

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



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

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Membership

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Guide to the Digest

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

Part One: Functions Regarding Bills

The Committee's purpose is to assist all members of Parliament to be aware of, and make considered decisions on, the rights implications of legislation. The Committee does not make specific recommendations on Bills and does not generally comment on government policy.

The Committee's functions with respect to Bills as established under section 8A of the Act are as follows:

- (a) to consider any Bill introduced into Parliament, and
- (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses 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 with Comments

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. Bail and Other Legislation Amendment (Domestic Violence) Bill 2024

Issue identified	Conclusion of Committee
Right to the presumption of innocence – reversal of the onus of proof	Referred
Right to liberty and freedom from arbitrary detention – automatic stay of release	Referred
Freedom of movement and privacy – requirement to impose electronic monitoring bail condition and limits on judicial discretion	Referred
Retrospectivity	Referred
Matters deferred to the regulations	Referred
Removal of Attorney General consent to institute certain proceedings	No further comment

2. Companion Animals Amendment (Puppy Farms) Bill 2024*

Issue identified	Conclusion of Committee
Wide powers of enforcement – property rights, right to presumption of innocence, right to personal integrity	Referred
Absolute liability offences	Referred
Privacy rights – business information register	Referred
Incorporation of extrinsic code into law – business code of practice	No further comment

3. Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2024*

No issues identified

4. Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024

Issue identified	Conclusion of Committee
Expansion of police powers impeding on personal rights and liberties	Referred
Declarations of designated areas not subject to parliamentary scrutiny	No further comment
Custodial penalty for strict liability offences	Referred

5. Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024*

Issue identified	Conclusion of Committee
Limitation of judicial discretion, procedural fairness and inconsistent operation with existing laws – stay of proceedings	Referred
Retrospectivity – settlement agreements that can be set aside	Referred
Retrospectivity – limitation period for appeals of stay decisions	Referred

6. Museums of History NSW Amendment (Chief Executive Officer) Bill 2024

No issues identified

7. National Parks and Heritage Legislation Amendment Bill 2024

No issues identified

8. Residential (Land Lease) Communities Amendment Bill 2024

Issue identified	Conclusion of Committee
Freedom of contract and property rights	No further comment
Absolute liability offences	No further comment
Retrospectivity and commencement by proclamation	No further comment

Summary of Conclusions

PART ONE – BILLS

1. Bail and Other Legislation Amendment (Domestic Violence) Bill 2024

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

Right to the presumption of innocence – reversal of the onus of proof

The Bill seeks to insert subsections 16B(1)(c1) and 16B(1)(c2) into the *Bail Act 2013*, which would expand the show cause bail test to persons charged with a 'serious domestic violence offence'. The amendments would place the onus on an accused person in bail proceedings to show why their detention is not justified.

The amendments extend the circumstances where an accused person can be denied bail and creates a presumption that bail will be refused. As bail decisions relate to individuals charged but not yet convicted of an offence, the Bill may therefore reverse the onus of proof in criminal proceedings. This may undermine an individual's right to the presumption of innocence under Article 14 of the ICCPR. The presumption of innocence protects an accused person's right to be presumed innocent until proven guilty according to the standards of criminal law.

The Committee acknowledges that the proposed amendments are intended to protect survivors of domestic and family violence from accused persons who are released on bail for these alleged offences. However, the Committee notes that the 'show cause' requirement creates a high threshold for an accused person to satisfy when applying for bail and inherently infringes on the accused person's right to the presumption of innocence. The Committee therefore refers this matter to Parliament for its consideration.

Right to liberty and freedom from arbitrary detention – automatic stay of release

The Bill seeks to widen the scope of offences to which a bail granted decision may be stayed to include a 'serious domestic violence offence' by amending the definition of 'serious offence' in section 40(5) of the Act. Under section 40 of the Act, if a person charged with a serious offence is granted bail, the decision may be stayed for three business days upon an application by the NSW Police or the Crown's representative informing the court that a detention application will be made to the Supreme Court.

An automatic stay would require an accused person charged with a serious domestic violence offence, having satisfied a bail authority to the higher 'show cause' standard and unacceptable risk test, to remain in custody until either the Supreme Court affirms the decision to release, the Crown revokes their detention application, or three business days have passed. The Committee notes the stay of release relates to bail decisions where accused persons have not yet been convicted of an offence and enjoy the right to the presumption of innocence. Therefore, the Bill may impact on the accused's right to liberty and freedom from arbitrary detention contained in Article 9 of the ICCPR, which provides that holding accused persons in remand should not be the general rule.

The Committee recognises that the amendment to the definition of a serious offence under section 40(5) was introduced to mitigate immediate risks for complainants in domestic violence contexts by providing an avenue for review of an original bail decision to a superior court while the accused person remains in custody. However, the Committee notes the accused must satisfy a stringent

'show cause' bail test, which is intended to protect public safety. The Committee also notes the accused does not appear to have a right of reply on the stay of release decision, which is dependent only on written notice being given from the Crown. For these reasons, the Committee refers the matter to Parliament for consideration.

Freedom of movement and privacy – requirement to impose electronic monitoring bail condition and limits on judicial discretion

The Bill seeks to insert section 28B into the *Bail Act 2013*, which creates a statutory requirement for electronic monitoring as a bail condition when an accused person charged with a 'serious domestic violence offence' is granted bail. Proposed section 28B would apply once an accused person has satisfied the show cause test and has been granted bail. This means that the likely outcome of a bail application for a person charged with a serious domestic violence offence will mean that they are remanded in custody or subject to electronic monitoring.

The requirement for electronic monitoring to be imposed on accused persons may limit the judicial discretion of these matters. The Committee notes that the presumption of a bail condition for accused persons may restrict the judicial discretion of the bail authority through an Act of Parliament. The Committee acknowledges that the court retains a discretion to determine whether 'sufficient reasons exist' along with an interests of justice test to assess whether the presumption can be rebutted. In these circumstances, the Committee makes no further comment in respect to the limitations on judicial discretion under proposed section 28B.

The Committee notes that a requirement for electronic monitoring would subject accused persons, who have yet to have their matters heard or determined, to continuing monitoring and surveillance. The likely imposition of this condition may adversely impact on the accused person's right to privacy and freedom of movement.

The Committee acknowledges that these provisions were introduced as a 'final safeguard' to monitor and deter persons charged with serious domestic violence offences from committing retributive violence. However, in the context of the proposed expansion of the show cause test to serious domestic violence offences, the proposed electronic monitoring requirements may unduly trespass on personal rights and liberties. For these reasons, the Committee refers this matter to Parliament for its consideration.

Retrospectivity

The Bill seeks to insert Part 5 into Schedule 3 into the *Bail Act 2013*, a transitional provision which would extend bail determinations and hearings for serious domestic violence offences to offences, allegations or charges that occur before the amendments would commence as an Act. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee acknowledges that the provisions are intended to capture the serious domestic violence offenders and to minimise immediate risk to some complainants. The Committee also notes that the amendments do not impose criminal liability for acts that were not criminal offences at the time they were committed. However, the retrospectivity applies to criminal proceedings in the form of a bail hearing, where a deprivation of liberty may flow, and also relate to charges and allegations not yet proven. For these reasons, the Committee refers the matter to Parliament for consideration.

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

Matters deferred to the regulations

The Bill seeks to defer significant matters regarding bail conditions and pre-release requirements to the regulations. In particular, it would allow the regulations to provide for matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed as a bail condition or pre-release requirement.

The Committee generally prefers substantive matters to be dealt with in the principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight.

The Committee acknowledges that deferring these matters to the regulations would support the implementation of the proposed electronic monitoring provisions while allowing flexibility to respond to changing needs and circumstances. The Committee also recognises that regulations are required to be tabled in Parliament and are therefore subject to disallowance under s 41 of the *Interpretation Act 1987*.

However, the Committee notes that the proposed regulation-making powers cover a broad range of matters with respect to electronic monitoring that would limit the accused person's freedom and privacy. The Committee further notes that an electronic monitoring bail condition must be imposed (unless there are 'sufficient reasons' not to) where an accused person is charged with a serious domestic violence offence and is granted bail. This means that an accused person who is granted bail for a serious domestic violence offence is likely to be significantly impacted by matters that have not been considered by Parliament. For these reasons, the Committee refers the matter for consideration.

Removal of Attorney General consent to institute certain proceedings

The Bill seeks to amend section 56 of the *Surveillance Devices Act 2007* by inserting subsection 56(1A) to remove the requirement for written consent of the Attorney General to institute proceedings for offences against section 9 of the *Surveillance Act*, where the offence is charged as a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

The Committee notes that the consent for the Attorney General to be established before the institution of certain proceedings is common in New South Wales. The delegation of this power to the Director of Public Prosecutions generally is a removal of a strict consideration by the Attorney General. The Committee acknowledges that the removal of the written consent requirement reflects an administrative burden away from the consent of the Attorney General to facilitate the focus on dealing with domestic violence offences in an all-encompassing and stringent way. In these circumstances, the Committee makes no further comment.

2. Companion Animals Amendment (Puppy Farms) Bill 2024*

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

Wide powers of enforcement – property rights, right to presumption of innocence, right to personal integrity

The Bill proposes to insert Division 3 into Part 7A of the *Companion Animals Act 1998* which would grant authorised officers wide enforcement powers relating to the regulation of companion animal businesses under proposed Part 6A. This would include powers to enter a property, including

residential premises, examine and record things, seize animals and other things including things which afford evidence that an offence was committed, comply with a notice issued for suspected contravention at the pain of criminal penalty, and use reasonable force in the exercise of these powers.

The Bill may therefore grant authorised officers wide powers of enforcement. The exercise of these powers may impact an individual's rights, including their property rights with respect to the entry and seizure powers, their right to the presumption of innocence with respect to the issue of compliance notices on grounds of reasonable suspicion, and their right to personal integrity with respect to the use of reasonable force.

The Committee acknowledges that these enforcement powers may be intended to strengthen compliance with the regulatory framework to prevent unethical animal breeding practices. The Committee also recognises that the powers of entry would not be able to be used without giving the occupiers of a property reasonable notice.

However, the Committee notes that some proposed exceptions to this notice requirement are dependent on the discretion of the enforcement officer. The Committee further notes that the Minister and Department Secretary or Deputy Secretary would have a broad power to authorise 'officers' to exercise these enforcement powers. As there is no definition of who is an eligible 'officer', it may permit an undefined class of people to be authorised to exercise significant enforcement powers. For these reasons, the Committee refers the matter to Parliament for consideration.

Absolute liability offences

The Bill seeks to amend the *Companion Animals Act 1998* to create a number of absolute liability offences relating to the regulation of companion animal businesses. These offences relate to non-compliance by the proprietor of a companion animal business or a recreational breeder with the regulatory framework under Part 6A proposed to be inserted into the Act by the Bill, such as having more than 10 breeding female dogs or cats at a time. These absolute liability offences carry maximum penalties which range from \$5 500 and/or six months imprisonment to \$110 000 and/or two years imprisonment for an individual, or from \$27 500 to \$550 000 otherwise. 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 acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. In this case, compliance with the regulatory regime proposed by the Bill is intended to prevent commercial breeding practices which may pose a risk to animal welfare and the health of litters resulting from commercial breeding. However, the Committee notes that these absolute liability offences carry maximum custodial penalties for individuals. This may mean an individual may be sentenced to a considerable imprisonment term in circumstances where the prosecution is only required to establish that the person committed the relevant conduct. For these reasons, the Committee refers the matter to the Parliament for consideration.

Privacy rights – business information register

The Bill seeks to insert Part 6A into the *Companion Animals Act 1998*, which would require the Departmental Chief Executive to maintain a business information register containing information relevant to the registration of companion animal businesses provided by local councils under proposed Division 5. Proposed section 61ZF would allow any person to inspect or obtain the name and email address of the proprietor of the companion animal business, microbreeder, animal rescue or recreational breeder from that register. Therefore, the Bill may impact an individual's

privacy rights by permitting members of the public to access their personal information on the grounds that they conduct a companion animal business or breed companion animals.

The Committee acknowledges that these proposed amendments may be intended to facilitate transparency and accountability in the regulation of the companion animal industry. However, the Committee notes that there do not appear to be provisions limiting what purposes this information may be obtained for, or how this information may be further disclosed or used. The Committee also notes that there does not appear to be an avenue for a relevant proprietor or breeder to object to the provision of their name and email address. For these reasons, the Committee refers the matter to Parliament for consideration.

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

Incorporation of extrinsic code into law – business code of practice

The Bill proposes to insert Part 6A into the *Companion Animals Act 1998* to regulate companion animal businesses, particularly the breeding of companion animals. Proposed section 61J provides for the Departmental Chief Executive to make a 'business code of practice' which must be published in the Government Gazette and updated within two years after the enactment of the Bill as an Act. Non-compliance with these business codes of practice (where applicable) is a discretionary ground for a local council to both refuse to register a premises for conducting a companion animal business, and suspend or revoke an existing registration. It would be an absolute liability offence under proposed Part 6A to conduct a companion animal business on premises that aren't registered. This offence would carry a maximum penalty of \$110 000 (1 000 penalty units) and/or two years imprisonment for an individual, or otherwise \$55 000 (5 00 penalty units).

The Committee notes that it is unclear whether the business codes of practice made by the Departmental Chief Executive and published in the Gazette would be required to be tabled in Parliament. Therefore the Bill may incorporate extrinsic business codes of practice into legislation. The Committee generally comments on any legislative provisions that permit the incorporation of external materials like codes and give those materials legal force. It also prefers substantive matters to be set out in legislation or to be tabled in Parliament as regulations where they can be subject to disallowance, and therefore subject to appropriate parliamentary scrutiny.

However, the Committee notes that prescribing such information in business codes of practice may enable greater flexibility and responsiveness to changing animal welfare and business practices. The Committee also acknowledges that local councils have the discretion to choose whether to refuse an application or suspend/revoke a registration on the grounds of non-compliance with these codes. In the circumstances, the Committee makes no further comment.

3. Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2024*

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

4. Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024

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

Expansion of police powers impeding on personal rights and liberties

The Bill proposes to insert Division 3 into the *Law Enforcement (Powers and Responsibilities) Act 2002*, which would allow police officers without a warrant to stop and scan people with a hand-held metal scanner in public spaces that have been declared designated areas. Section 45L would also allow for searches on public transport in certain circumstances. Subsection 45O(4) would further enable police to detain people for as long as reasonably necessary to exercise their search powers. The Committee notes that failing to comply with an officer's request is an offence under section 45N that attracts a maximum penalty of 50 penalty units (a \$5,500 fine).

The Committee notes that the proposed expansion of a police officer's power to stop and scan people in public spaces, and on public transport dense with law abiding people, may interfere with their fundamental rights to freedom of movement and personal physical integrity.

The Committee acknowledges that the proposed powers are intended to increase community safety and deter people from carrying knives and other weapons in public spaces.

However, the Committee notes that the proposed power to detain people for 'as long as is reasonably necessary to exercise the power' is not further defined, and may result in people being arbitrarily detained for not complying with a police officer's request. For these reasons, the Committee refers the matter to Parliament for further consideration.

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

Declarations of designated areas not subject to parliamentary scrutiny

The Bill proposes to insert Division 2 into the *Law Enforcement (Powers and Responsibilities) Act 2002*, which would empower senior police officers to declare certain public spaces as 'designated areas'. Under the proposed Division 3, a person in a designated area must comply with a police officer's request to stop and submit to the use of a hand-held metal scanner.

Although a designated area can only be declared for up to 12 hours, section 45J would allow multiple declarations to be made in relation to the same place. The Committee also notes that declarations are only required to be published on the NSW Police Force website, and are not required to be tabled in Parliament. This would effectively give senior police officers a broad power to declare designated areas for an indefinite period without being subject to parliamentary scrutiny or review.

The Committee notes that the immediate effect of a declaration may result in people not knowing if they are in a designated area. A person may therefore not understand whether they can lawfully refuse an officer's request and avoid criminal penalty.

However, the Committee acknowledges that senior police officers must be satisfied of the legislated requirements under section 45G before a place can be declared a designated area. The Committee also acknowledges that the delegation of powers to senior police officers to make declarations may increase administrative efficiency and allow declarations to be made quickly in reaction to violent public events. For these reasons, the Committee makes no further comment.

Custodial penalty for strict liability offences

The Bill seeks to increase the current penalty and insert a custodial penalty for the strict liability offence of selling a knife to a child under the age of 16 under section 11F of the *Summary Offences Act 1988*. The offence would carry a maximum penalty of a 100 penalty units (an \$11,000 fine) and/or 12 months imprisonment.

The Bill also proposes to create a new strict liability offence for selling a knife to a child who is 16 or 17 years old without a reasonable excuse. The associated maximum penalty is 50 penalty units (a \$5,500 fine).

The Committee generally comments on strict 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 acknowledges that the proposed offences are intended to deter the sale of knives to young people in order to protect public safety and reduce instances of young people committing crime with knives.

However, the Committee notes that it may be difficult for a lay person to understand what they must establish as a defence under section 11F(2). This is of particular concern as the offence under section 11F may attract a custodial penalty. Allowing for custodial sentences where the prosecution is not required to prove criminal intent may impact on procedural fairness for the accused. For these reasons, the Committee refers the issue to Parliament for consideration.

5. Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024*

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

Limitation of judicial discretion, procedural fairness and inconsistent operation with existing laws – stay of proceedings

The Bill seeks to insert subsections (1A) and (5A) into section 6A of the *Limitation Act 1969*. Proposed subsection (5A) would require a court to consider the list of factors set out when making decisions about whether to stay proceedings for damages related to child abuse. These factors would require the court to consider a stay of proceedings as a remedy of last resort only to be granted in exceptional circumstances. Another factor that the court would have to consider under subsection (5A)(c) is that the passage of time, loss of evidence, death or incapacity of the alleged perpetrator, or inability for the defendant to question the alleged perpetrator are not exceptional circumstances which would justify a stay of proceedings against an institutional defendant.

Therefore, the Bill may effectively limit the court's judicial discretion to determine whether proceedings should be stayed through an Act of Parliament. Given the inherent jurisdiction of courts to grant stays where proceedings would not be fair or would amount to an abuse of process, the proposed amendments may result in legislative interference with the court's right to protect its processes in accordance with the interests of justice.

The list of factors under proposed subsection 6A(5A) would also include the acknowledgments inserted by proposed subsection (1A). Proposed subsection (1A) would include an acknowledgment that loss of evidence due to time passing is a 'common feature' of these claims and that potential prejudice and injustice to alleged perpetrators due to the passing of time does not outweigh the potential injustice to possible child abuse victims and any undermining of public confidence that may result. Although it is unclear how these statutory acknowledgments may impact judicial decision-making, the Committee notes that these acknowledgments appear to favour plaintiffs in claims for damages relating to child abuse. By requiring courts to consider

these acknowledgments when determining stay applications, the Bill may also impact a defendant's right to procedural fairness.

Additionally, section 6A of the Limitation Act explicitly provides that this section does not limit the powers or inherent jurisdiction of a court, including the power to permanently stay proceedings. Therefore, the proposed subsections may be inconsistent with subsection 6A(6). The Committee generally comments where provisions may operate in a manner inconsistent with other laws, as this may make it harder for individuals to understand how the law applies to them, particularly in cases where it impacts individual rights and liberties.

The Committee acknowledges these proposed amendments are intended to protect the ability of victims of child abuse to seek justice through court proceedings by facilitating the ability for their claims to be heard and determined by a court. However, the Committee notes that subsection 6A(5A), as proposed by the Bill, appears to apply to all stay applications, not just applications for permanent stays, which may significantly broaden the application of this section. Given the potential impacts on judicial discretion and procedural fairness rights, the Committee refers the matter to Parliament for consideration.

Retrospectivity – settlement agreements that can be set aside

The Bill seeks to insert subsections 7C(1)(d), (1)(e) and (3) into the *Civil Liability Act 2002* which would allow a person to apply to the court to set aside settlement agreements made before the Bill commences as an Act. This would apply where those agreements are reached because of representations, pleadings or applications made for proceedings to be permanently stayed, or to agreements which are 'not just and reasonable in the circumstances'.

The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The application of these proposed amendments to agreements reached before the provisions commence might also impact an individual's rights, including procedural fairness rights and the right to freedom of contract.

The Committee acknowledges that the Bill is intended to facilitate the rights of victims of child abuse to seek justice. However, the proposed amendments widely define what amounts to a 'representation' and may therefore apply too broadly to agreements not involving explicit representations for an application for a stay of proceedings. The Committee notes that capturing agreements which are 'not just and reasonable in the circumstances' may also provide a broad discretion to a court to set aside settlement agreements. This may permit courts to set aside the majority of agreements made between parties in the context of claims for damages for child abuse. For these reasons, the Committee refers the matter to Parliament for consideration.

Retrospectivity – limitation period for appeals of stay decisions

The Bill seeks to insert subsection (5B) into section 6A of the *Limitation Act 1969*, which would remove the 28 day limitation period for appealing a decision to stay child abuse proceedings made 'on or after 17 March 2016'. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee acknowledges that the amendments proposed by the Bill may be intended to facilitate the ability of victims of child abuse to seek justice by bringing claims for damages. However, the Committee notes that the broad wording of proposed subsection (5B) could capture a wide category of any civil proceedings relating an allegation of child abuse, and not just proceedings for damages relating to child abuse. It also appears to apply to all stay decisions and

not just permanent stays. The Committee notes that temporary stays are not uncommon in civil proceedings. For these reasons, the Committee refers the matter to Parliament for consideration.

6. Museums of History NSW Amendment (Chief Executive Officer) Bill 2024

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

7. National Parks and Heritage Legislation Amendment Bill 2024

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

8. Residential (Land Lease) Communities Amendment Bill 2024

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

Freedom of contract and property rights

The Bill seeks to amend the *Residential (Land Lease) Communities Act 2013* to limit an operator of a residential land lease community to using a single element to calculate a site fee increase under a fixed method. These elements may include Consumer Price Index rates or a variation in the aged care pension. It also proposes to limit the number of fixed method site fee increases in a 12-month period. This would place restrictions and limits on the rights and obligations of operators who are contracting parties to site agreements. Therefore, the Bill may impact an operator's contract and property rights by limiting the ways in which they may negotiate and set site fees for their property.

The Committee notes that freedom of contract and property rights of an operator are fundamental legal rights, noting that section 4 of the Act defines an operator to include individual persons. However, the Committee recognises that the Bill would provide residents in residential land lease communities with protections by offering more clarity and certainty about how and when site fees may be increased by operators. It also acknowledges that the proposed amendments may be intended to help residents with cost-of-living pressures. In the circumstances, the Committee makes no further comment.

Absolute liability offences

The Bill would amend the regulatory framework surrounding utility and electricity charging in residential land lease communities with an embedded network. The Bill would establish a number of absolute liability offences for non-compliance with requirements for utility and electricity charges and billing. These offences carry maximum penalties ranging from \$1 100 (10 penalty units) to \$2 200 (20 penalty units). 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.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks as a means of encouraging compliance. In this case, compliance with the regulatory regime is intended to ensure that the pricing of electricity is transparent and residents are protected from excessive prices. The Committee also notes that the offences only carry a monetary penalty and not a custodial penalty. In the circumstances, the Committee makes no further comment.

Retrospectivity and commencement by proclamation

The Bill seeks to insert Part 3 into the *Residential (Land Lease) Communities Act 2013* to ensure all existing site agreements would use only a single element to calculate a site fee increase by the 'transition day' if the agreements adopt a fixed method for the calculation. 'Transition day' under proposed section 21 is defined as the day that is 3 years after the commencement day of the Bill (if enacted). Under clause 2 of the Bill, the commencement day would be 'on a day or days to be appointed by proclamation'.

The Bill also seeks to amend sections 65 and 66 to place restrictions on how a site fee can be increased if the operator chooses to use a fixed method in the calculation of the increase. Proposed section 22 provides that the previous sections 65 and 66 would continue to apply under the existing site agreements until the 'transition day' or an earlier day if the parties enter into a variation agreement or a compliant site agreement. Failure to enter into a variation agreement or a compliant site agreement by the transition day might result in site fees being increased by notice instead of by a fixed method.

The Committee notes that the Bill seeks to apply the proposed amendments to site agreements entered into before the amendments would commence. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The Committee further notes that the Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee notes that the Bill would set a period of 3 years as a transitional period and the retrospective application may be intended to ensure clarity and consistency in relation to site agreements. The Committee also recognises that the Bill may be intended to provide lower-cost and affordable homes for vulnerable people and that commencement by proclamation may enable greater flexibility to facilitate policy reform of the regulatory framework for residential land lease communities. In the circumstances, the Committee makes no further comment.



Part One – Bills

1. Bail and Other Legislation Amendment (Domestic Violence) Bill 2024

Date introduced	15 May 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 1.1 The objects of this Bill are to:
- (a) amend the *Bail Act 2013* (the **Act**) to:
 - (i) make certain domestic violence offences show cause offences, and
 - (ii) require a bail authority to consider additional matters when assessing bail concerns, and
 - (iii) require or permit electronic monitoring of the accused person when granting bail or imposing pre-release requirements, and
 - (iv) provide for bail conditions and pre-release requirements in relation to electronic monitoring for certain domestic violence offences, and
 - (v) provide for bail decisions to be stayed for certain domestic violence and sexual assault offences in certain circumstances, and
 - (b) amend the *Surveillance Devices Act 2007* (the **Surveillance Act**) to remove the requirement for an offence of install, use or maintain a tracking device to determine the geographical location of a person to be instituted with the written consent of the Attorney General where the offence is charged as a domestic violence offence.

Background

- 1.2 The Bill has been introduced as a response to recent domestic violence incidents in NSW. In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained that the Bill introduces several new requirements to 'strengthen the legislative framework governing bail for domestic violence offenders'.
- 1.3 The Act sets out the legislative framework for people charged with criminal offences to apply for release on bail, pending a verdict on those charges. The show cause requirement under section 16A requires a bail authority to refuse bail for certain serious offences unless the accused person shows why their detention is not justified.

- 1.4 The Bill seeks to expand the offences to which the 'show cause' requirement applies by establishing two new categories (the 'serious domestic violence offence' and the new coercive control offence) as show cause offences under subsection 16B(1)(c1) of the Act.
- 1.5 The Bill also proposes to amend section 18(1) of the Act to require explicit consideration of key factors related to domestic violence offending.
- 1.6 Where bail has been granted for a serious domestic violence offence, the proposed section 28B would require an electronic monitoring bail condition to be imposed.
- 1.7 Further, the proposed amendment to section 40(5) would allow bail decisions to be stayed if detention is sought for a serious domestic violence offence.

Issues considered by the Committee

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

Right to the presumption of innocence – reversal of the onus of proof

- 1.8 The Bill proposes to insert subsections 16B(1)(c1) and 16B(1)(c2) into the Act, which would expand the show cause test to 'serious domestic violence offences'.
- 1.9 Under Part 3 of the Act, an accused person charged with a 'serious domestic violence offence' would be required to undergo a three-step test before they can be granted release on bail:
- (a) First, the accused person must show cause as to why their detention is not justified to the bail authority (otherwise they must be refused bail) under Division 1A.
 - (b) Under Division 2A, the accused person must be assessed by the bail authority for any 'bail concerns' (which includes concerns that, if released on bail, they will commit a serious offence or endanger the safety of victims or others) and must refuse bail if they are satisfied on that assessment that there is an unacceptable risk.
 - (c) Finally, under Division 2A, the bail authority must either grant bail, release the person without bail, or dispense with bail if there are no unacceptable risks.
- 1.10 The Attorney General explained in his second reading speech that these provisions seek to 'keep victims and survivors safer' by requiring that people charged with these offences are refused bail 'unless they can meet the high threshold of showing that their detention is not justified'.

The Bill seeks to insert subsections 16B(1)(c1) and 16B(1)(c2) into the *Bail Act 2013*, which would expand the show cause bail test to persons charged with a 'serious domestic violence offence'. The amendments would place the onus on an accused person in bail proceedings to show why their detention is not justified.

The amendments extend the circumstances where an accused person can be denied bail and creates a presumption that bail will be refused. As

bail decisions relate to individuals charged but not yet convicted of an offence, the Bill may therefore reverse the onus of proof in criminal proceedings. This may undermine an individual's right to the presumption of innocence under Article 14 of the ICCPR.¹ The presumption of innocence protects an accused person's right to be presumed innocent until proven guilty according to the standards of criminal law.

The Committee acknowledges that the proposed amendments are intended to protect survivors of domestic and family violence from accused persons who are released on bail for these alleged offences. However, the Committee notes that the 'show cause' requirement creates a high threshold for an accused person to satisfy when applying for bail and inherently infringes on the accused person's right to the presumption of innocence. The Committee therefore refers this matter to Parliament for its consideration.

Right to liberty and freedom from arbitrary detention – automatic stay of release

- 1.11 The Bill proposes to amend the definition of a 'serious offence' at section 40(5) of the Act to include domestic violence offences, coercive control offences under section 54D of the *Crimes Act 1900* (the **Crimes Act**) and various sexual assault offences under Part 3, Division 10, Subdivision 2 of the Crimes Act. This would allow a court or authorised justice to stay the decision of granting bail or dispensing with bail for serious domestic violence offences for up to 3 days pending a further application to the Supreme Court.
- 1.12 Section 40(1) of the Act provides that a stay would operate if a bail decision for the offence has not been previously made and upon a police officer, or Australian legal practitioner, appearing on behalf of the Crown immediately informing the court that a detention application will be made to the Supreme Court, and an authorised officer from the Director of Public Prosecutions has provided written approval of that application.
- 1.13 Section 40(2) provides that the stay would have effect until one of the following occurs first:
- (a) the Supreme Court affirms or varies the decision, substitutes another bail decision, or refuses to hear the detention application
 - (b) a police officer or a person acting on behalf of the crown files with the Supreme Court, or such other court as may be prescribed by the regulations, notice that the Crown does not intend to proceed with the detention application
 - (c) it reaches 4pm, three business days after the day on which the decision to grant bail was made
- 1.14 In his second reading speech, the Attorney General explained that the expansion of these provisions to include serious domestic violence offences and other serious

¹ United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966.

offences aims to mitigate immediate risks for the community and victims. Specifically, by providing an avenue for a detention application to be heard by the Supreme Court while the accused person remains in custody'.

The Bill seeks to widen the scope of offences to which a bail granted decision may be stayed to include a 'serious domestic violence offence' by amending the definition of 'serious offence' in section 40(5) of the Act. Under section 40 of the Act, if a person charged with a serious offence is granted bail, the decision may be stayed for three business days upon an application by the NSW Police or the Crown's representative informing the court that a detention application will be made to the Supreme Court.

An automatic stay would require an accused person charged with a serious domestic violence offence, having satisfied a bail authority to the higher 'show cause' standard and unacceptable risk test, to remain in custody until either the Supreme Court affirms the decision to release, the Crown revokes their detention application, or three business days have passed. The Committee notes the stay of release relates to bail decisions where accused persons have not yet been convicted of an offence and enjoy the right to the presumption of innocence. Therefore, the Bill may impact on the accused's right to liberty and freedom from arbitrary detention contained in Article 9 of the ICCPR,² which provides that holding accused persons in remand should not be the general rule.

The Committee recognises that the amendment to the definition of a serious offence under section 40(5) was introduced to mitigate immediate risks for complainants in domestic violence contexts by providing an avenue for review of an original bail decision to a superior court while the accused person remains in custody. However, the Committee notes the accused must satisfy a stringent 'show cause' bail test, which is intended to protect public safety. The Committee also notes the accused does not appear to have a right of reply on the stay of release decision, which is dependent only on written notice being given from the Crown. For these reasons, the Committee refers the matter to Parliament for consideration.

Freedom of movement and privacy – requirement to impose electronic monitoring bail condition and limits on judicial discretion

- 1.15 The Bill seeks to insert section 28B which would require a bail authority to impose electronic monitoring as a condition of bail for an accused person who is charged with a serious domestic violence offence under subsection 16B(1)(c1) and is granted bail.
- 1.16 Proposed section 28B(1)(2) creates an exception to the presumption of electronic monitoring, if the bail authority is 'satisfied sufficient reasons exist, in the interests of justice, to justify not imposing the condition'.

² United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#).

- 1.17 In his second reading speech, the Attorney General, explained that these provisions are a 'further and final safeguard aimed at improving victim-survivor safety and reducing the risk of further offending'

The Bill seeks to insert section 28B into the *Bail Act 2013*, which creates a statutory requirement for electronic monitoring as a bail condition when an accused person charged with a 'serious domestic violence offence' is granted bail. Proposed section 28B would apply once an accused person has satisfied the show cause test and has been granted bail. This means that the likely outcome of a bail application for a person charged with a serious domestic violence offence will mean that they are remanded in custody or subject to electronic monitoring.

The requirement for electronic monitoring to be imposed on accused persons may limit the judicial discretion of these matters. The Committee notes that the presumption of a bail condition for accused persons may restrict the judicial discretion of the bail authority through an Act of Parliament. The Committee acknowledges that the court retains a discretion to determine whether 'sufficient reasons exist' along with an interests of justice test to assess whether the presumption can be rebutted. In these circumstances, the Committee makes no further comment in respect to the limitations on judicial discretion under proposed section 28B.

The Committee notes that a requirement for electronic monitoring would subject accused persons, who have yet to have their matters heard or determined, to continuing monitoring and surveillance. The likely imposition of this condition may adversely impact on the accused person's right to privacy and freedom of movement.

The Committee acknowledges that these provisions were introduced as a 'final safeguard' to monitor and deter persons charged with serious domestic violence offences from committing retributive violence. However, in the context of the proposed expansion of the show cause test to serious domestic violence offences, the proposed electronic monitoring requirements may unduly trespass on personal rights and liberties. For these reasons, the committee refers this matter to Parliament for its consideration.

Retrospectivity

- 1.18 As set out above, the Bill proposes amendments to the Act that would expand considerations and requirements for bail authorities when making a bail decision for persons charged with certain domestic violence offences. This will make the threshold for bail for these affected persons harder to reach.
- 1.19 The Bill seeks to insert a transitional provision into schedule 3 of the Act, to provide that the Bill's provisions would 'extend to offences committed or alleged to have been committed, or charged, before the commencement of the amendment'.

The Bill seeks to insert Part 5 into Schedule 3 into the *Bail Act 2013*, a transitional provision which would extend bail determinations and hearings for serious domestic violence offences to offences, allegations or charges that occur before the amendments would commence as an Act. The Committee generally comments on provisions that are drafted

to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee acknowledges that the provisions are intended to capture the serious domestic violence offenders and to minimise immediate risk to some complainants. The Committee also notes that the amendments do not impose criminal liability for acts that were not criminal offences at the time they were committed. However, the retrospectivity applies to criminal proceedings in the form of a bail hearing, where a deprivation of liberty may flow, and also relate to charges and allegations not yet proven. For these reasons, the Committee refers the matter to Parliament for consideration.

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

Matters deferred to the regulations

- 1.20 The Bill seeks to insert subsection 28B(4), which would allow the regulations to 'provide for matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a bail condition under this section'.
- 1.21 As noted above, under the proposed section 28B, a bail authority would be required to impose electronic monitoring as a bail condition for an accused person who is charged with a serious domestic violence offence and is granted bail. An exception would only be available if the bail authority is 'satisfied sufficient reasons exist, in the interests of justice, to justify not imposing the condition'.
- 1.22 The proposed subsection 29(5A) would also allow the regulations to 'provide for matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a pre-release requirement under this section'. Under subsection 29(1), a bail authority may, but would not be required to, impose electronic monitoring as a pre-release requirement.

The Bill seeks to defer significant matters regarding bail conditions and pre-release requirements to the regulations. In particular, it would allow the regulations to provide for matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed as a bail condition or pre-release requirement.

The Committee generally prefers substantive matters to be dealt with in the principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight.

The Committee acknowledges that deferring these matters to the regulations would support the implementation of the proposed electronic monitoring provisions while allowing flexibility to respond to changing needs and circumstances. The Committee also recognises that regulations are required to be tabled in Parliament and are therefore subject to disallowance under s 41 of the *Interpretation Act 1987*.

However, the Committee notes that the proposed regulation-making powers cover a broad range of matters with respect to electronic monitoring that would limit the accused person's freedom and privacy.

The Committee further notes that an electronic monitoring bail condition must be imposed (unless there are 'sufficient reasons' not to) where an accused person is charged with a serious domestic violence offence and is granted bail. This means that an accused person who is granted bail for a serious domestic violence offence is likely to be significantly impacted by matters that have not been considered by Parliament. For these reasons, the Committee refers the matter for consideration.

Removal of Attorney General consent to institute certain proceedings

- 1.23 The Bill seeks to amend section 56 of the Surveillance Act to remove the written consent requirement of the Attorney General before proceedings can be instituted for certain offences.
- 1.24 Section 56 of the Surveillance Act provides that proceedings for an offence against the Surveillance Act, and the relevant regulations, cannot be instituted without the written consent of the Attorney General.
- 1.25 Proposed section 56(1A) provides that the written consent of the Attorney General does not apply to proceedings of offences charged as 'domestic violence offences' under section 9 of the Surveillance Act. The subsection clarifies that the meaning of domestic violence offences is the same as the meaning in the *Crimes (Domestic and Personal Violence) Act 2007*.
- 1.26 Offences under section 9 of the Surveillance Act include offences of installation, use and maintenance of tracking devices.
- 1.27 In his second reading speech, the Attorney General explained that the current power under the Surveillance Act is delegated to the Director of the Public Prosecutions with the requirement for personal consent of the Attorney General that cannot be delegated further. He described the current process as 'restrictive and may present a barrier to greater use of the offence in circumstances of domestic violence' and that the changes would facilitate another way to respond to domestic abuse.

The Bill seeks to amend section 56 of the *Surveillance Devices Act 2007* by inserting subsection 56(1A) to remove the requirement for written consent of the Attorney General to institute proceedings for offences against section 9 of the Surveillance Act, where the offence is charged as a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

The Committee notes that the consent for the Attorney General to be established before the institution of certain proceedings is common in New South Wales. The delegation of this power to the Director of Public Prosecutions generally is a removal of a strict consideration by the Attorney General. The Committee acknowledges that the removal of the written consent requirement reflects an administrative burden away from the consent of the Attorney General to facilitate the focus on dealing with domestic violence offences in an all-encompassing and stringent way. In these circumstances, the Committee makes no further comment.

2. Companion Animals Amendment (Puppy Farms) Bill 2024*

Date introduced	15 May 2024
House introduced	Legislative Council
Member responsible	The Hon. Emma Hurst MLC
*Private Members Bill	

Purpose and description

- 2.1 The object of this Bill is to amend the *Companion Animals Act 1998* (the **Act**) to—
- (a) regulate the conduct of businesses breeding companion animals and other companion animal businesses, and
 - (b) provide enforcement powers for the purposes of regulating the conduct of companion animal businesses.

Background

- 2.2 The Bill seeks to insert Part 6A into the Act to introduce a legislative framework for regulating and limiting the breeding of cats and dogs (other than working dogs) for commercial sale. In her second reading speech, the Hon. Emma Hurst MLC emphasised that the Bill is intended to prohibit the practices of 'puppy farming' which she described as 'the intensive factory farming of dogs for a pet trade industry', as well as prohibiting 'kitten farming'. She considered these practices as both an 'animal welfare issue' and a broader 'issue for the community', and stated the proposed amendments were modelled from existing 'puppy farm legislation introduced in Victoria in 2017'.
- 2.3 The amendments proposed by the Bill include inserting a new Part 6A into the Act that would be repealed after two years (the **proposed transitional Part 6A**). The transitional Part 6A would cap the number of breeding female dogs or cats a person could have to 10 at a time. After two years the transitional Part 6A would be replaced with the ongoing framework for regulating companion animal breeding (**proposed Part 6A**).
- 2.4 Ms Hurst noted in her second reading speech that the Bill is substantially similar to the Companion Animals Amendment (Puppy Farms) Bill 2021 (the **2021 Bill**) introduced in the previous (57th) Parliament, which was passed by the Legislative Council with amendments on 16 November 2022. However, Ms Hurst noted that the Bill had undergone updates since its 2021 iteration following further consultation. Before it could be reported to the Legislative Assembly, the 2021 Bill lapsed on prorogation on 27 February 2023.

- 2.5 The Committee reported on the 2021 Bill in its Digest No. 35/57,³ and the comments in this report are consistent with the comments in that Digest. In that Digest, the Committee noted that the provisions of the 2021 Bill may provide for wide powers of enforcement that impact people's property rights, impact an individual's privacy rights and for strict liability offences.

Issues considered by the Committee

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

Wide powers of enforcement – property rights, right to presumption of innocence, right to personal integrity

- 2.6 The Bill proposes to insert Divisions 3 and 4 into Part 7A of the Act, which provides for enforcement powers in relation to the new framework regulating companion animal businesses under proposed Part 6A.
- 2.7 Specifically, proposed Part 7A, Division 3 sets out the enforcement powers that an 'enforcement officer' may exercise, including the power to:
- enter a property (proposed section 69L),
 - once lawfully on a property, to seize animals kept in contravention of proposed Part 6A, or where there is serious risk to the health or safety of the animal in the officer's opinion (proposed section 69M),
 - issue a compliance notice to ensure compliance with Part 6A within 14 days, where the officer is of the opinion that the person is contravening or has contravened Part 6A, and non-compliance with this notice is an absolute liability offence carrying potential monetary and custodial penalties for individuals (proposed section 69O), and
 - once lawfully on a property, exercise the powers under section 69B of the Act, which includes recording, examining or seizing things, including seizing anything that will afford evidence of the commission of an offence and was used for the purpose of committing the offence (proposed section 69P).
- 2.8 Before exercising the power of entry under proposed section 69L, an enforcement officer must give the occupier 'reasonable notice' that they intend to enter the property. However, proposed subsection (2) sets out exceptions to this requirement, including where:
- (a) entry is, in the officer's opinion, required urgently because of the existence or reasonable likelihood of a serious risk to the health or safety of a companion animal, or
 - (b) the giving of the notice would, in the officer's opinion, defeat the purpose for which entering the property is intended.

³ Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 35/57](#), 19 October 2021.

2.9 Additionally, proposed subsection 69L(3) would prohibit an enforcement officer from exercising their power of entry on premises used only for residential purposes without a search warrant or the occupier's consent. However, proposed subsection (4) would provide that the officer can enter residential premises if, in their opinion, entry is required urgently 'because of the existence or reasonable likelihood of' either:

- a 'serious risk' to the animal's health or safety, or
- the loss, hiding or destruction of evidence of the commission of an offence under the Act.

2.10 Under proposed section 69I, an 'enforcement officer' under Division 3 is defined to include 'an authorised officer' under the Act as well as 'an officer who is the holder of an authority that is issued under section 69J(1)'. Proposed section 69J(1) would permit the Minister, Department Secretary or Deputy Secretary to issue an officer with an authority to act as an 'enforcement officer', and subsection (2) clarifies that this authority would enable the enforcement officer to exercise the functions and powers of an 'authorised officer' under Division 1 of the Act for determining if there has been compliance or contravention of proposed Part 6A.

2.11 Division 1 of Part 7A of the Act empowers 'authorised officers' to enter a property and do things on entry. It also includes section 69C which permits authorised officers to exercise these powers 'with the aid of assistants and with the use of reasonable force'.

The Bill proposes to insert Division 3 into Part 7A of the *Companion Animals Act 1998* which would grant authorised officers wide enforcement powers relating to the regulation of companion animal businesses under proposed Part 6A. This would include powers to enter a property, including residential premises, examine and record things, seize animals and other things including things which afford evidence that an offence was committed, comply with a notice issued for suspected contravention at the pain of criminal penalty, and use reasonable force in the exercise of these powers.

The Bill may therefore grant authorised officers wide powers of enforcement. The exercise of these powers may impact an individual's rights, including their property rights with respect to the entry and seizure powers, their right to the presumption of innocence with respect to the issue of compliance notices on grounds of reasonable suspicion, and their right to personal integrity with respect to the use of reasonable force.

The Committee acknowledges that these enforcement powers may be intended to strengthen compliance with the regulatory framework to prevent unethical animal breeding practices. The Committee also recognises that the powers of entry would not be able to be used without giving the occupiers of a property reasonable notice.

However, the Committee notes that some proposed exceptions to this notice requirement are dependent on the discretion of the enforcement officer. The Committee further notes that the Minister and Department Secretary or Deputy Secretary would have a broad power to authorise 'officers' to exercise these enforcement powers. As there is no definition of who is an eligible 'officer', it may permit an undefined class of people

to be authorised to exercise significant enforcement powers. For these reasons, the Committee refers the matter to Parliament for consideration.

Absolute liability offences

- 2.12 As noted above, the Bill proposes to insert proposed transitional Part 6A into the Act. This would create absolute liability offences for a person:
- to have more than 10 fertile female dogs or 10 fertile female cats (proposed transitional section 61D), or
 - who is an existing breeder to acquire any additional fertile female dogs or cats unless the total number does not exceed a total of 10 (proposed transitional section 61E).
- 2.13 These absolute liability offences under proposed transitional Part 6A would carry a maximum penalty of \$110 000 (1 000 penalty units) and/or two years imprisonment for an individual, or \$550 000 (5 000 penalty units) otherwise.
- 2.14 Again, as noted above, the Bill also proposes to insert Part 6A into the Act. Other than sections 61ZO(3) and 61ZV(3), the provisions of proposed Part 6A, Division 6 create absolute liability offences relating to the conduct of a companion animal breeding business. Some examples of the absolute liability offences which would be established by Division 6 of proposed Part 6A include:
- conducting a companion animal business on premises not registered with the relevant local council (proposed section 61ZG),
 - a proprietor of a companion animal breeding business or a recreational breeder having more than 10 fertile female dogs or cats at a time (proposed section 61ZJ),
 - a proprietor of a companion animal breeding business or a recreational breeder failing to ensure the ongoing safety of each dog or cat of the business (proposed section 61ZQ).
- 2.15 The maximum penalty carried by the offences proposed under this Division range from:
- for an individual, \$5 500 (50 penalty units) and/or six months imprisonment to \$110 000 (1 000 penalty units) and/or two years imprisonment.
 - otherwise, \$27 500 (250 penalty units) to \$550 000 (5 000 penalty units).
- 2.16 Finally, as discussed above, the Bill seeks to insert Division 3 into Part 7A of the Act, to provide for enforcement powers relating to companion animal businesses, which includes the power to issue compliance notices under proposed section 69O. Proposed subsection 69O(2) establishes an absolute liability offence for non-compliance with this notice, which carries a maximum penalty of \$5 500 (50 penalty units) and/or six months imprisonment for an individual, or \$27 500 (250 penalty units) otherwise.

The Bill seeks to amend the *Companion Animals Act 1998* to create a number of absolute liability offences relating to the regulation of companion animal businesses. These offences relate to non-compliance by the proprietor of a companion animal business or a recreational breeder with the regulatory framework under Part 6A proposed to be inserted into the Act by the Bill, such as having more than 10 breeding female dogs or cats at a time. These absolute liability offences carry maximum penalties which range from \$5 500 and/or six months imprisonment to \$110 000 and/or two years imprisonment for an individual, or from \$27 500 to \$550 000 otherwise. 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 acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. In this case, compliance with the regulatory regime proposed by the Bill is intended to prevent commercial breeding practices which may pose a risk to animal welfare and the health of litters resulting from commercial breeding. However, the Committee notes that these absolute liability offences carry maximum custodial penalties for individuals. This may mean an individual may be sentenced to a considerable imprisonment term in circumstances where the prosecution is only required to establish that the person committed the relevant conduct. For these reasons, the Committee refers the matter to the Parliament for consideration.

Privacy rights – business information register

- 2.17 The Bill seeks to insert proposed Part 6A into the Act to establish a new legislative regime for the regulation of companion animal breeding businesses.
- 2.18 Division 2 of proposed Part 6A establishes a registration scheme, which would require a person to register premises on which a companion animal business is to be conducted with the relevant local council. This registration must be renewed, and may be transferred on application, and could be suspended/revoked by the council or a court order. Proposed Part 6A, Division 3 would require local councils to provide specified information relating to these registrations and applications for registration to the Departmental Chief Executive.
- 2.19 Under proposed Division 5, the Departmental Chief Executive would have to maintain a business information register that contains this information provided by the councils. Proposed section 61ZF would provide that 'any person' could 'inspect or obtain' certain types of information contained in that register. This includes the name and email address of a proprietor of the companion animal business, microbreeder, animal rescue or recreational breeder.
- 2.20 Proposed section 61G of Part 6A defines a 'proprietor' to mean a person who conducts a companion animal business.

The Bill seeks to insert Part 6A into the *Companion Animals Act 1998*, which would require the Departmental Chief Executive to maintain a business information register containing information relevant to the registration of companion animal businesses provided by local councils

under proposed Division 5. Proposed section 61ZF would allow any person to inspect or obtain the name and email address of the proprietor of the companion animal business, microbreeder, animal rescue or recreational breeder from that register. Therefore, the Bill may impact an individual's privacy rights by permitting members of the public to access their personal information on the grounds that they conduct a companion animal business or breed companion animals.

The Committee acknowledges that these proposed amendments may be intended to facilitate transparency and accountability in the regulation of the companion animal industry. However, the Committee notes that there do not appear to be provisions limiting what purposes this information may be obtained for, or how this information may be further disclosed or used. The Committee also notes that there does not appear to be an avenue for a relevant proprietor or breeder to object to the provision of their name and email address. For these reasons, the Committee refers the matter to Parliament for consideration.

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

Incorporation of extrinsic code into law – business code of practice

- 2.21 As discussed above, Division 2 of proposed Part 6A would include requiring the proprietor of a companion animal business to register a premises for conducting that business with the relevant local council. Under proposed section 61ZG, conducting a companion animal business on a premises without a current registration with the relevant council is an absolute liability offence carrying a maximum penalty of \$110 000 (1 000 penalty units) and/or two years imprisonment for an individual, or otherwise \$55 000 (5 00 penalty units).
- 2.22 Proposed section 61R sets out the discretionary grounds on which a local council may refuse an application for registration or otherwise suspend or revoke a registration for a companion animal business. This includes failure to comply with 'a business code of practice that applies to the business' under subsection (c)(i).
- 2.23 A 'business code of practice' is defined under proposed section 61J to include a number of existing Animal Welfare codes of Practice as well as, under subsection (1)(d), 'a business code of practice made by the Departmental Chief Executive and published in the Gazette'. Proposed subsection 61J(5) would require the Departmental Chief Executive to publish updated versions of any codes they make within two years after the Bill commences as an Act.

The Bill proposes to insert Part 6A into the *Companion Animals Act 1998* to regulate companion animal businesses, particularly the breeding of companion animals. Proposed section 61J provides for the Departmental Chief Executive to make a 'business code of practice' which must be published in the Government Gazette and updated within two years after the enactment of the Bill as an Act. Non-compliance with these business codes of practice (where applicable) is a discretionary ground for a local council to both refuse to register a premises for conducting a companion animal business, and suspend or revoke an existing registration. It would be an absolute liability offence under proposed Part 6A to conduct a companion animal business on premises that aren't registered. This

offence would carry a maximum penalty of \$110 000 (1 000 penalty units) and/or two years imprisonment for an individual, or otherwise \$55 000 (5 00 penalty units).

The Committee notes that it is unclear whether the business codes of practice made by the Departmental Chief Executive and published in the Gazette would be required to be tabled in Parliament. Therefore the Bill may incorporate extrinsic business codes of practice into legislation. The Committee generally comments on any legislative provisions that permit the incorporation of external materials like codes and give those materials legal force. It also prefers substantive matters to be set out in legislation or to be tabled in Parliament as regulations where they can be subject to disallowance, and therefore subject to appropriate parliamentary scrutiny.

However, the Committee notes that prescribing such information in business codes of practice may enable greater flexibility and responsiveness to changing animal welfare and business practices. The Committee also acknowledges that local councils have the discretion to choose whether to refuse an application or suspend/revoke a registration on the grounds of non-compliance with these codes. In the circumstances, the Committee makes no further comment.

3.

Environmental Planning and
Assessment Amendment (Affordable
Housing) Bill 2024*

Date introduced	16 May 2024
House introduced	Legislative Assembly
Member responsible	Ms Jenny Leong MP
*Private Members Bill	

Purpose and description

- 3.1
- The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the **Act**), *Environmental Planning and Assessment Regulation 2021* and *State Environmental Planning Policy (Housing) 2021* to ensure that affordable housing is retained in perpetuity for very low, low and moderate income households.

Background

- 3.2
- In her second reading speech, Ms Jenny Leong MP referred to the housing crisis affecting NSW and considered there to be 'significant shortcomings' to how affordable housing is defined and regulated. This included 'an absence of clarity over how rents should be set in affordable housing'.
- 3.3
- Ms Leong also noted that there is no central register of affordable housing across the state, which makes it difficult to determine how much affordable housing actually exists and whether it meets community need.
- 3.4
- The Bill seeks to redefine the term 'affordable housing' and proposes new mechanisms to uncouple the rent-setting mechanism from the private rental market by:

(a)

clarifying that affordable housing should be rented out at no more than 30% of a household's gross income,

(b)

mandating that affordable housing be held in perpetuity, and

(c)

requiring that the Minister for Planning and Public Spaces keeps a central register of affordable housing across the state and that consent authorities notify the Minister within 14 days of issuing an occupation certificate for those developments.
- 3.5
- Ms Leong said that the new mechanisms proposed would ensure that affordable housing remains 'genuinely affordable' and not revert to market rate after a set period.

Issues considered by the Committee

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

4.

Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024

Date introduced	15 May 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 4.1
- The objects of this Bill are to:
- provide for a trial of powers for police officers to carry out scans in relation to knives and other weapons,
 - increase the penalties for selling knives to children who are less than 16 years of age, and
 - make it an offence for a person, without reasonable excuse, to sell a knife to a child who is 16 or 17 years of age.

Background

- 4.2
- The Bill seeks to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* (the **LEPRA**) to empower police officers to scan members of the public for knives and other weapons, using a hand-held metal scanner, in designated areas without a warrant.
- 4.3
- The Bill also seeks to expand the existing prohibition on the sale of knives to children under the *Summary Offences Act 1988* (the **Summary Offences Act**). It does this by increasing the maximum penalty for selling knives to children under 16 years of age, and by creating a new offence for selling knives to 16 or 17 year old children without a reasonable excuse.
- 4.4
- In his second reading speech, the Hon. Michael Daley, Attorney General, stated that the Bill aims to 'target the possession of knives, particularly among young people, reduce knife crime and boost community safety'.
- 4.5
- The Attorney General, noted that the proposed amendments to the LEPRA will not authorise police to search a person without a warrant. However, if a police officer is exercising the proposed scanner powers and suspects on reasonable grounds that a person is in possession of a dangerous article, they may be able to search that person in accordance with the ordinary search powers under Part 4 of the LEPRA.

Issues considered by the Committee

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

Expansion of police powers impeding on personal rights and liberties

- 4.6 The Bill seeks to insert Division 3 into the LEPR, which would allow police officers to stop and scan people with a hand-held metal scanner in a designated area without a warrant. Under the proposed section 45M, a police officer can ask a person to produce the item causing the metal scanner to indicate that metal is present and require them to resubmit to a scan.
- 4.7 If the designated area is a public transport station, under section 45L police may also search people on board the public transport or at the public transport station at the end of the trip without a warrant in certain circumstances.
- 4.8 Section 45N makes it an offence to refuse to comply with any of these police powers under Division 3 without reasonable excuse. The maximum penalty associated with the offence is 50 penalty units (a \$5,500 fine).
- 4.9 Section 45O sets out certain safeguards for the exercise of the police powers under Division 3:
- the officer must exercise the power in the least invasive way practicable in the circumstances,
 - the officer must be the same sex as the person, if reasonably practicable,
 - the person may be detained for as long as is reasonably necessary to exercise the power,
 - before exercising the power, the officer must give evidence that they are a police officer, the name of their place of duty and the reason for the exercise of the power, and
 - the officer must give a warning that the person is required by law to comply with the direction.

The Bill proposes to insert Division 3 into the *Law Enforcement (Powers and Responsibilities) Act 2002*, which would allow police officers without a warrant to stop and scan people with a hand-held metal scanner in public spaces that have been declared designated areas. Section 45L would also allow for searches on public transport in certain circumstances. Subsection 45O(4) would further enable police to detain people for as long as reasonably necessary to exercise their search powers. The Committee notes that failing to comply with an officer's request is an offence under section 45N that attracts a maximum penalty of 50 penalty units (a \$5,500 fine).

The Committee notes that the proposed expansion of a police officer's power to stop and scan people in public spaces, and on public transport dense with law abiding people, may interfere with their fundamental rights to freedom of movement and personal physical integrity.

The Committee acknowledges that the proposed powers are intended to increase community safety and deter people from carrying knives and other weapons in public spaces.

However, the Committee notes that the proposed power to detain people for 'as long as is reasonably necessary to exercise the power' is not further defined, and may result in people being arbitrarily detained for not complying with a police officer's request. For these reasons, the Committee refers the matter to Parliament for further consideration.

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

Declarations of designated areas not subject to parliamentary scrutiny

- 4.10 The Bill proposes to insert Division 2 into the LEPRA, which would allow senior police officers (police officers of or above the rank of Assistant Commissioner) to declare public transport stations, shopping precincts, sporting venues, and other public places prescribed by the regulations as 'designated areas' where:
- one of the following offence(s) was committed in the last 12 months at the place:
 - an offence where a person was armed with a knife or other weapon,
 - a serious indictable offence involving violence against a person, or
 - multiple offences of possessing a knife or prohibited weapon in a public place or school,
 - the senior police officer thinks that hand-held scanners would likely detect or deter an offence involving a knife or other weapon,
 - the senior police officer has considered the effect of hand-held scanners on lawful activity in the space, and
 - the senior police officer has considered whether knives or other weapons were found, if the place was previously a designated area.
- 4.11 Under sections 45I and 45J, a declaration of a designated area cannot be for longer than 12 hours, however, multiple designations of the same place can be made. The declaration must also be published on the NSW Police Force website as soon practicable after it is made, as per section 45H.
- 4.12 As noted above, the proposed Division 3 would give police officers the power to stop and scan people with a hand-held metal scanner in designated areas without a warrant. Under section 45M, if the scanner indicates that metal is likely to be present, the officer may require the person to produce the thing causing the scanner to indicate the likely presence of metal.
- 4.13 Under the proposed section 45N, a person cannot fail or refuse to comply with an officer's request to exercise their powers under Division 3 without reasonable excuse. The maximum penalty associated with the offence is 50 penalty units (a \$5,500 fine).

The Bill proposes to insert Division 2 into the *Law Enforcement (Powers and Responsibilities) Act 2002*, which would empower senior police officers to declare certain public spaces as 'designated areas'. Under the proposed Division 3, a person in a designated area must comply with a police officer's request to stop and submit to the use of a hand-held metal scanner.

Although a designated area can only be declared for up to 12 hours, section 45J would allow multiple declarations to be made in relation to the same place. The Committee also notes that declarations are only required to be published on the NSW Police Force website, and are not required to be tabled in Parliament. This would effectively give senior police officers a broad power to declare designated areas for an indefinite period without being subject to parliamentary scrutiny or review.

The Committee notes that the immediate effect of a declaration may result in people not knowing if they are in a designated area. A person may therefore not understand whether they can lawfully refuse an officer's request and avoid criminal penalty.

However, the Committee acknowledges that senior police officers must be satisfied of the legislated requirements under section 45G before a place can be declared a designated area. The Committee also acknowledges that the delegation of powers to senior police officers to make declarations may increase administrative efficiency and allow declarations to be made quickly in reaction to violent public events. For these reasons, the Committee makes no further comment.

Custodial penalty for strict liability offences

- 4.14 Schedule 2 of the Bill seeks to amend section 11F of the Summary Offences Act to increase the maximum penalty for selling knives to children under the age of 16 from 50 penalty units (a \$5,500 fine) to 100 penalty units (a \$11,000 fine) and/or 12 months imprisonment. The current defence under section 11F(2) still applies where the person selling the knife believed on reasonable grounds that the child was at least 16 years old.
- 4.15 The Bill also proposes to create a new strict liability offence under section 11F(1A) to make it an offence to sell a knife to a child who is 16 or 17 years of age without reasonable excuse. The proposed section 11F(2A) provides that it would be a reasonable excuse if the person selling the knife is satisfied that the child reasonably requires the knife for the lawful pursuit of the child's occupation, education or training. A defence under subsection 11F(2)(b) would also be available where the person believed on reasonable grounds that the child was at least 18 years old.
- 4.16 In his second reading speech, the Attorney General noted that the proposed reforms 'reflect community concern about access to knives' and 'strongly denounce and penalise any retailer that may seek to profit from youth knife ownership'.

The Bill seeks to increase the current penalty and insert a custodial penalty for the strict liability offence of selling a knife to a child under the age of 16 under section 11F of the *Summary Offences Act 1988*. The

offence would carry a maximum penalty of a 100 penalty units (an \$11,000 fine) and/or 12 months imprisonment.

The Bill also proposes to create a new strict liability offence for selling a knife to a child who is 16 or 17 years old without a reasonable excuse. The associated maximum penalty is 50 penalty units (a \$5,500 fine).

The Committee generally comments on strict 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 acknowledges that the proposed offences are intended to deter the sale of knives to young people in order to protect public safety and reduce instances of young people committing crime with knives.

However, the Committee notes that it may be difficult for a lay person to understand what they must establish as a defence under section 11F(2). This is of particular concern as the offence under section 11F may attract a custodial penalty. Allowing for custodial sentences where the prosecution is not required to prove criminal intent may impact on procedural fairness for the accused. For these reasons, the Committee refers the issue to Parliament for consideration.

5. Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024*

Date introduced	15 May 2024
House introduced	Legislative Council
Member responsible	The Hon. Jeremy Buckingham MLC
*Private Members Bill	

Purpose and description

- 5.1 The object of this Bill is to amend the *Limitation Act 1969* (the **Limitation Act**) as follows:
- (a) to acknowledge the reasons for removing limitation periods for child abuse claims
 - (b) to require courts to consider certain matters in determining whether to stay proceedings for child abuse claims
 - (c) to remove limitation periods for the appeal of decisions by courts to stay proceedings of claims for child abuse for decisions made on or after 17 March 2016.
- 5.2 The Bill also amends the *Civil Liability Act 2002* (the **Civil Liability Act**) to provide additional circumstances in which a court may set aside an agreement preventing an action for child abuse.

Background

- 5.3 In his second reading speech, the Hon. Jeremy Buckingham MLC explained that the Bill is intended to limit the ability of defendants in historic child abuse claims from using permanent stays in cases where accused perpetrators have died, either 'to defeat active claims before the courts' or as a settlement negotiation tool.
- 5.4 Mr Buckingham referred to the recent court decision of '*GLJ*', which found that the death of an alleged perpetrator was not an exceptional circumstance which warranted a permanent stay.⁴ He noted that this decision 'pertains to the specific circumstances' of that case and stated that:

... it is still an open question as to how factually different cases may be interpreted, so uncertainty and risk is not eliminated for survivors. ... This

⁴ [*GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore*](#) [2023] HCA 32.

is why it is critical that we enshrine the lessons of GLJ into New South Wales statute law.

- 5.5 The Bill seeks to insert a number of new provisions into the Limitation Act and the Civil Liability Act that would limit the circumstances in which a court can grant a stay of proceedings for claims of damages for child abuse. The proposed amendments would also allow a court to set aside settlement agreements made in the context of stay orders, and remove the limitation period for appeals of stay orders.

Issues considered by the Committee

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

Limitation of judicial discretion, procedural fairness and inconsistent operation with existing laws – stay of proceedings

- 5.6 The Bill seeks to insert proposed subsections (1A) and (5A) into section 6A of the Limitation Act, which clarifies that there is no limitation period for bringing claims for damages relating to child abuse.

- 5.7 Subsection (1A) seeks to insert an 'acknowledgment' of a list of matters with respect to actions for child abuse. This list includes acknowledgments that:

- the potential prejudice and injustice caused by the passing of time to a perpetrator of child abuse, or to an institutional defendant to these claims are presumed to not outweigh both the potential injustice to child abuse victims of not being able to bring a claim for damages, and the undermining of public confidence in the administration of justice resulting from this potential injustice to victims.
- the loss of evidence 'due to the passing of time' is a 'common feature' in these claims.

- 5.8 Proposed section 6A(5A) states that a court must consider a number of factors when determining whether to stay proceedings for claims of damages related to child abuse, including that stays of proceedings are to be a remedy of last resort and only granted in exceptional cases, as well as the 'acknowledgments' under proposed subsection (1A). Proposed subsection (5A)(c) would also require the court to consider that the following listed circumstances are not 'exceptional circumstances' to justify an order to stay proceedings' on a child abuse claim against an institutional defendant:

- (i) the passing of time,
- (ii) the loss of evidence or the poor state of evidence, including from the passing of time, death, illness, legal incapacity, the loss or destruction of documents and the absence of witnesses,
- (iii) the death, illness, legal incapacity of, or inability to identify, the perpetrator of the child abuse,
- (iv) the inability for the institutional defendant to question the perpetrator about the child abuse pleaded in the claim.

5.9 Currently, subsection 6A(6) of the Limitation Act states that section 6A:

... does not limit—

- (a) any inherent jurisdiction, implied jurisdiction or statutory jurisdiction of a court, or
- (b) any other powers of a court arising or derived from the common law or under any Act (including any Commonwealth Act), rule of court, practice note or practice direction.

Note—

For example, this section does not limit a court's power to summarily dismiss or permanently stay proceedings where the lapse in time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.

5.10 In his second reading speech, Mr Buckingham stated that these proposed amendments are intended to 'limit the ability for a defendant to argue for a permanent stay simply because of the passage of time'.

The Bill seeks to insert subsections (1A) and (5A) into section 6A of the *Limitation Act 1969*. Proposed subsection (5A) would require a court to consider the list of factors set out when making decisions about whether to stay proceedings for damages related to child abuse. These factors would require the court to consider a stay of proceedings as a remedy of last resort only to be granted in exceptional circumstances. Another factor that the court would have to consider under subsection (5A)(c) is that the passage of time, loss of evidence, death or incapacity of the alleged perpetrator, or inability for the defendant to question the alleged perpetrator are not exceptional circumstances which would justify a stay of proceedings against an institutional defendant.

Therefore, the Bill may effectively limit the court's judicial discretion to determine whether proceedings should be stayed through an Act of Parliament. Given the inherent jurisdiction of courts to grant stays where proceedings would not be fair or would amount to an abuse of process, the proposed amendments may result in legislative interference with the court's right to protect its processes in accordance with the interests of justice.

The list of factors under proposed subsection 6A(5A) would also include the acknowledgments inserted by proposed subsection (1A). Proposed subsection (1A) would include an acknowledgment that loss of evidence due to time passing is a 'common feature' of these claims and that potential prejudice and injustice to alleged perpetrators due to the passing of time does not outweigh the potential injustice to possible child abuse victims and any undermining of public confidence that may result. Although it is unclear how these statutory acknowledgments may impact judicial decision-making, the Committee notes that these acknowledgments appear to favour plaintiffs in claims for damages relating to child abuse. By requiring courts to consider these acknowledgments when determining stay applications, the Bill may also impact a defendant's right to procedural fairness.

Additionally, section 6A of the Limitation Act explicitly provides that this section does not limit the powers or inherent jurisdiction of a court, including the power to permanently stay proceedings. Therefore, the proposed subsections may be inconsistent with subsection 6A(6). The Committee generally comments where provisions may operate in a manner inconsistent with other laws, as this may make it harder for individuals to understand how the law applies to them, particularly in cases where it impacts individual rights and liberties.

The Committee acknowledges these proposed amendments are intended to protect the ability of victims of child abuse to seek justice through court proceedings by facilitating the ability for their claims to be heard and determined by a court. However, the Committee notes that subsection 6A(5A), as proposed by the Bill, appears to apply to all stay applications, not just applications for permanent stays, which may significantly broaden the application of this section. Given the potential impacts on judicial discretion and procedural fairness rights, the Committee refers the matter to Parliament for consideration.

Retrospectivity – settlement agreements that can be set aside

- 5.11 Part 1C of the Civil Liability Act enables a person to apply to a court to set aside an 'affected agreement', which settled a claim for child abuse perpetrated against them. Section 7C(1) defines what amounts to an 'affected agreement' that may be set aside by a court.
- 5.12 The Bill seeks to insert proposed subsections 7C(1)(d) and (e) into the Civil Liability Act to include any agreement made before the Bill commences as an Act as an 'affected agreement', if either:
- the agreement is not 'just and reasonable in the circumstances', or
 - a party to the agreement either:
 - (i) made a representation to another party (the **second party**) to the agreement before the agreement was entered into that the party may seek a stay of proceedings for a claim brought by the second party for a cause of action to which the agreement relates, or
 - (ii) pleads a stay of proceedings as a defence to a cause of action to which the agreement relates, or
 - (iii) applied for a stay of proceedings in relation to a cause of action to which the agreement relates.
- 5.13 The Bill would also insert subsection 7C(3) into the Civil Liability Act, which would define a 'representation' as 'an express or implied representation, whether oral or in writing'.
- 5.14 In his second reading speech, Mr Buckingham explained that these proposed subsections are intended to address 'the injustices of those settlements entered into under the threat of a permanent stay, which would now be liable to be set aside'.

The Bill seeks to insert subsections 7C(1)(d), (1)(e) and (3) into the *Civil Liability Act 2002* which would allow a person to apply to the court to set aside settlement agreements made before the Bill commences as an Act. This would apply where those agreements are reached because of representations, pleadings or applications made for proceedings to be permanently stayed, or to agreements which are 'not just and reasonable in the circumstances'.

The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The application of these proposed amendments to agreements reached before the provisions commence might also impact an individual's rights, including procedural fairness rights and the right to freedom of contract.

The Committee acknowledges that the Bill is intended to facilitate the rights of victims of child abuse to seek justice. However, the proposed amendments widely define what amounts to a 'representation' and may therefore apply too broadly to agreements not involving explicit representations for an application for a stay of proceedings. The Committee notes that capturing agreements which are 'not just and reasonable in the circumstances' may also provide a broad discretion to a court to set aside settlement agreements. This may permit courts to set aside the majority of agreements made between parties in the context of claims for damages for child abuse. For these reasons, the Committee refers the matter to Parliament for consideration.

Retrospectivity – limitation period for appeals of stay decisions

5.15 Under rule 49.8 of the *Uniform Civil Procedure Rules 2005*, parties have a right to appeal decisions in the Supreme Court. They must institute any appeal within 28 days of the original decision.

5.16 The Bill seeks to insert proposed subsection (5B) into section 6A of the Limitations Act, which provides that:

The appeal of a decision by a court to stay proceedings of a claim of child abuse is not subject to a limitation period under this Act or another Act or law for a decision made on or after 17 March 2016.

The Bill seeks to insert subsection (5B) into section 6A of the *Limitation Act 1969*, which would remove the 28 day limitation period for appealing a decision to stay child abuse proceedings made 'on or after 17 March 2016'. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee acknowledges that the amendments proposed by the Bill may be intended to facilitate the ability of victims of child abuse to seek justice by bringing claims for damages. However, the Committee notes that the broad wording of proposed subsection (5B) could capture a wide category of any civil proceedings relating an allegation of child abuse,

and not just proceedings for damages relating to child abuse. It also appears to apply to all stay decisions and not just permanent stays. The Committee notes that temporary stays are not uncommon in civil proceedings. For these reasons, the Committee refers the matter to Parliament for consideration.

6. Museums of History NSW Amendment (Chief Executive Officer) Bill 2024

Date introduced	14 May 2024
House introduced	Legislative Council
Minister with carriage	The Hon. John Graham MLC
Portfolio	Arts

Purpose and description

- 6.1 The object of the Bill is to amend the *Museums of History NSW Act 2022* (the **Museums Act**) and the *Government Sector Employment Act 2013* (the **Employment Act**) to make the office of Chief Executive Officer of Museums of History NSW (the **CEO**) an office in the Public Service established by the Employment Act, rather than a statutory office established by the Museums Act.

Background

- 6.2 In his second reading speech, the Hon. John Graham MLC, Minister for the Arts, said that the Bill would 'harmonise and align the employment arrangements' for the CEO with the heads of other cultural institutions in NSW. The Minister explained that this would better integrate the CEO's office into the Public Service framework and ensure 'transparency and due process'.
- 6.3 The Bill proposes to make the following amendments to the Museums Act:
- (a) moving the CEO's position to be employed under the Employment Act instead of the Museums Act,
 - (b) requiring the Minister to consult with the Board before appointing a person to the office of the CEO,
 - (c) allowing Museums of History NSW to delegate its functions to the CEO, among other delegates while removing the CEO's power to further delegate or subdelegate functions,
 - (d) providing transitional provisions to ensure the current CEO continues in office under the new structure until the end of their appointed term, or until a new appointment is made.
- 6.4 The Bill also seeks to amend the Employment Act to list the CEO as a Public Service role under the Department of Enterprise, Investment and Trade, which would reinforce the governance and operational integration of the Museums of History NSW with the Public Sector.

Issues considered by the Committee

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

7. National Parks and Heritage Legislation Amendment Bill 2024

Date introduced	15 May 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Penny Sharpe MLC
Member introducing	The Hon. Jihad Dib MP
Portfolio	Environment

Purpose and description

- 7.1 The object of this Bill is to amend the *National Parks and Wildlife Act 1974* (the **NPW Act**) as follows:
- (a) to revoke reservations of certain land in the following areas:
 - (i) Gardens of Stone State Conservation Area
 - (ii) Lake Macquarie State Conservation Area
 - (iii) Lake Innes Nature Reserve
 - (iv) Jervis Bay National Park
 - (v) Marramarra National Park
 - (vi) Royal National Park
 - (vii) Sea Acres National Park,
 - (b) to recategorise Serpentine Nature Reserve as Serpentine Aboriginal Area,
 - (c) to enable the Minister for the Environment (the **Minister**) to deal with land and property vested in the Minister under the NPW Act,
 - (d) to establish a new National Parks and Wildlife Operating Fund (the **Operating Fund**) for the National Parks and Wildlife Conservation Trust (the **Trust**) for the purposes of holding money not permitted to be held by the National Parks and Wildlife Conservation Public Fund (the **Public Fund**),
 - (e) to further provide for the preparation and content of plans of management for land reserved under the NPW Act.
- 7.2 The Bill also amends the *Heritage Act 1977* (the **Heritage Act**) in relation to the Heritage Conservation Fund (the **Fund**), including in relation to payments made into and out of the Fund.

Background

- 7.3 The NPW Act sets out the legislative framework to conserve and manage land and significant places in NSW according to relevant conservation and environmental management principles.
- 7.4 The Bill seeks to amend the NPW Act to revoke various areas of land that have been reserved under the NPW Act. In his second reading speech, the Member with carriage of the Bill, the Hon. Jihad Dib MP, said that the Bill will revoke around '144 hectares of land from seven national parks and reserves in the national park system'. He said that the revocations 'will enable delivery of Government infrastructure projects together with some smaller scale sensible proposals to improve boundaries with park neighbours and local councils.'
- 7.5 The Bill also proposes amendments to address operational and administrative issues. It proposes to add a new section to the NPW Act to provide information about the content that must be included in plans of management for reserved land. It also seeks to clarify provisions allowing the Minister to deal with land that has been transferred to them under the provisions of the NPW Act.
- 7.6 In addition, the Bill seeks to establish a new Operating Fund and sets out what payments are to be made into and out of that fund.
- 7.7 Finally, the Bill clarifies liability issues for statutory officers and other officials, and adjusts provisions regarding offences against officers.
- 7.8 Further, the Bill proposes to amend the Heritage Act to modify how the Fund is administered. It proposes to set out the purposes of the Fund and include additional payments that can be made into and out of the Fund.

Issues considered by the Committee

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

8. Residential (Land Lease) Communities Amendment Bill 2024

Date introduced	14 May 2024
House introduced	Legislative Assembly
Minister with carriage	Mr Anoulack Chanthivong MP
Portfolio	Better Regulation and Fair Trading

Purpose and description

- 8.1 The object of this Bill is to amend the *Residential (Land Lease) Communities Act 2013* (the **Act**) as follows:
- (a) to make certain amendments relating to voluntary sharing arrangements in site agreements, including to prohibit the payment of entry and exit fees,
 - (b) to require operators to test emergency evacuation procedures at least once per year,
 - (c) to limit the circumstances in which the operator of a community can enter a home on a residential site,
 - (d) to allow home owners to make certain minor alterations or additions to their home without the operator’s consent,
 - (e) to limit the circumstances in which the operator of a community can issue a notice to rectify dilapidation to a home owner,
 - (f) to require the operator of a community to give potentially affected residents notice before lodging a development application or planning proposal that may affect the community or a residential site,
 - (g) to limit the number of fixed method site fee increases in a 12-month period and provide that a fixed calculation for site fee increases can use a single element only,
 - (h) to make changes relating to utility bills and utility charges payable for electricity,
 - (i) to increase the notice period for vacating a residential site, and expand a home owner’s entitlement to compensation, where a termination notice is given on the ground that the site is not lawfully useable for the purposes of a residential site,
 - (j) to prohibit termination of a site agreement on the ground that the residential site has not been used as a place of residence for at least 3 years, and

- (k) to make other minor and consequential amendments, including amendments to the Residential (Land Lease) Communities Regulation 2015.

Background

- 8.2 In his second reading speech, Mr Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading (the **Minister**), referred to the statutory review of the Act that was completed in 2021 and noted that the Bill would implement 21 of the 48 recommendations made by the review.⁵ The Minister said that the Bill would set out the rights and obligations of operators of residential land lease communities (**operators**) and the home owners or tenants (**residents**) that live there.
- 8.3 The Bill seeks to amend the Act to:
- simplify how site fee increases are calculated and to cap the frequency of these increases, to make costs more predictable and fair,
 - bring clarity and fairness to the charges and billing of utilities, particularly of electricity, to protect residents from excessive charges,
 - grant residents more autonomy over their property by allowing them to undertake minor modifications without seeking the operators' consent,
 - set new restrictions on when and why operators can enter homes to protect residents' privacy, and
 - require operators to inform residents about potential impacts from upcoming development projects.
- 8.4 The Minister explained that the Bill would 'improve the regulatory framework for residential land lease communities' and enhance protections for the residents living in those communities.

Issues considered by the Committee

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

Freedom of contract and property rights

- 8.5 Under section 4 of the Act, an operator of a residential land lease community means a person, among others, who is:
- (a) the person who manages, controls or otherwise operates the community, including by granting rights of occupancy under site agreements or tenancy agreements, whether or not the person is an owner of the community.
- 8.6 The Bill proposes to amend section 65 of the Act to limit the number of elements that operators can use in a fixed calculation to determine an increase in site fees to one single element.

⁵ Department of Customer Service, [Report of Residential \(Land Lease\) Communities Act 2013 Statutory Review](#), November 2021.

- 8.7 The Bill provides two examples of elements that may be used, namely Consumer Price Index rates and the variation in the age pension.
- 8.8 It also proposes to amend section 66 to limit the number of fixed method site fee increases in a 12-month period to 'no more than twice', if the variation in the age pension is used as the calculating element. If another element is used, site fees must not be increase more than once in a 12 month period.
- 8.9 The Minister explained that the proposed amendments would ease the financial burden on residents and improve clarity around site fee increases.

The Bill seeks to amend *the Residential (Land Lease) Communities Act 2013* to limit an operator of a residential land lease community to using a single element to calculate a site fee increase under a fixed method. These elements may include Consumer Price Index rates or a variation in the aged care pension. It also proposes to limit the number of fixed method site fee increases in a 12-month period. This would place restrictions and limits on the rights and obligations of operators who are contracting parties to site agreements. Therefore, the Bill may impact an operator's contract and property rights by limiting the ways in which they may negotiate and set site fees for their property.

The Committee notes that freedom of contract and property rights of an operator are fundamental legal rights, noting that section 4 of the Act defines an operator to include individual persons. However, the Committee recognises that the Bill would provide residents in residential land lease communities with protections by offering more clarity and certainty about how and when site fees may be increased by operators. It also acknowledges that the proposed amendments may be intended to help residents with cost-of-living pressures. In the circumstances, the Committee makes no further comment.

Absolute liability offences

- 8.10 The Bill proposes to make several amendments regarding requirements and limitations on utility charges an operator may charge residents, and embedded network electricity charges under the Act.
- 8.11 The Bill would create a number of absolute liability offences for non-compliance, including:
- limiting daily supply charge or usage charge payable by the residents – failure to comply with the requirements by the operators or third party suppliers would be an offence carrying a maximum penalty of \$2 200 (20 penalty units) (section 77).
 - requiring a written notice of the charges payable for the supply of electricity to be given to the residents and also requiring contracts for the supply of electricity to be reviewed periodically – failure to comply with the requirements by the selling entities would be an offence carrying a maximum penalty of \$1 100 (10 penalty units) (section 77A).
 - requiring the applicable electricity and gas billing requirements to be complied with by the operators or third parity suppliers – failure to comply with the

requirements would be offence carrying a maximum penalty of \$1 100 (10 penalty units) (sections 83 and 84).

- 8.12 Schedule 2 of the Bill amends the Residential (Land Lease) Communities Regulation 2015 (the **Regulation**), largely to reflect the changes made to the Act. The amendment to Clause 13 would create absolute liability offences for non-compliance with the requirements regarding maximum utility charges payable by residents under the Regulation. Non-compliance would be imposed with a maximum penalty of \$1 100 (10 penalty units).
- 8.13 In his second reading speech, Mr Chanthivong said that the proposed amendments would protect the residents from 'excessive prices' and would 'help them understand the pricing in a clear and transparent manner'.

The Bill would amend the regulatory framework surrounding utility and electricity charging in residential land lease communities with an embedded network. The Bill would establish a number of absolute liability offences for non-compliance with requirements for utility and electricity charges and billing. These offences carry maximum penalties ranging from \$1 100 (10 penalty units) to \$2 200 (20 penalty units). 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.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks as a means of encouraging compliance. In this case, compliance with the regulatory regime is intended to ensure that the pricing of electricity is transparent and residents are protected from excessive prices. The Committee also notes that the offences only carry a monetary penalty and not a custodial penalty. In the circumstances, the Committee makes no further comment.

Retrospectivity and commencement by proclamation

- 8.14 The Bill seeks to insert a new Part 3 into the Act prescribing the transitional provisions consequent on the proposed amendments being enacted. Under proposed Part 3, operators must identify all existing site agreements that provide for the increase in site fees by a fixed calculation to ensure that only a single element will be used in the calculation by a 'transition day'.
- 8.15 Proposed section 21 of Part 3 defines a 'transition day' as the day that is 3 years after the commencement day of the Bill (if enacted). Clause 2 of the Bill provides that the commencement day would be 'on a day or days to be appointed by proclamation'.
- 8.16 As noted earlier, the Bill seeks to amend sections 65 and 66 to place restrictions on how a site fee could be increased if operators choose to use a fixed method in the calculation of the increase.
- 8.17 Proposed section 22 provides that the previous sections 65 and 66 would continue to apply under the existing site agreements until the 'transition day' or an earlier day when the parties enter into a variation agreement or a compliant site agreement.

- 8.18 Site fees may only be increased 'by notice' under proposed section 23, if the parties to the existing site agreements fail to enter into a variation agreement or a compliant site agreement by the 'transition day'.

The Bill seeks to insert Part 3 into the *Residential (Land Lease) Communities Act 2013* to ensure all existing site agreements would use only a single element to calculate a site fee increase by the 'transition day' if the agreements adopt a fixed method for the calculation. 'Transition day' under proposed section 21 is defined as the day that is 3 years after the commencement day of the Bill (if enacted). Under clause 2 of the Bill, the commencement day would be 'on a day or days to be appointed by proclamation'.

The Bill also seeks to amend sections 65 and 66 to place restrictions on how a site fee can be increased if the operator chooses to use a fixed method in the calculation of the increase. Proposed section 22 provides that the previous sections 65 and 66 would continue to apply under the existing site agreements until the 'transition day' or an earlier day if the parties enter into a variation agreement or a compliant site agreement. Failure to enter into a variation agreement or a compliant site agreement by the transition day might result in site fees being increased by notice instead of by a fixed method.

The Committee notes that the Bill seeks to apply the proposed amendments to site agreements entered into before the amendments would commence. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The Committee further notes that the Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee notes that the Bill would set a period of 3 years as a transitional period and the retrospective application may be intended to ensure clarity and consistency in relation to site agreements. The Committee also recognises that the Bill may be intended to provide lower-cost and affordable homes for vulnerable people and that commencement by proclamation may enable greater flexibility to facilitate policy reform of the regulatory framework for residential land lease communities. In the circumstances, the Committee makes no further comment.



Part Two – Regulations without comment

Regulations without comment

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

1. Criminal Records Amendment (Eligible Homosexual Offences) Regulation 2024

The Regulation amends the *Criminal Records Regulation 2019* under the *Criminal Records Act 1991* (NSW) (the **Act**).

The Regulation adds two further former offences as 'eligible homosexual offences'. Under the Act, individuals who have been convicted of an eligible homosexual offence can apply to the Secretary of the Department of Communities and Justice to have the conviction extinguished from their criminal record.

The Regulation also removes subregulation 10(2)(c) which excluded a former offence from being an eligible homosexual offence if the offender had a previous conviction(s) for that offence.

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

2. Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024

The Regulation amends the *Electricity Infrastructure Investment Regulation 2021* under the *Electricity Infrastructure Investment Act 2020* (the **Act**).

The objects of this Regulation are

- (a) to specify actions the consumer trustee is required and not required to do in authorising a network operator to carry out a REZ network infrastructure project, including to either undertake and consider a cost benefit analysis or consider an infrastructure investment objectives report
- (b) to restrict certain persons from making a tender bid in a competitive tender for a long-term energy service agreement (LTES agreement) in relation to an infrastructure project
- (c) to require the consumer trustee to publish its reasons for determining there are exceptional circumstances to allow persons, otherwise restricted, to make a tender bid in a competitive tender for an LTES agreement for infrastructure
- (d) to establish a time frame by when the consumer trustee is to conduct a competitive tender requested by the infrastructure planner
- (e) to require the infrastructure planner to include certain matters in a development agreement between the infrastructure planner and a participant for the grant or increase of access rights, including a right to terminate the access right if the project has not achieved the finance and construction criteria by the nominated date
- (f) to restrict the infrastructure planner from exercising certain functions until it publishes a standard development agreement
- (g) to give the infrastructure planner additional access scheme functions, including to carry out an application process without a competitive tender for the grant or increase of access

rights and to make recommendations to the scheme financial vehicle in relation to payment deeds with access rights holders

The Regulation sets out a regulatory scheme for contracting network operators of a Renewable Energy Zone (**REZ**) under the Act. Although the amendments allow the infrastructure planner to terminate the access rights of a participant to a development agreement under certain circumstances, the circumstances only arise if the participant has not met the financial and construction criteria by the agreed date, and either cannot demonstrate that they will meet the criteria within two years of that date, or have not met the criteria by a further date nominated by the infrastructure planner. For these reasons the Regulation does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

3. [Environmental Planning and Assessment Amendment \(Transport Oriented Development\) Regulation 2024](#)

The Regulation amends the Environmental Planning and Assessment Regulation 2021 under the *Environmental Planning and Assessment Act 1979*.

The Regulation sets out conditions that must be met before the development of affordable housing in Transport Oriented Development Areas. The conditions specify that the development must have an agreement with a registered community housing provider and must be used for affordable housing in perpetuity.

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

4. [NSW Admission Board Third Amendment Rule 2024](#)

The object of this Rule is to amend the NSW Admission Board Rules 2015 to provide for the Executive Officer to permit, under Rule 97, a person given a direction under rule 11 of the Legal Profession Uniform Admission Rules 2015 to sit or be exempted from having to sit the Board's examinations that equate to that direction, and for the Practical Training Exemptions Sub Committee, under Rule 98, to be allowed to grant, at first instance, exemptions from practical legal training competencies with a right of review to the Legal Qualifications Committee.

The Rule is made under section 21A of the *Legal Profession Uniform Law Application Act 2014* and replaces rules 97 and 98.

Although there exists broad discretion for decision makers to apply exemptions to both examinations and practical legal training competencies, there stands a right of review and separate committees within the Board. For those reasons, the Rule does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Property and Stock Agents Amendment Regulation 2024](#)

The Regulation amends the *Property and Stock Agents Regulation 2022* under the *Property and Stock Agents Act 2002*.

The Regulation allows the Secretary to grant, extend or restore a certificate of registration for a property or stock agent where the agent has not completed the qualifications due to a medical condition, an event beyond the agent's control, or a disruption in the agent's domestic arrangements.

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

6. Specialist Family Violence List Pilot Practice Note, Local Court of New South Wales

The Practice Note commenced on 6 May 2024 and substantively replicates the previous Practice Note which commenced on 25 September 2023. The Practice Note makes minor administrative changes and assists the court with case management and functioning. The Practice Note applies to the Specialist Family Violence List Pilot program in Local Courts of New South Wales as directed by the Chief Magistrate. The Practice Note is made under section 27 of the *Local Court Act 2007* (NSW).

The object of this Practice Note is to establish the procedural measures to be applied by the Court and for court users. It is intended to improve the court experience for complainants in family violence proceedings and provide guidance to court stakeholders such as magistrates, practitioners and court participants in relation to family violence proceedings.

Section 8.35A requires that the presiding magistrate will determine when to list the hearing of ancillary applications for apprehended domestic violence orders. Limiting the length of a hearing may typically raise an issue pursuant to s 9 of the *Legislation Review Act 1987* (NSW). Specifically, the right for an accused person to due process and a fair hearing. The Committee acknowledges that the proposed section applies only to ancillary applications and is intended to provide practical benefits to the courts through stricter case management. The Committee also acknowledges the section does not impinge on a person's right to a full and final hearing. For these reasons, the Practice Note does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

7. Referable Debt Order (2024-121)

The Referable Debt Order allows a charge by a transport authority under the *Transport Administration Act 1988* (the **Transport Act**) to be recovered under the *State Debt Recovery Act 2018*. These charges are also recoverable under the Transport Act.

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

8. Report and Determination Pursuant to Section 14(2) of the Statutory and Other Offices Remuneration Act 1975 – President, Vice-President, Deputy Presidents and Acting Judge of Industrial Relations Commission

The Determination amends the 2023 Annual Determination Statutory and Other Offices Remuneration Tribunal, which determines remuneration packages for judicial members of the Industrial Relations Commission. It will take effect on and from the commencement of the *Industrial Relations Amendment Act 2023* (the **Amendment Act**) which commences from the date of proclamation.

The Determination is made under section 14 of the *Statutory and Other Offices Remuneration Act 1975* (the **SOOR Act**) and responds to a direction from the Premier. The Determination is necessitated by the Amendment Act, which re-establishes the Industrial Court of NSW. It also amends the SOOR Act to align the remuneration packages with that of other judicial officers similar to the structure before the abolition of the Industrial Court in 2016.

The Committee notes that there are several cross references to the Amendment Act without specifically referring to the provisions under the Amendment Act. However, the Determination does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

9. Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2024

The object of the Regulation is to amend the *Road Transport (Driver Licensing) Regulation 2017* to prescribe

- (a) a further trial period for the demerit points reduction trial
- (b) the date on which the *Road Transport Act 2013 (the Act)*, sections 32A and 31(5)(b) expire.

The amendment inserts Clause 72 which provides for the start and end dates of the demerit points reduction trial prescribed by section 32A of the Act.

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

10. Supreme Court Practice Not SC Gen 22 – Pronunciation of Names and Forms of Address

The Practice Note commenced on 22 April 2024 and applies to all Supreme Court hearings.

The Practice Note is made under subsection 124(11) of the *Supreme Court Act 1970* (NSW).

The object of this Practice Note is to seek to have participants in judicial proceedings' names correctly pronounced with the correct form of address.

Section 3 provides that legal representatives and self-represented parties should advise the Court, where appropriate, of the correct pronunciation and form of address of names in a proceeding. Section 4 sets out the different ways in which legal representatives and self-represented parties may communicate that information to the Court.

Section 5 sets an expectation that legal representatives and self-represented parties, where possible, familiarise themselves with and use in hearings the correct pronunciation of all names and forms of address of individuals in proceedings they are involved in.

The 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. 15

TIME & DATE: 3.02PM, 3 JUNE 2024

LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

Ms Voltz (**Chair**), Ms Stuart (**Deputy Chair**) (via Webex), Ms Davis (via Webex), Mr Hagarty (via Webex), Ms Munro (via Webex), Mr Murphy (via Webex).

APOLOGIES

Ms Higginson and Mr Layzell.

OFFICERS PRESENT

Rohan Tyler, Carly McKenna, Alice Zwar, Mengyuan Chen, Oliver Sinclair, Alex Read, Isabella Ciampa and Elizabeth Hawken.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 13 May 2024 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 14/58

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

- a) Bail and Other Legislation Amendment (Domestic Violence) Bill 2024
- b) Companion Animals Amendment (Puppy Farms) Bill 2024
- c) Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024
- d) Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024
- e) Residential (Land Lease) Communities Amendment Bill 2024

4. Consideration of bills without comment for Legislation Review Digest 14/58

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

- a) Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2024
- b) Museums of History NSW Amendment (Chief Executive Officer) Bill 2024
- c) National Parks and Heritage Legislation Amendment Bill 2024

5. Regulations without comment for Legislation Review Digest 14/58

Resolved, on the motion of Mr Hagarty: That the Committee adopts the regulations without comment as Part Two to Digest 14/28.

6. Legislation Review Digest 14/58

Resolved, on the motion of Ms Stuart:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 14/58 and that it be signed by the Chair and presented to the House.

7. Regulations to be reviewed

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

8. ***

9. Next meeting

The meeting adjourned at 3:05pm until 17 June 2024 at 3.00pm.