulations without comment

The Committee reviews all disallowable regulations which have been tabled in Parliament. However, unlike Bills, the Committee is only required by statute to report on those regulations with identified issues under section 9, rather than reporting on every regulation made.

Part Three to the Digest contains a brief summary of the regulations that do not engage with any issues under section 9 or, in the Committee's view, do not warrant further comment.

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. Ageing and Disability Commissioner Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Privacy rights – sharing personal information with private entities	Referred
Absolute liability offence and matters deferred to regulations	No further comment
Commissioner's powers to conduct investigations without consent	No further comment

[2. Constitution Amendment \(Executive Council\) Bill 2023](#)

No issues identified

[3. Constitution Amendment \(Rights and Freedoms\) Bill 2023; Constitution Amendment \(Rights and Freedoms – Referendum\) Bill 2023*](#)

Issue identified	Conclusion of Committee
Express restrictions on legislative power and unclear interaction with existing laws	Referred

[4. Constitution Amendment \(Water NSW and Local Water Utilities\) Bill 2023*](#)

No issues identified

[5. Detention Legislation Amendment \(Prohibition on Spit Hoods\) Bill 2023](#)

No issues identified

[6. Drug Misuse and Trafficking Amendment \(Regulation of Personal Adult Use of Cannabis\) Bill 2023*](#)

No issues identified

[7. Institutions Legislation Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Wide delegation power	No further comment

[8. Pill Testing Trial Bill 2023*](#)

Issue identified	Conclusion of Committee
Wide regulation-making powers	Referred

PART TWO – REGULATIONS

[1. Evidence \(Audio and Audio Visual Links\) Amendment \(Bail Exemptions\) Regulation 2023](#)

Issue identified	Conclusion of Committee
Fair trial rights and access to justice	Referred

2. Poisons and Therapeutic Goods Amendment (Voluntary Assisted Dying Substances) Regulation 2023

Issue identified	Conclusion of Committee
Absolute liability offences – monetary penalties	No further comment
Source of regulation-making power is unclear	Referred

Summary of Conclusions

PART ONE – BILLS

1. Ageing and Disability Commissioner Amendment Bill 2023

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

Privacy rights – sharing personal information with private entities

The Bill seeks to amend the *Ageing and Disability Commissioner Act 2019* to allow the Commissioner to share information with private entities who assist adults with disabilities or older adults. This would allow disclosures outside the current information-sharing regime between the Commissioner and 'relevant' government and health agencies. The regulations may prescribe what information is considered 'relevant' under section 14. Proposed subsection 14(4) also allows the regulations to prescribe additional persons or bodies as entities that can disclose to and receive information from the Commissioner.

The Bill therefore creates an exception to the *Privacy Act 1988* (Cth) by allowing personal information to be shared without the consent of the individual. The Committee also notes that this exception proposed by the Bill may broadly expand the information-sharing scheme for purposes which are related to the 'safety' of a vulnerable adult, as the regulations may prescribe additional private entities.

The Committee acknowledges that these amendments are intended to practically facilitate service provision for vulnerable adults and strengthen protection of their safety and welfare, and therefore limits the provision of information to a private entity by the Commissioner to only these purposes. However, the Committee notes that the Bill does not require obtaining consent from these individuals before disclosing information or provide clear criteria for when this consent is not required. For these reasons, the Committee refers the matter to Parliament for its consideration.

Absolute liability offence and matters deferred to regulations

The Bill seeks to amend the *Ageing and Disability Commissioner Act 2019* to require service providers to inform the Commissioner about their contact details within specific timeframes. Failure to comply with this requirement is an offence which carries a maximum penalty of 50 penalty units (\$5 500). The regulations may prescribe the timeframe for providing information and who can be considered a 'service provider' under this provision.

The Bill may therefore establish absolute liability offences. The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee also notes that, by deferring to regulations who may be subject to the new requirement and timeframes for compliance, it may be unclear to an individual if they are subject to the requirement under proposed section 24A and whether they will be required to provide the information within a shorter time period. The Committee generally prefers these matters to be clearly specified in the primary legislation to ensure clarity and better oversight of the Executive's responsibilities.

However, the Committee acknowledges that deferring these matters to regulations could provide more flexibility in administering the statutory scheme. It also recognises that these regulations are

still required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee further notes absolute liability offences are not uncommon in regulatory frameworks to encourage compliance and that the offence under proposed section 24A only carries a monetary penalty. In these circumstances, the Committee makes no further comment.

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

Commissioner's powers to conduct investigations without consent

The Bill seeks to amend the *Ageing and Disability Commissioner Act 2019* to extend the circumstances in which the Commissioner may investigate allegations of abuse, neglect or exploitation without the consent of the relevant adult. Proposed subsection 13(12)(a) would extend these circumstances to when the Commissioner cannot obtain access to the relevant adult after 'reasonable efforts' have been made. There does not appear to be any provisions in the Bill which provides what may amount to 'reasonable efforts'.

The Bill may therefore enable the Commissioner to investigate a greater number of allegations without obtaining the consent of the relevant adult, so long as the Commissioner has made 'reasonable efforts' to access the adult. The Committee notes that, by doing so, the Bill may subject the rights of vulnerable individuals to broad discretionary and investigative powers of the Commissioner. This may impact their rights to privacy and self-autonomy as the investigations relate to matters of abuse, neglect or exploitation which may be personal and sensitive in nature.

However, the Committee acknowledges that these amendments seek to implement a recommendation from the Statutory Review which recognises practical benefits for vulnerable adults in allowing the Commissioner to conduct investigations in these circumstances. Further, the Committee recognises that the proposed amendments build upon existing discretionary powers of the Commissioner to conduct investigations without consent, based on the personal circumstances of the relevant adult. In the circumstances, the Committee makes no further comment.

2. Constitution Amendment (Executive Council) Bill 2023

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

**3. Constitution Amendment (Rights and Freedoms) Bill 2023;
Constitution Amendment (Rights and Freedoms – Referendum) Bill
2023***

Constitution Amendment (Rights and Freedoms) Bill 2023

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

Express restrictions on legislative power and unclear interaction with existing laws

The Bill proposes to insert section 8 into the *Constitution Act 1902*, which provides that the Legislature does not have power to make a law that would establish a religion, prohibit the free exercise of a religion, restrict freedom of speech and the press, or restrict the right to peaceful assembly and the right to petition the Executive or the Parliament. The Bill also amends section 7A(1)(b) of the NSW Constitution to provide section 8 can only be repealed or amended by a

referendum. Therefore, the Bill expressly restricts the legislative power to make laws regarding certain freedoms and rights.

The Committee notes the law-making power of the Parliament is fundamental to the system of representative and responsible government under the NSW Constitution. The express restrictions may broadly limit the Parliament's ability to make laws for the 'peace, welfare and good government of NSW', which may undermine the system of representative democracy in NSW and thereby may impact the democratic rights of electors in NSW. The Committee acknowledges that restrictions on State legislative power are not uncommon, e.g. section 90 of the Australian Constitution prohibits states from making laws which impose excise or grant bounties with some exceptions.

However, the Committee notes that the Bill does not appear to set out any limitations to the broad protections for those rights and freedoms under proposed section 8. It also notes that there are no explicit protections for the freedoms of religion, speech, the press, peaceable assembly or the right to petition in the NSW or Australian Constitution.

Further, it is not clear how the proposed amendment would interact with existing NSW laws. Currently, there are a number of NSW laws which concern matters that may contravene the restriction under proposed section 8, particularly anti-discrimination legislation, the *Defamation Act 2005* (NSW) and criminal laws regulating protest and assembly. Given the broad wording of proposed section 8, the Committee notes this may limit the Parliament's ability to legislatively amend or update those existing laws. The Committee further notes that it is unclear whether the limitations would apply to delegated legislation which is made by the Executive, subject to disallowance by the Parliament. For these reasons, the Committee refers this matter to Parliament for its consideration.

Constitution Amendment (Rights and Freedoms – Referendum) Bill 2023

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

4. Constitution Amendment (Water NSW and Local Water Utilities) Bill 2023*

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

5. Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023

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

6. Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*

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

7. Institutions Legislation Amendment Bill 2023

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

Wide delegation power

The Bill seeks to replace section 20A of the *Legal Profession Uniform Law Application Act 2014* to expand the power of the Legal Profession Admission Board to delegate its functions to other entities. This would allow the Board to also delegate any of its functions to a member of the Board's staff or a person or a class of persons prescribed by regulations. One of the functions of the Board includes assessing applications for a person's admission as a lawyer to the NSW legal profession.

Therefore, the Bill may provide for a broad delegation power of the Board's functions, including its function to approve admission applications, to a wide class of persons prescribed by regulations. Without legislative limitations, this could include individuals who may not have the requisite experience to assess such applications and may not meet an applicant's expectation that their application will be assessed by the members of the Admission Board.

The Committee generally prefers that broad delegation powers which may impact a person's ability to undertake a profession be specified and clearly limited in primary legislation rather than subordinate legislation. However, the Committee acknowledges that expanding the Board's delegation power is intended to support its ability to undertake its functions efficiently. It also recognises that there are avenues for applicants to seek reviews of decisions by those exercising the Board's functions regarding admission to practice. In these circumstances, the Committee makes no further comment.

8. Pill Testing Trial Bill 2023*

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

Wide regulation-making powers

The Bill would provide for a general power to make regulations for matters that are 'necessary or convenient' for 'carrying out or giving effect' to the Bill. Section 31 includes a non-exhaustive list of matters that the regulations may provide for and allows regulations to create offences that carry a penalty of \$1 100 (10 penalty units).

The Committee notes that there does not appear to be any provisions which define or narrow the ordinary meaning of 'convenient'. The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament and the Parliament does not control when it commences.

The Committee also generally comments on wide regulation-making powers which delegate legislative power in respect to matters that are substantive and not just administrative in nature. It generally prefers that such matters be specified in primary legislation, particularly the creation of offences.

The Committee recognises that this general regulation making power may provide more flexibility in the administration of government. Further, the Committee acknowledges that any regulation made under this provision is still required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the provision may effectively allow regulations to prescribe matters with little limit. For this reason, the Committee refers this matter to Parliament for its consideration.

PART TWO – REGULATIONS

1. Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2023

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

Fair trial rights and access to justice

The Regulation amends the *Evidence (Audio and Audio Visual Links) Regulation 2015* to exempt accused persons detained at Fairfield Police Station from requirements under the *Evidence (Audio and Audio Visual Links) Act 1998* to appear in-person at court for bail proceedings. By facilitating the use of audio visual link in bail proceedings, the Regulation may affect the rights of accused persons to a fair trial, including their access to justice.

The Committee previously reported in Digest No. 1/57 on the *Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2019* which prescribed additional places in the exemption under clause 4. Consistent with those comments, the Committee acknowledges that the use of AVL in court proceedings may have cost savings and some practical benefits. However, the Committee notes decisions in bail proceedings may affect an accused person's right to liberty and freedom from arbitrary detention. Therefore, restrictions on an accused's ability to appear in-person in bail proceedings should be limited to exceptional circumstances. For these reasons, the Committee refers the matter to Parliament for its consideration.

2. Poisons and Therapeutic Goods Amendment (Voluntary Assisted Dying Substances) Regulation 2023

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

Absolute liability offences – monetary penalties

The Regulation inserts Part 4A into the *Poisons and Therapeutic Goods Regulation 2008*. Divisions 2 to 4 of Part 4A sets requirements relating to storage, record keeping, prescribing, disposal and delivery of voluntary assisted dying substances. It also creates offences for non-compliance with these requirements, which carry maximum penalties of up to 20 penalty units (\$2 200).

Therefore, the Regulation may create absolute liability offences for non-compliance. 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 in order to encourage compliance. The Committee also recognises that these offences may be intended to ensure compliance with regulations for the handling of voluntary assisted dying substances, which could have serious impacts to human health if mishandled. Additionally, the Committee acknowledges that the maximum penalties for these offences are monetary, not custodial. In the circumstances, the Committee makes no further comment.

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

Source of regulation-making power is unclear

The Regulation amends the *Poisons and Therapeutic Goods Regulation 2008*, which is made under the *Poisons and Therapeutic Goods Act 1966*. However, the Regulation makes provisions for the handling of voluntary assisted dying substances that fall under the *Voluntary Assisted Dying Act 2022*.

The Committee acknowledges that the *Poisons and Therapeutic Goods Act* provides that regulations may make provisions around the handling of therapeutic goods. However, this Regulation makes references to and provisions about substances regulated under the *Voluntary Assisted Dying Act*. The Regulation also adds penalty notice offences in relation to matters covered in the *Voluntary Assisted Dying Act*, even though this Act does not specifically provide a power to make such penalties.

This may mean that it is unclear to a lay person what is the operative effects of the Regulation or the relevant statutory power under which it is made. This may be confusing to a lay person and makes it difficult for them to understand that the provisions of the Regulation are linked to the *Voluntary Assisted Dying Act*. For these reasons, the Committee refers the matter to Parliament for its consideration.

Part One – Bills

1. Ageing and Disability Commissioner Amendment Bill 2023

Date introduced	29 November 2023
House introduced	Legislative Assembly
Minister with carriage	The Hon. Kate Washington MP
Portfolio	Disability Inclusion Seniors

Purpose and description

- 1.1 The object of this Bill is to implement a number of recommendations arising from an independent statutory review of the *Ageing and Disability Commissioner Act 2019* (the **Act**).

Background

- 1.2 In her second reading speech, the Hon. Kate Washington MP, Minister for Disability Inclusion, described the amendments proposed by Bill as implementing recommendations from a statutory review of the Act (the **Statutory Review**).¹ She noted that these amendments are intended to strengthen the Ageing and Disability Commission (the **Commission**):

... to perform its important functions, including in relation to safeguarding adults with disability and older adults who are subject to, or at risk of, abuse, neglect or exploitation.

- 1.3 The Minister explained that the Bill aims to introduce the following key changes concerning adults with disability or older adults (**vulnerable adults**):
- (a) giving the Ageing and Disability Commissioner (the **Commissioner**) a discretionary power to refer relevant reports to other bodies, including not referring reports if a person does not want the information to be reported
 - (b) allowing the Commissioner to investigate allegations without the consent of the relevant adult if the Commissioner cannot gain access to the person
 - (c) expanding the information-sharing scheme to include organisations and persons who provide support to vulnerable adults
 - (d) authorising Official Community Visitors to provide advice to the Department of Communities and Justice and the NDIS Commissioner

¹ Department of Communities and Justice, [Report of the Independent Statutory Review of the Ageing and Disability Commissioner Act 2019](#), April 2023.

- (e) requiring service providers notify the Commission with their contact details
- (f) requiring two or more older adults on the Ageing and Disability Advisory Board.

Issues considered by the Committee

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

Privacy rights – sharing personal information with private entities

- 1.4 Section 14 of the Act allows information to be shared between the Commissioner and a 'relevant agency' defined in subsection (8), which includes government agencies and certain health organisations. Under subsection 14(4), 'relevant information' is information regarding:
- (a) the safety, welfare or wellbeing or possible abuse, neglect or exploitation of vulnerable adults,
 - (b) any reports under the Act, and
 - (c) other matters prescribed in the regulations.
- 1.5 The Bill proposes to insert section 14A which would allow the Commissioner to provide relevant information to an 'entity', which is a person or body that is not a 'relevant agency' but provides supports to vulnerable adults. Proposed subsection 14A(4)(b) allows the regulations to specify additional persons to whom this provision applies.
- 1.6 The Commissioner is allowed to provide relevant information to these entities if it is for the purpose of enabling or assisting the entity to either:
- (a) provide services in relation to the safety of vulnerable adults
 - (b) make a decision or an assessment regarding the safety of vulnerable adults, or
 - (c) take action regarding the safety of vulnerable adults generally.
- 1.7 Proposed subsection 14A(2) also permits an entity to give relevant information to the Commissioner to assist the Commissioner's handling of a report under the Act.
- 1.8 In her second reading speech, the Minister acknowledged that proposed section 14A creates an exception to the general rule against disclosure of personal information. However, she noted that this provision has been 'carefully drafted to balance the right to privacy with the practical need to facilitate service provision' and support the Commission in fulfilling its protective functions. The Minister further emphasised that the disclosure permitted under proposed section 14A is 'subject to reasonable and proportionate limitations' as follows:

First, it only allows the commission to disclose information to non-government entities in relation to the safety of adults with disability or older adults. ... Similarly, new section 14A only allows non-government entities to provide relevant information to the Ageing and Disability

Commission for the purposes of enabling or assisting the commissioner's handling of a report under the Act.

The Bill seeks to amend the *Ageing and Disability Commissioner Act 2019* to allow the Commissioner to share information with private entities who assist adults with disabilities or older adults. This would allow disclosures outside the current information-sharing regime between the Commissioner and 'relevant' government and health agencies. The regulations may prescribe what information is considered 'relevant' under section 14. Proposed subsection 14(4) also allows the regulations to prescribe additional persons or bodies as entities that can disclose to and receive information from the Commissioner.

The Bill therefore creates an exception to the *Privacy Act 1988* (Cth) by allowing personal information to be shared without the consent of the individual. The Committee also notes that this exception proposed by the Bill may broadly expand the information-sharing scheme for purposes which are related to the 'safety' of a vulnerable adult, as the regulations may prescribe additional private entities.

The Committee acknowledges that these amendments are intended to practically facilitate service provision for vulnerable adults and strengthen protection of their safety and welfare, and therefore limits the provision of information to a private entity by the Commissioner to only these purposes. However, the Committee notes that the Bill does not require obtaining consent from these individuals before disclosing information or provide clear criteria for when this consent is not required. For these reasons, the Committee refers the matter to Parliament for its consideration.

Absolute liability offence and matters deferred to regulations

- 1.9 The Bill proposes to insert section 24A into the Act which would require service providers offering visitable services to provide certain information to the Commissioner. Failure to comply would be an absolute liability offence carrying a maximum penalty of 50 penalty units (\$5 500). Under proposed subsection 24A(4), the 'required information' which must be provided to the Commissioner includes their contact details and information regarding the location of their visitable services.
- 1.10 Proposed subsections 24A(2) and (4) specifies that this information should be provided in writing and within a specified timeframe (either one month or a time prescribed by regulations), after the provisions commence or the start of a new visitable service.
- 1.11 Under section 20 of the Act, 'service provider' refers to a person, organisation, or entity authorised by the Minister to offer a visitable service. This includes the owners or occupiers of an assisted boarding house and any other person prescribed by the regulations.
- 1.12 In her second reading speech, the Minister referred to the amendment as a 'sensible practical change' that is intended to ensure the Commission remains informed about new services or changes in service addresses to facilitate necessary visits.

The Bill seeks to amend the *Ageing and Disability Commissioner Act 2019* to require service providers to inform the Commissioner about their contact details within specific timeframes. Failure to comply with this requirement is an offence which carries a maximum penalty of 50 penalty units (\$5 500). The regulations may prescribe the timeframe for providing information and who can be considered a 'service provider' under this provision.

The Bill may therefore establish absolute liability offences. The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee also notes that, by deferring to regulations who may be subject to the new requirement and timeframes for compliance, it may be unclear to an individual if they are subject to the requirement under proposed section 24A and whether they will be required to provide the information within a shorter time period. The Committee generally prefers these matters to be clearly specified in the primary legislation to ensure clarity and better oversight of the Executive's responsibilities.

However, the Committee acknowledges that deferring these matters to regulations could provide more flexibility in administering the statutory scheme. It also recognises that these regulations are still required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee further notes absolute liability offences are not uncommon in regulatory frameworks to encourage compliance and that the offence under proposed section 24A only carries a monetary penalty. In these circumstances, the Committee makes no further comment.

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

Commissioner's powers to conduct investigations without consent

- 1.13 Under section 13 of the Act, the Commissioner may receive reports from a person in relation to the abuse, neglect, or exploitation of a vulnerable adult as well as conduct an investigation into the reported matter. Subsection 15(11) requires the Commissioner to get the consent of the relevant adult before conducting an investigation, but also sets out the circumstances where the Commissioner may investigate without obtaining that consent.
- 1.14 The Bill proposes to replace subsection 13(11) and insert subsection (12), which expands the circumstances in which the Commissioner may investigate reports without the consent of the relevant adult. Under the proposed section 13(12)(a), the Commissioner is not required to obtain consent if the Commissioner 'has made reasonable efforts to obtain access to the adult' but is not able to access the adult.
- 1.15 In her second reading speech, the Minister explained that the proposed amendments implement recommendation 3(a) from the Statutory Review. She noted that it intends to:

...cover situations such as where the relevant adult cannot be contacted because an alleged perpetrator is blocking access, and where the adult cannot be spoken to in a safe and confidential setting to seek consent.

The Bill seeks to amend the *Ageing and Disability Commissioner Act 2019* to extend the circumstances in which the Commissioner may investigate allegations of abuse, neglect or exploitation without the consent of the relevant adult. Proposed subsection 13(12)(a) would extend these circumstances to when the Commissioner cannot obtain access to the relevant adult after 'reasonable efforts' have been made. There does not appear to be any provisions in the Bill which provides what may amount to 'reasonable efforts'.

The Bill may therefore enable the Commissioner to investigate a greater number of allegations without obtaining the consent of the relevant adult, so long as the Commissioner has made 'reasonable efforts' to access the adult. The Committee notes that, by doing so, the Bill may subject the rights of vulnerable individuals to broad discretionary and investigative powers of the Commissioner. This may impact their rights to privacy and self-autonomy as the investigations relate to matters of abuse, neglect or exploitation which may be personal and sensitive in nature.

However, the Committee acknowledges that these amendments seek to implement a recommendation from the Statutory Review which recognises practical benefits for vulnerable adults in allowing the Commissioner to conduct investigations in these circumstances. Further, the Committee recognises that the proposed amendments build upon existing discretionary powers of the Commissioner to conduct investigations without consent, based on the personal circumstances of the relevant adult. In the circumstances, the Committee makes no further comment.

2. Constitution Amendment (Executive Council) Bill 2023

Date introduced	30 November 2023
House introduced	Legislative Council
Minister with carriage	The Hon. John Graham MLC
Portfolio	Special Minister of State

Purpose and description

- 2.1 The object of this Bill is to amend the *Constitution Act 1902* (the **Constitution**):
- (a) to allow meetings of the Executive council to be held either in person or by means of a teleconference or videoconference
 - (b) to allow the Governor, or Vice-President or senior member presiding in the absence of the Governor or Vice-President, to preside at a meeting of the Executive Council either in person or by means of a teleconference or video conference.

Background

2.2 The Bill proposes amendments to the Constitution which would allow meetings of the Executive Council to be convened in person or by means of a teleconference or videoconference.

2.3 In his second reading speech, the Hon John Graham MLC, Special Minister of State said that the Constitution had previously been amended in response to the COVID-19 pandemic, to allow the Executive Council to convene by teleconference or videoconference, but that those provisions were automatically repealed on 27 September 2023. He then explained that:

While the COVID-19 emergency has since evolved, circumstances which make it impractical for meetings of the Executive Council to be held in person may arise again in the future.

2.4 The Minister described the Bill's purpose as making 'permanent the measures allowing Executive Council meetings to be conducted in a manner other than in person', which he argued would 'guarantee uninterrupted governmental decision making in instances where in-person meetings are impractical.'

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*.

3. Constitution Amendment (Rights and Freedoms) Bill 2023; Constitution Amendment (Rights and Freedoms – Referendum) Bill 2023*

Date introduced	29 November 2023
House introduced	Legislative Council
Member responsible	The Hon. John Ruddick MLC
	*Private Members Bill

Purpose and description

Constitution Amendment (Rights and Freedoms) Bill 2023

- 3.1 The object of the *Constitution Amendment (Rights and Freedoms) Bill 2023* (the **Amendment Bill**) is to amend the *Constitution Act 1902* (the **NSW Constitution**) to limit the power of the Legislature to make laws restricting certain rights and freedoms.

Constitution Amendment (Rights and Freedoms – Referendum) Bill 2023

- 3.2 The object of the *Constitution Amendment (Rights and Freedoms – Referendum) Bill 2023* (the **Referendum Bill**) is to appoint the date of the next general election as the date for taking the votes of electors at the referendum on the Amendment Bill.

Background

- 3.3 In his second reading speech, the Hon. John Ruddick MLC said the amendments proposed by the Amendment Bill and the Referendum Bill (the **Bills**) 'seek to constitutionally protect the right to free speech in New South Wales' by preventing 'enacting legislation that would curtail open expression'.
- 3.4 The Amendment Bill proposes to insert section 8 into the NSW Constitution, which provides that 'the Legislature' (that is, the NSW Parliament) does not have power to make a law that might negatively impact freedom of religion, expression, peaceable assembly and the right to petition.
- 3.5 It also seeks to amend section 7A(1)(b) of the NSW Constitution to provide proposed section 8 cannot be expressly or impliedly repealed or amended by another Act, unless the Bill for the amending Act is approved by the electors at a referendum.
- 3.6 Section 3 of the Referendum Bill would require that the Amendment Bill be submitted to electors for approval at a referendum. Clauses 4 and 5 seek to set out the date and manner of taking votes for this referendum respectively.
- 3.7 Although these Bills would operate as separate Acts if enacted, the Amendment Bill and the Referendum Bill 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

Constitution Amendment (Rights and Freedoms) Bill 2023

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

Express restrictions on legislative power and unclear interaction with existing laws

3.8 Subject to the Australian Constitution, section 5 of the NSW Constitution states that the Parliament shall have the power to make laws affecting for 'the peace, welfare and good government of New South Wales in all cases whatsoever'.

3.9 The Amendment Bill seeks to insert section 8 into the NSW Constitution, which broadly restricts the NSW Parliament from making any law that:

- (a) establishes a religion
- (b) prohibits the free exercise of a religion
- (c) restricts freedom of speech
- (d) restricts the freedom of the press, or
- (e) restricts the right of the people of New South Wales to peaceably assemble or to petition the Executive Government or the Legislature for a redress of grievances.

3.10 In his second reading speech, Mr Ruddick acknowledged that proposed section 8 'cuts and pastes from the United States First Amendment' and noted that 'if the Bill is enacted, our courts will be able to rely on those established principles around matters like defamation, copyright et cetera.'

The Bill proposes to insert section 8 into the *Constitution Act 1902*, which provides that the Legislature does not have power to make a law that would establish a religion, prohibit the free exercise of a religion, restrict freedom of speech and the press, or restrict the right to peaceful assembly and the right to petition the Executive or the Parliament. The Bill also amends section 7A(1)(b) of the NSW Constitution to provide section 8 can only be repealed or amended by a referendum. Therefore, the Bill expressly restricts the legislative power to make laws regarding certain freedoms and rights.

The Committee notes the law-making power of the Parliament is fundamental to the system of representative and responsible government under the NSW Constitution. The express restrictions may broadly limit the Parliament's ability to make laws for the 'peace, welfare and good government of NSW', which may undermine the system of representative democracy in NSW and thereby may impact the democratic rights of electors in NSW. The Committee acknowledges that restrictions on State legislative power are not uncommon, e.g. section 90

of the Australian Constitution prohibits states from making laws which impose excise or grant bounties with some exceptions.

However, the Committee notes that the Bill does not appear to set out any limitations to the broad protections for those rights and freedoms under proposed section 8. It also notes that there are no explicit protections for the freedoms of religion, speech, the press, peaceable assembly or the right to petition in the NSW or Australian Constitution.

Further, it is not clear how the proposed amendment would interact with existing NSW laws. Currently, there are a number of NSW laws which concern matters that may contravene the restriction under proposed section 8, particularly anti-discrimination legislation, the *Defamation Act 2005* (NSW) and criminal laws regulating protest and assembly. Given the broad wording of proposed section 8, the Committee notes this may limit the Parliament's ability to legislatively amend or update those existing laws. The Committee further notes that it is unclear whether the limitations would apply to delegated legislation which is made by the Executive, subject to disallowance by the Parliament. For these reasons, the Committee refers this matter to Parliament for its consideration.

Constitution Amendment (Rights and Freedoms – Referendum) Bill 2023

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

4. Constitution Amendment (Water NSW and Local Water Utilities) Bill 2023*

Date introduced	30 November 2023
House introduced	Legislative Assembly
Member with carriage	Ms Steph Cooke MP
	*Private Members Bill

Purpose and description

- 4.1 The object of this Bill is to amend the *Constitution Act 1902* (the **NSW Constitution**) to ensure the continued public ownership of Water NSW and certain local water utilities and their main undertakings.
- 4.2 It is also an object of the Bill to prohibit certain water corporations from leasing critical assets from non-public entities, or entering agreements or arrangements with non-public entities for the use of critical assets, with the authorisation of an Act of Parliament.

Background

- 4.3 In her second reading speech, Ms Steph Cooke MP said that the Bill 'enshrines government ownership of WaterNSW and the 89 local water utilities across regional, rural and remote New South Wales in the State Constitution.'
- 4.4 The Bill proposes to amend the NSW Constitution to expand the scope of the prohibition against privatisation already applying to Sydney Water and Hunter Water to include more entities that also exercise water functions.
- 4.5 Under section 57(1) of the NSW Constitution, a water corporation or main undertaking of a water corporation must not be sold or disposed of unless authorised by an Act. The Bill proposes to insert sub-section 57(6) to expand the definition of 'water corporation' to include:
- (a) WaterNSW
 - (b) a water supply authority within the meaning of the *Water Management Act 2000*
 - (c) a local council or country council exercising water supply functions under the *Local Government Act 1993*.
- 4.6 The Bill also proposes to insert section 58 which would prohibit a water corporation from leasing a critical asset from a private entity, or enter into an agreement or arrangement with a private entity for the use of a critical asset owned by that entity.

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*.

5. Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023

Date introduced	29 November 2023
House introduced	Legislative Assembly
Minister with carriage	The Hon. Michael Daley MP
Member introducing	Dr Hugh McDermott MP
Portfolio	Attorney General

Purpose and description

- 5.1 The object of this Bill is to amend various Acts relating to the detention of persons to prohibit the use of spit hoods, which are coverings intended to be placed over a person's head to prevent the person from spitting on, or biting, another person. For the purposes of this Bill, a spit hood does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Background

- 5.2 The Bill seeks to insert provisions prohibiting the use of spit hoods into a number of Acts that regulate places of detention in NSW. A spit hood is a hood that covers the face or mouth of the wearer to prevent the wearer from spitting on or biting other persons, but can cause injury to the wearer.

- 5.3 In his second reading speech, Dr Hugh McDermott MP, Parliamentary Secretary to the Attorney General, stated that:

The New South Wales Government considers that the use of spit hoods in places of detention is an outdated practice that does not align with community expectations about the treatment of persons in places of detention.

- 5.4 He then clarified that, although spit hoods are not used in NSW, the Bill is intended to 'enshrine the current operational decision by agencies administering places of detention in NSW to not use spit hoods'.

- 5.5 Each Schedule of the Bill proposes amendments to be inserted into a specific Act to prohibit the use of spit hoods, as follows:

- (a) Schedule 1 would amend the *Children (Detention Centres) Act 1987*, which captures youth detention centres
- (b) Schedule 2 would amend the *Crimes (Administration of Sentences) Act 1999*, which captures correctional centres and court cells
- (c) Schedule 3 would amend the *Drug and Alcohol Treatment Act 2007*, which captures treatment centres

- (d) Schedule 4 would amend the *Law Enforcement (Powers and Responsibilities) Act 2002*, which captures police cells and the NSW Police Force generally
- (e) Schedule 5 would amend the *Mental Health Act 2007*, which captures mental health facilities
- (f) Schedule 6 would amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, which captures mental health facilities.

5.6 The Bill's proposed amendments clarify that a spit hood does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle, and include a note that contravention of the prohibition may amount to an unauthorised or unreasonable use of force.

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*.

6. Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*

Date introduced	29 November 2023
House introduced	Legislative Council
Member responsible	The Hon. Jeremy Buckingham MLC
	*Private Members Bill

Purpose and description

- 6.1 The object of this Bill is to amend the *Drug Misuse and Trafficking Act 1985* (the **Act**) to permit adults to cultivate and possess small amounts of cannabis for personal use.

Background

- 6.2 Currently, certain possession, cultivation, manufacture and distribution of prohibited plants and drugs including cannabis is illegal under the Act.
- 6.3 In his second reading speech, the Hon. Jeremy Buckingham MLC described the effect of the amendments proposed by the Bill as allowing 'an adult to cultivate not more than six cannabis plants for personal use and to allow them to share the harvest with friends', but clarified that 'payment for cannabis would remain illegal.'
- 6.4 The Bill seeks to amend the Act by inserting Part 2D, which would allow an adult to:
- possess small quantities of cannabis, which can be no more than 50g of cannabis leaf
 - cultivate a maximum of 6 cannabis plants for personal use
 - gift no more than 50g of cannabis to another adult, although proposed section 36ZM clarifies that this does not authorise the sale of cannabis.
- 6.5 The Bill also proposes new subsections to sections 23A and 24, which would establish exceptions to the offences under those sections of the Act. Proposed subsection 23A(7A) would exempt a person who cultivates cannabis as provided for in Part 2D. Similarly, subsection 24(4A) would exempt the manufacture of a prohibited plant or cannabis leaf lawfully done under proposed Part 2D.

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*.

7. Institutions Legislation Amendment Bill 2023

Date introduced	28 November 2023
House introduced	Legislative Assembly
Minister with carriage	The Hon. Michael Daley MP
Member introducing	Dr Hugh McDermott MP
Portfolio	Attorney General

Purpose and description

- 7.1 The object of this Bill is to make amendments to the following Acts relating to institutions in the State:
- (a) *Legal Aid Commission Act 1979*
 - (b) *Legal Profession Uniform Law Application Act 2014* (the **Legal Profession Act**)
 - (c) *Personal Injury Commission Act 2020*
 - (d) *Royal Institute for Deaf and Blind Children Act 1998*.

Background

- 7.2 During his second reading speech, Dr Hugh McDermott MP, Parliamentary Secretary to the Attorney General, said that the amendments proposed by the Bill would update laws governing the Legal Aid Commission of NSW, the Legal Profession Admission Board, the Personal Injury Commission and the Royal Institute for Deaf and Blind Children. He further described these amendments as 'improvements to support their continued operation and functions'.
- 7.3 Schedule 1 of the Bill proposes to amend the *Legal Aid Commission Act 1979* to change the operation and function of the Legal Aid Review Panel in determining appeals about the provision of legal aid.
- 7.4 Schedule 2 of the Bill proposes several amendments to the Legal Profession Act to expand the powers of the NSW Admission Board (the **Admission Board**), including expanding its power to delegate functions, make rules about fees and other matters.
- 7.5 Schedule 3 of the Bill proposes amendments to the *Personal Injury Commission Act 2020* to extend the term of an Acting Deputy President of the Personal Injury Commission from 12 months to 3 years.
- 7.6 Finally, Schedule 4 of the Bill proposes to amend the *Royal Institute for Deaf and Blind Children Act 1998* to change the name of the Royal Institute for Deaf and Blind

Children to NextSense, amend the objects of the Institute and make changes to the terms of office for directors of its Board.

Issues considered by the Committee

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

Wide delegation power

7.7 Under section 20A of the Legal Profession Act, the Admissions Board can delegate its functions to a committee of the Board or a member of the Board. The Bill seeks to replace section 20A of the Legal Profession Act to expand this delegation power so that the Admission Board's functions can also be delegated to:

- (a) a member of staff of the Board, and
- (b) a person, or class of persons prescribed by the regulations.

7.8 Section 20 of the Legal Profession Act provides that the functions of the Board are conferred by the *Legal Profession Uniform Law (NSW) (Uniform Law)*. Under section 19 of the Uniform Law, these functions include issuing compliance certificates to approve admission of a person to practice as a lawyer in NSW.

7.9 In his second reading speech, Dr McDermott explained that this proposed amendment is intended to allow the Admission Board to exercise its delegation power without 'the operational burden of the board needing to make a separate delegation to a sub-committee to assist its parent committee'.

The Bill seeks to replace section 20A of the *Legal Profession Uniform Law Application Act 2014* to expand the power of the Legal Profession Admission Board to delegate its functions to other entities. This would allow the Board to also delegate any of its functions to a member of the Board's staff or a person or a class of persons prescribed by regulations. One of the functions of the Board includes assessing applications for a person's admission as a lawyer to the NSW legal profession.

Therefore, the Bill may provide for a broad delegation power of the Board's functions, including its function to approve admission applications, to a wide class of persons prescribed by regulations. Without legislative limitations, this could include individuals who may not have the requisite experience to assess such applications and may not meet an applicant's expectation that their application will be assessed by the members of the Admission Board.

The Committee generally prefers that broad delegation powers which may impact a person's ability to undertake a profession be specified and clearly limited in primary legislation rather than subordinate legislation. However, the Committee acknowledges that expanding the Board's delegation power is intended to support its ability to undertake its functions efficiently. It also recognises that there are avenues for applicants to seek reviews of decisions by those exercising the Board's functions regarding admission to practice. In these circumstances, the Committee makes no further comment.

8. Pill Testing Trial Bill 2023*

Date introduced	29 November 2023
House introduced	Legislative Council
Member with carriage	Ms Cate Faehrmann MLC
	*Private Members Bill

Purpose and description

- 8.1 The object of this Bill is to provide for the trial of pill testing services for the purposes of drug harm reduction in accordance with a licensing scheme to be administered by the Secretary of the Ministry of Health (the **Secretary**). The proposed Act provides for pill testing of prohibited drugs, substances specified in Schedules 2-8 of the NSW Poisons Schedules (**scheduled substances**) and other substances that would cause harm if ingested.
- 8.2 The Bill also provides that the possession and provision of prohibited drugs and scheduled substances in accordance with a licence under the proposed Act will not constitute an offence under the *Drug Misuse and Trafficking Act 1985*, the *Poisons and Therapeutic Goods Act 1966* or the *Medicines, Poisons and Therapeutic Goods Act 2022*.

Background

- 8.3 The Bill proposes a legislative framework to provide a trial licensing scheme authorising a person to conduct pill testing services of prohibited drugs for harm reduction purposes. In her second reading speech, Ms Cate Faehrmann MLC said that the provisions 'outline how, where and when pill testing services may be undertaken in New South Wales as part of the trial.' She described the Bill as 'an important step' for 'reducing the harm from drugs and saving lives'.
- 8.4 Proposed Part 1 of the Bill sets out preliminary matters like its objects and definitions. One object under proposed section 3 is 'to reduce the number of avoidable deaths cause by using substances that are, or that contain, a prohibited drug, scheduled substance or another substance that would cause harm if ingested'.
- 8.5 Part 2 proposed by the Bill outlines how pill testing licences may be granted and used, and makes provisions for the process of pill testing as well as treatment and handling of substances subject to testing. Pill testing services can be provided at fixed or mobile locations by persons holding a licence issued by the Secretary.
- 8.6 The Bill also includes proposed Part 3, which sets out exemptions as part of the pill testing trial to offences for the possession and testing of substances under the *Drug Misuse and Trafficking Act 1985* and the *Medicines, Poisons and Therapeutic Goods Act 2022*. It also includes an exemption from civil liability for actions taken in connection with pill testing.

Issues considered by the Committee

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

Wide regulation-making powers

- 8.7 Section 31 of the Bill proposes to create a general power for the Governor to make regulations under the Act. Proposed sub-section 31(1) provides that:

The governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- 8.8 Proposed sub-section 31(2) provides a list of matters the regulations may make provision for and subsection (3) provides that the regulations may create offences that are punishable by 10 penalty units.

The Bill would provide for a general power to make regulations for matters that are 'necessary or convenient' for 'carrying out or giving effect' to the Bill. Section 31 includes a non-exhaustive list of matters that the regulations may provide for and allows regulations to create offences that carry a penalty of \$1 100 (10 penalty units).

The Committee notes that there does not appear to be any provisions which define or narrow the ordinary meaning of 'convenient'. The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament and the Parliament does not control when it commences.

The Committee also generally comments on wide regulation-making powers which delegate legislative power in respect to matters that are substantive and not just administrative in nature. It generally prefers that such matters be specified in primary legislation, particularly the creation of offences.

The Committee recognises that this general regulation making power may provide more flexibility in the administration of government. Further, the Committee acknowledges that any regulation made under this provision is still required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the provision may effectively allow regulations to prescribe matters with little limit. For this reason, the Committee refers this matter to Parliament for its consideration.

Part Two – Regulations

1. Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2023

Date tabled	LA: 21 November 2023 LC: 21 November 2023
Disallowance date	LA: 7 May 2024 LC: 7 May 2024
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 1.1 The object of this Regulation is to exempt accused detainees held in custody at Fairfield Police Station from the requirement to appear physically before a court in bail proceedings.
- 1.2 This Regulation is made under the *Evidence (Audio and Audio Visual Links) Act 1998* (the **Act**).

Issues considered by the Committee

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

Fair trial rights and access to justice

- 1.3 Sections 5BA and 5BB of the Act respectively requires a detainee in criminal proceedings to appear before the court:
- (a) in person, for 'physical appearance proceedings', or
 - (b) by audio visual link (AVL), for proceedings other than 'physical appearance proceedings'.
- 1.4 The Act defines a 'physical appearance proceedings' under section 3(c) to include 'any proceeding relating to bail'.
- 1.5 Clause 4 of the *Evidence (Audio and Audio Visual Links) Regulation 2015* (the **principal Regulation**) sets out exemptions from this requirement to appear physically in bail proceedings. This clause prescribes 12 other places that are exempt from the requirement for an accused detainee to physically appear in bail proceedings. The Regulation amends the clause 4 of the principal Regulation to also prescribe Fairfield Police station as an exempt place.

The Regulation amends the *Evidence (Audio and Audio Visual Links) Regulation 2015* to exempt accused persons detained at Fairfield Police Station from requirements under the *Evidence (Audio and Audio Visual Links) Act 1998* to appear in-person at court for bail proceedings. By facilitating the use of audio visual link in bail proceedings, the Regulation may affect the rights of accused persons to a fair trial, including their access to justice.

The Committee previously reported in Digest No. 1/57 on the *Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2019* which prescribed additional places in the exemption under clause 4.² Consistent with those comments, the Committee acknowledges that the use of AVL in court proceedings may have cost savings and some practical benefits. However, the Committee notes decisions in bail proceedings may affect an accused person's right to liberty and freedom from arbitrary detention. Therefore, restrictions on an accused's ability to appear in-person in bail proceedings should be limited to exceptional circumstances. For these reasons, the Committee refers the matter to Parliament for its consideration.

² Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 1/57](#), 6 August 2019.

2. Poisons and Therapeutic Goods Amendment (Voluntary Assisted Dying Substances) Regulation 2023

Date tabled	LA: 10 October 2023 LC: 10 October 2023
Disallowance date	LA: 12 March 2024 LC: 12 March 2024
Minister responsible	The Hon. Ryan Park MP
Portfolio	Health

Purpose and description

- 2.1 The objects of this Regulation are:
- (a) to make provision for the handling of substances prescribed for purposes under the *Voluntary Assisted Dying Act 2022* (the **Act**), including the following:
 - (i) the form and retention of prescriptions
 - (ii) storage
 - (iii) keeping of records
 - (iv) delivery,
 - (b) to make provision for drugs of addiction to be destroyed by retail pharmacists with appropriate supervision and record keeping, and
 - (c) to clarify the circumstances in which a person has lawful authority to access information on the database kept under the *Poisons and Therapeutic Goods Regulation 2008* (the **Poisons and Therapeutic Goods Regulation**), Part 8A.

Issues considered by the Committee

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

Absolute liability offences – monetary penalties

- 2.2 The Regulation inserts Part 4A into the Poisons and Therapeutic Goods Regulation. Part 4A imposes the following requirements relating to 'voluntary assisted dying substances' (**VAD substances**):

- (a) Division 2 requires authorised suppliers to store VAD substances in a prescribed way to ensure they cannot be accessed by the public,
- (b) Division 3 requires coordinating practitioners, administering practitioners, authorised suppliers and authorised disposers to keep written records of prescriptions for VAD substances, and
- (c) Division 4 sets out requirements in relation to the form and use of prescriptions, and the disposal and delivery mode of VAD substances.

2.3 Part 4A also provides that non-compliance with any requirement in Divisions 2 to 4 is an offence which carries a maximum penalty of 20 penalty units (\$2 200) for an individual.

The Regulation inserts Part 4A into the *Poisons and Therapeutic Goods Regulation 2008*. Divisions 2 to 4 of Part 4A sets requirements relating to storage, record keeping, prescribing, disposal and delivery of voluntary assisted dying substances. It also creates offences for non-compliance with these requirements, which carry maximum penalties of up to 20 penalty units (\$2 200).

Therefore, the Regulation may create absolute liability offences for non-compliance. 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 in order to encourage compliance. The Committee also recognises that these offences may be intended to ensure compliance with regulations for the handling of voluntary assisted dying substances, which could have serious impacts to human health if mishandled. Additionally, the Committee acknowledges that the maximum penalties for these offences are monetary, not custodial. In the circumstances, the Committee makes no further comment.

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

Source of regulation-making power is unclear

- 2.4 The Regulation relates to the handling of VAD substances prescribed for purposes under the Act. However, the Regulation amends the Poisons and Therapeutic Goods Regulation, which is made under the *Poisons and Therapeutic Goods Act 1966* (the **Poisons Act**).
- 2.5 Section 45C of the Poisons Act provides a general regulation-making power and sets out a number of matters that regulations may make provisions about. This includes a regulation-making power around prescribing conditions for preparing, supplying, storing, packing, handling, carrying and delivering therapeutic goods.
- 2.6 Section 187 of the Act provides a general power to make regulations about matters 'required or permitted to be prescribed', or otherwise 'necessary or convenient to carry out or give effect to' the Act. Section 14 of the Act provides that if there is an

inconsistency between the Act and the Poisons Act, the Act prevails to the extent of any inconsistency.

- 2.7 Part 4, Division 5 of the Act makes provisions in relation to ‘prescribing, supplying and disposing of’ VAD substances. It also sets out requirements with respect to the matters under Part 4A inserted by the Regulation, such as the prescription, storage and disposal of VAD substances. However, the Act does not set out offences in respect of those matters.
- 2.8 There does not appear to be any specific regulation-making powers in relation to the matters covered in Part 4A of the Regulation or a specific provision permitting regulations to create offences under the Act.

The Regulation amends the *Poisons and Therapeutic Goods Regulation 2008*, which is made under the *Poisons and Therapeutic Goods Act 1966*. However, the Regulation makes provisions for the handling of voluntary assisted dying substances that fall under the *Voluntary Assisted Dying Act 2022*.

The Committee acknowledges that the Poisons and Therapeutic Goods Act provides that regulations may make provisions around the handling of therapeutic goods. However, this Regulation makes references to and provisions about substances regulated under the Voluntary Assisted Dying Act. The Regulation also adds penalty notice offences in relation to matters covered in the Voluntary Assisted Dying Act, even though this Act does not specifically provide a power to make such penalties.

This may mean that it is unclear to a lay person what is the operative effects of the Regulation or the relevant statutory power under which it is made. This may be confusing to a lay person and makes it difficult for them to understand that the provisions of the Regulation are linked to the Voluntary Assisted Dying Act. For these reasons, the Committee refers the matter to Parliament for its consideration.

Part Three – Regulations without comment

Regulations without comment

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

1. [Aboriginal Land Rights Amendment Regulation 2023](#)

The object of this Regulation is to make miscellaneous amendments to the *Aboriginal Land Rights Regulation 2020* about Local Aboriginal Land Council membership rolls and the conduct of elections for New South Wales Aboriginal Land Council councillors.

This Regulation is made under the *Aboriginal Land Rights Act 1983*.

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

2. [Electricity Infrastructure Investment Amendment \(Performance Audits\) Regulation 2023](#)

The object of this Regulation is to provide for performance audits of entities under the *Electricity Infrastructure Investment Act 2020*, including by making provision for—

- (a) the frequency and scope of audits
- (b) the auditing standards to be applied in audits, and
- (c) reporting on the outcome of an audit.

This Regulation is made under the *Electricity Infrastructure Investment Act 2020*, section 67.

While section 74 inserted by the Regulation requires audit subjects to provide requested information considered reasonably necessary by the auditor, it does not establish an offence or impose penalties for this obligation.

3. [Environmental Planning and Assessment Amendment \(Flood Planning\) Regulation 2023](#)

The object of this Regulation is to replace references to the *Floodplain Development Manual* published by the NSW Government in April 2005 with references to the *Flood Risk Management Manual* published by the NSW Government in June 2023.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 10.7 and 10.13, the general regulation-making power.

While the Regulation may incorporate an extrinsic material in law, the Regulation updates a previously incorporated extrinsic material and there does not appear to be provisions to amend that material without further amendment to the regulations.

4. [Environmental Planning and Assessment Amendment \(Snowy Mountains Activation Precinct\) Regulation 2023](#)

The object of this Regulation is to remove the requirement for an application for a complying development certificate to be accompanied by an Activation Precinct certificate under *State*

Environmental Planning Policy (Precincts—Regional) 2021 for development in the Snowy Mountains Activation Precinct under that policy.

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

5. [Growth Centres \(Development Corporations\) Savings and Transitional Amendment Regulation 2023](#)

The object of this Regulation is to provide for:

- (a) the transfer of the assets, rights and liabilities of the Northern Rivers Reconstruction Corporation to the NSW Reconstruction Authority consequent on the dissolution of the Northern Rivers Reconstruction Corporation
- (b) other transitional arrangements relating to the dissolution of the Northern Rivers Reconstruction Corporation.

This Regulation is made under the *Growth Centres (Development Corporations) Act 1974*, including section 42, the general regulation-making.

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

6. [Liquor Amendment \(ICC Men's One Day International World Cup\) Regulation 2023](#)

The object of this Regulation is to enable certain hotels and clubs to trade during extended hours for the semi-finals and final of the ICC Men's One Day International World Cup 2023.

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

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

7. [Liquor Amendment \(Miscellaneous\) Regulation 2023](#)

The objects of this Regulation are as follows—

- (a) to increase fees payable by—
 - (i) applicants for approval to become approved training providers, and
 - (ii) approved training providers for additional approval to provide online training courses,
- (b) to omit redundant provisions,
- (c) to require the payment of fees in relation to applications for recognised competency cards,
- (d) to provide that RSA endorsements, licensee endorsements and advanced licensee endorsements may be renewed by the completion of a licensee refresher course,

- (e) to defer the expiry of certain recognised competency card endorsements until the end of 14 May 2024.

This Regulation is made under the Liquor Act 2007, including sections 114A, definition of *recognised competency card* and 159, the general regulation-making power.

The Regulation does increase fees for relevant training approvals required to conduct a business serving or supplying alcohol. However, this does not appear to warrant comment by the Committee.

8. Motor Accident Guidelines Version 9.2

The Guidelines support the administration of the CTP scheme and the objects of the *Motor Accident Injuries Act 2017* and the operation of the *Motor Accident Injuries Regulation 2017* by establishing clear processes and procedures, scheme objectives and compliance requirements. In particular, the Guidelines describe and clarify expectations that apply to respective stakeholders in the scheme. It is a condition of an Insurers licence to comply with relevant parts of the Guidelines that apply to them.

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

These Guidelines commence on 10 November 2023 and replace the Motor Accident Guidelines version 9.1, except for claims arising from motor accidents before 1 April 2023. The Guidelines largely reproduce its previous iteration, version 9.1, and the only substantive amendments are updates to the figures under Schedule 1E. The Regulation therefore does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

9. Passenger Transport (General) Amendment (Driver Authorities) Regulation 2023 (2023-574)

The object of this Regulation is to amend the *Passenger Transport (General) Regulation 2017*:

- (a) to require an applicant for an authority to drive a public passenger vehicle to pass a medical assessment before submitting the application
- (b) to clarify that a driver authority card is evidence of a person's driver authority and displays the expiry date of the driver authority
- (c) to remove the requirement to satisfy Transport for NSW (the **TfNSW**) that an applicant may lawfully work in Australia
- (d) to enable a driver authority to be granted to an applicant who:
 - (i) holds a relevant Australian driver licence
 - (ii) is at least 25 years of age
 - (iii) has held a relevant Australian driver licence or recognised overseas driver licence for a period of at least 3 years during the 4 years immediately before the date the application is made
- (e) to clarify that driver authorities may be issued, and documents may be given to persons, electronically

- (f) to require TfNSW to give a driver authority card to a person who is authorised under the *Passenger Transport Act 1990* (the **Act**) to drive a public passenger vehicle, and
- (g) to make other minor or consequential amendments.

This Regulation is made under the Act, including sections 12 and 63, the general regulation-making power.

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

10. [Protection of the Environment Operations \(Waste\) Amendment \(Mixed Waste Organic Outputs\) Regulation 2023](#)

The object of this Regulation is to amend the *Protection of the Environment Operations (Waste) Regulation 2014* to extend, to 1 September 2024, the exemption of mixed waste organic outputs from the calculation of waste contributions payable by approved scheduled waste disposal facilities under the *Protection of the Environment Operations Act 1997*. The exemption is limited to certain waste processed at facilities approved by the Environment Protection Authority.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 88(5), 286 and 323, the general regulation-making power.

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

11. [Regional Development Amendment \(Advisory Council\) Regulation 2023 \(2023-575\)](#)

The object of the Regulation is to amend the *Regional Development Regulation 2018* to provide for:

- (a) the establishment of the Regional Development Advisory Council by the Minister for Regional New South Wales
- (b) the membership and procedures of the Council.

This Regulation is made under the *Regional Development Act 2004*.

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

12. [Supreme Court Practice Note SC CL 12: Supreme Court Common Law Division – Proceedings under the Crimes \(High Risk Offenders\) Act 2006, the Terrorism \(High Risk Offenders\) Act 2017, Mental Health & Cognitive Impairment Forensic Provisions Act 2020 and Division 105A of the Criminal Code Act 1995 \(Cth\) \(n2023-2040\)](#)

This Practice Note applies to proceedings brought pursuant to the *Crimes (High Risk Offenders) Act 2006*, the *Terrorism (High Risk Offenders) Act 2017* and Division 105A of the *Criminal Code Act 1995* (Cth), and Part 6 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

This Practice Note was issued on 1 November 2023 and will commence on 3 November 2023. The Practice Note is made under section 124 of the *Supreme Court Act 1970*.

The Practice Note provides for administrative matters and therefore does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

13. [Supreme Court Practice Note SC Eq 4 in the Corporations List \(n2023-1937\)](#)

This Practice Note relates to the structure and operation of the Corporations List in the Equity Division in the Supreme Court. All proceedings and applications in the Corporations List (except those in the Corporations Registrar's List) will be case managed by the Corporations List Judge with the aim of achieving a speedy resolution of the real issues in the proceedings.

This Practice Note was issued on 13 October 2023 and commenced on 18 October 2023. It replaces former Practice Note SC Eq 4 issued on 19 May 2023.

The section of schemes of arrangement under this Practice Note implements the *Practice Note – Harmonisation in Schemes of Arrangement* as developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand and adopted by the Supreme Court of New South Wales. This Practice Note is issued in order to address recent differences in scheme practice and recognises that consistency in Australian Courts' approach is beneficial to all parties involved in schemes of arrangement.

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



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 – Unconfirmed extracts of minutes

Meeting no. 10

TIME & DATE: 3.02PM, 5 FEBRUARY 2024

LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

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

APOLOGIES

Nil.

OFFICERS PRESENT

Sam Griffith, Anna Tran, Mengyuan Chen, Kate McCorquodale, Alex Read, Alice Zwar and Nicolle Gill.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 4 December 2023 be confirmed.

2. Correspondence

...

3. Consideration of Bills with comment for Legislation Review Digest 9/58

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

- a. Ageing and Disability Commissioner Amendment Bill 2023
- b. Constitution Amendment (Rights and Freedoms) Bill 2023; Constitution Amendment (Rights and Freedoms–Referendum) Bill 2023
- c. Institutions Legislation Amendment Bill 2023
- d. Pill Testing Trial Bill 2023

4. Consideration of Bills without comment for Legislation Review Digest 9/58

Resolved, on the motion of Mr Hagarty: That the Committee adopts the draft bill reports *in globo*:

- a. Constitution Amendment (Executive Council) Bill 2023
- b. Constitution Amendment (Water NSW and Local Water Utilities) Bill 2023
- c. Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023

- d. Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

5. Consideration of Regulations for Legislation Review Digest 9/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the draft regulation reports *in globo*:

- a. Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation (No 2) 2023
- b. Poisons and Therapeutic Goods Amendment (Voluntary Assisted Dying Substances) Regulation 2023

6. Regulations without comment for Legislation Review Digest 9/58

Resolved, on the motion of Ms Munro: That the Committee adopts the regulations without comment as Part 3 to Digest 9/58.

7. Legislation Review Digest 5/58

Resolved, on the motion of Ms Munro:

- That appropriate minute extracts of this meeting be published as Appendix Two to the Digest.
- That the Committee adopts the Legislation Review Digest 9/58 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.

Committee discussed outstanding regulatory impact statement for the *Childcare and Economic Opportunity Fund Regulation 2023* and the requirements under section 5 of the *Subordinate Legislation Act 1989*.

Resolved, on the motion of Ms Munro: That the Chair write to the Minister for Education and Early Learning regarding the legislative requirement to provide the Committee with a regulatory impact statement for the *Childcare and Economic Opportunity Fund Regulation 2023*.

9. General business

...

10. Next Meeting

The meeting adjourned at 3.09pm until 11 March 2024 at 3.00pm.