

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. Alcohol Consumption in Public Places (Liberalisation) Bill 2024\*

No issues identified

### 2. Automated External Defibrillators (Public Access) Bill 2024 (No 2)\*

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment
Significant custodial penalty	Referred
Statutory rule expressed to commence before publication on the NSW legislation website	Referred
Penalty notice offences and wide powers of delegation	Referred
Matters deferred to regulations – creation of offences	Referred

### 3. Catholic Cemeteries and Crematoria Trust Bill 2024

No issues identified

### 4. Community Services Sector (Portable Long Service Leave) Bill 2024

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment
Right of autonomy – worker's consent not required for registration	No further comment
Wide official powers – property rights, right to silence and privilege against self-incrimination	Referred
Deferral of powers to regulations	Referred
Henry VIII clause	Referred
Commencement by proclamation	No further comment

### 5. Electoral Funding Amendment Bill 2024

Issue identified	Conclusion of Committee
Retrospective change to definition of administrative expenditure	No further comment
Inappropriate regulation-making power - new categories of administrative expenditure	Referred

### 6. Energy Legislation Amendment (Clean Energy Future) Bill 2024

Issue identified	Conclusion of Committee
Commencement by proclamation – removal of offences from the Act	No further comment
Wide regulation making powers – power to create offences	No further comment
Making of guidelines and ministerial powers determining compensation	No further comment

## 7. Energy Security Corporation Bill 2024

Insufficiently defined administrative powers – Requirements of Investment Mandate	Referred
Matters deferred to regulations	Referred

## 8. Environmental Planning and Assessment Amendment (Disallowance of Transport Oriented Development SEPP) Bill 2024\*

No issues identified

## 9. Government Sector Employment and Other Legislation Amendment Bill 2024

Issue identified	Conclusion of Committee
Commencement by proclamation	No further comment

## 10. Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024

Issue identified	Conclusion of Committee
Absolute liability offences and penalty notice offences	No further comment
Presumption to make a disqualification order – limits on judicial discretion	Referred
Privacy rights – authority to require disclosure of information	Referred
Wide power of delegation	Referred

## 11. Protection of the Environment Operations Amendment (Balloons) Bill 2024\*

No issues identified

## 12. Rice Marketing Amendment Bill 2024

No issues identified

## 13. Road Rules Amendment (Helmets-Sikh Exemption) Bill 2024\*

No issues identified

## 14. Statute Law (Miscellaneous Provisions) Bill 2024

Issue identified	Conclusion of Committee
Statutory rule expressed to commence before publication on NSW legislation website	Referred

## 15. Transport Administration Amendment Bill 2024

Issue identified	Conclusion of Committee
Wide powers of TAM	Referred
Wide power of delegation	Referred
Commencement by proclamation	No further comment

## 16. Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

Issue identified	Conclusion of Committee
Commencement by proclamation - custodial penalty	No further comment

# Summary of Conclusions

## PART ONE – BILLS

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### 1. Alcohol Consumption in Public Places (Liberalisation) Bill 2024\*

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

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### 2. Automated External Defibrillators (Public Access) Bill 2024 (No 2)\*

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

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##### *Absolute liability offences*

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Section 7 of the Bill proposes to establish absolute liability offences for failure to comply with the requirements for the installation, maintenance and signage of automated external defibrillators. These offences carry a maximum penalty ranging from a \$2,420 fine (22 penalty units) to a \$19,800 fine (180 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 to encourage compliance. In this case, compliance with the regulatory regime is intended to ensure defibrillator devices are adequately installed and well maintained in order to protect public health and safety during potential medical emergencies. The Committee also notes that the offences only carry a monetary penalty and do not carry a custodial penalty. In the circumstances, the Committee makes no further comment.

##### *Significant custodial penalty*

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Proposed section 9 of the Bill prohibits a person from intentionally, and without a reasonable excuse, damaging, destroying or removing a defibrillator. Non-compliance would be an offence carrying a maximum penalty of a \$9,900 fine and/or five years imprisonment.

The Committee notes that this maximum penalty range is broad and the Bill does not appear to specify what circumstances or aggravating factors may warrant a custodial penalty for the commission of the offence. The Committee also notes that a maximum custodial penalty of five years imprisonment is a serious punishment which would render the offence a 'serious indictable offence' under the *Crimes Act 1900*. Therefore, the Bill may impose a wide range of penalties for an offence which may include a disproportionate imprisonment sentence.

The Committee acknowledges that the offence may be intended to prevent damaging or removing potentially life-saving medical equipment, to ensure it is ready and accessible during medical emergencies. However, the Committee notes that without specifying circumstances or differentiating tiers of the seriousness of the offence, it may be difficult for an accused to understand what circumstances may attract a custodial sentence. Additionally, imposing a maximum custodial penalty of five years imprisonment renders the offence a serious indictable offence under the *Crimes Act 1900*, which may significantly change how the criminal prosecution of the offence is conducted. Given the significant impacts of a custodial sentence on an individual's rights, the Committee refers this matter to Parliament for consideration.

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

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Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill or other Act amending the Bill once enacted. It also provides that the regulation may take effect on a date earlier than the date that provision commenced, including a date before the publication of those regulations on the NSW legislation website. 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 also notes that this would conflict with section 39(2A) of the *Interpretation Act 1987*, which requires that statutory rules commence either on the day of publication or a later specified date. For these reasons, the Committee refers this matter to the Parliament for its consideration.

*Penalty notice offences and wide powers of delegation*

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Proposed section 14 of the Bill would enable authorised officers to issue a penalty notice to a person who appears to the officer to have committed a penalty notice offence (as prescribed by regulations). Under proposed subsection 14(6), an authorised officer is a person designated by the Department Secretary as an authorised officer.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount instead of appearing before a court to have their matter heard. This may impact on a person's right to a fair trial, specifically their right to have their matter heard by an impartial decision maker. The Committee also notes that, by permitting authorised officers to issue penalty notices if it 'appears' to them that a person has committed a penalty notice offence, it may result in people being penalised for offences before guilt has been proven to the criminal standard of proof. Therefore, the Bill may also impact on a person's right to the presumption of innocence.

The Committee recognises that individuals still retain the right to elect to have their matter heard and decided by a court. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice.

However, the Committee notes that the Bill allows the Secretary to designate a departmental employee or 'person prescribed by the regulations' as an authorised officer. The Bill may therefore provide for a wide power of delegation of the function to issue penalty notices under proposed section 14, including to an unknown or unclear group or class of persons prescribed by the regulations. For these reasons, the Committee refers this matter to Parliament for consideration.

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

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*Matters deferred to regulations – creation of offences*

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Section 15 of the Bill seeks to provide a general regulation-making power to prescribe anything 'necessary or convenient' for carrying out or giving effect to the Bill. The Committee notes that there does not appear to be any provisions that define or narrow the meaning of 'convenient'. Section 15 would also allow regulations to broadly exempt specified persons or entities from specified provisions of the Bill, once enacted. The Bill may therefore provide for a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament, and which the Parliament has no control over when they commence.

The Bill would also permit regulations to create offences punishable by a maximum penalty of a \$1,100 fine (10 penalty units). The Committee generally prefers that offences are established in primary legislation in order to facilitate an appropriate level of Parliamentary scrutiny.

The Committee recognises that these regulation-making powers may allow for more flexible regulatory responses and encourage compliance with the broader regulatory framework. It notes that regulations can only create offences that carry monetary penalties. The Committee also acknowledges that any regulations would still have to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the proposed general regulation-making power may effectively allow regulations to prescribe matters with little limit. It may enable the Executive to create offences and also broadly exempt the application of the parent Act without reference to Parliament. For these reasons, the Committee refers this matter to Parliament for consideration.

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### **3. Catholic Cemeteries and Crematoria Trust Bill 2024**

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

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### **4. Community Services Sector (Portable Long Service Leave) Bill 2024**

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

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##### *Absolute liability offences*

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The Bill proposes to create the *Community Services Sector (Portable Long Service Leave) Act 2024*, which would introduce a number of new offences in relation to record keeping, providing information, making payments on time and not obstructing an inspector's powers. The offences carry maximum penalties ranging from a \$2,200 fine to a \$5,500 fine.

The Committee notes that the new offences do not require a mental element to be proven. A small number of the new offences provide that a person may not be guilty if they have a 'reasonable' excuse. The Committee notes that 'reasonable excuse' does not amount to either a defence in respect to a criminal offence or a mental element to prove guilt. Therefore, the Bill may establish a number of absolute liability offences.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. However, the Committee recognises that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. The Committee also acknowledges that the maximum penalties carried by these proposed offences would only be monetary and not custodial. In the circumstances, the Committee makes no further comment.

##### *Right of autonomy – worker's consent not required for registration*

---

The Bill seeks to create the *Community Services Sector (Portable Long Service Leave) Act 2024*. Subsections 14(1)(c) and (3) of the Act provide that the Long Service Corporation (the Corporation) may register a person as a worker where the person has not applied but they have evidence that they are, or were a worker and are satisfied that they should be registered. The subsections may impact an individual's right to personal autonomy by permitting them to be registered without their consent. The Committee notes that the register would contain personal information about workers under section 17, which may infringe on privacy rights.



However, the Committee acknowledges that under proposed subsection 19(4)(b) a worker can request to have their worker's registration cancelled, which the Corporation must comply with. The Committee also acknowledges that the information that would be collected by the Corporation is intended to facilitate the establishment of the Portable Long Service Leave scheme. For these reasons, the Committee makes no further comment.

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

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The proposed *Community Services Sector (Portable Long Service Leave) Act 2024* would grant broad entry, search and seizure powers to inspectors under Part 8. These include powers to enter premises with or without a search warrant, examine and inspect the premises and any records or other documents, and seize any documents or things suspected to relate to an offence under the Act or regulations. Entry to, and search of, non-residential premises without the occupier's consent can occur at any time using 'reasonable force'. Entry to, and search of, residential premises without the occupier's consent can be authorised by applying for a search warrant from an authorised officer. By providing for broad powers to enter, search and seize items, the Bill may impact on a person's privacy and property rights.

The Committee notes that inspectors may only enter non-residential premises to determine whether workers are at the premises, or if there has been non-compliance with the Act or regulations. The Committee further notes that inspectors may only enter residential premises where the inspector reasonably believes that there has been a contravention of the Act or regulations, or that there is an item at the premises connected with an offence under the Act or regulations. The Committee acknowledges that the enforcement powers may be intended to protect against fraud or stealing of public money.

However, the Committee notes that section 84 may impact on individual's privilege from self-incrimination. Under subsection 84(4) of the Act, any record provided at the request of an inspector is admissible evidence against the person in criminal proceedings. Further, under subsection 84(3), information or responses given can be admissible evidence in criminal proceedings. The Committee acknowledges that a safeguard has been included in subsection 84(3) by prohibiting the use of that information in criminal proceedings where objection on grounds of self-incrimination were, or could have been raised. However, these powers may be exercised without a warrant and on broadly defined grounds like determining compliance as well as 'anything necessary for the purpose of... Part [8]'. For these reasons, the Committee refers the matter to Parliament for consideration.

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

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*Deferral of powers to regulations*

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The proposed *Community Services Sector (Portable Long Service Leave) Act 2024* would defer a number of significant matters to the regulations, including: what 'workers' and 'community services' are eligible to partake in the scheme, the procedure and processes for appeals, and part of the formula for determining long service leave payments.

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 the provisions may be intended to build more flexibility into the regulatory framework, and to allow regulators to better respond to changing circumstances, including changing community services. However, the Committee considers that the powers being deferred to the regulations, which include prescribing who is eligible to partake in the scheme and how much long service leave they are entitled to, are substantive matters that effect

individual workers. The Committee therefore refers the matter to Parliament for further consideration.

#### *Henry VIII clause*

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The Bill proposes to create the *Community Services Sector (Portable Long Service Leave) Act 2024*. Subsection 4(3) of the proposed Act allows for Schedule 1 to be amended by the regulations. The subsection may therefore amount to a Henry VIII clause by allowing the Executive to alter the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses to be an inappropriate delegation of legislative powers.

The Committee further notes that regulations made under this subsection would not have to be tabled in Parliament and are not subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee notes that the proposed Act has included other deferrals of power to the Minister that are required to be tabled in Parliament and are subject to disallowance.

The Committee acknowledges the administrative efficiency of deferring the amendment of Schedule 1 to the regulations. However, as the regulation-making power relates to which workers are eligible to apply for long service leave, the Committee refers the matter to Parliament for further consideration.

#### *Commencement by proclamation*

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The Bill would create the *Community Services Sector (Portable Long Service Leave) Act 2024*. Section 2 of the Act allows for the Minister to choose a date for the Act to commence, which will be published in the Government Gazette. The Committee generally prefers for the commencement date to be included in the Bill, which makes it subject to parliamentary scrutiny. However, the Committee notes that an estimate for the commencement date has been provided to Parliament and therefore Committee makes no further comment.

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## **5. Electoral Funding Amendment Bill 2024**

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

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#### *Retrospective change to definition of administrative expenditure*

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The Bill seeks to expand the definition of administrative expenditure that can be claimed from the Administration Fund under the *Electoral Funding Act 2018*. The Act currently provides that if a Member of Parliament can claim an expenditure item through their parliamentary allowance, they cannot claim this expenditure through the Administration Fund. The proposed amendments would create a specific exception for members' electoral allowances, which are a type of parliamentary allowance. These amendments would apply retrospectively from 1 April 2023.

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.

However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact person rights or liberties. The Committee also notes that the retrospective application is intended to provide legislative clarity for those making and determining claims for payment from the Fund. For this reason, the Committee makes no further comment.

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

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*Inappropriate regulation-making power - new categories of administrative expenditure*

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The Bill proposes a new regulation-making power under the *Electoral Funding Act 2018*. Regulations made under this power could create new categories of administrative expenditure for eligible political parties and independent members to claim from the Administration Fund. Regulations made before 1 July 2024 may apply retrospectively from 1 April 2023.

The Committee acknowledges that the intention of the regulation-making power may be to allow flexibility in identifying types of administrative expenditure. However, the Committee notes that the objects of the Act include the administration of a 'fair and transparent' electoral funding scheme. If a decision to expand the definition of administrative expenditure is delegated to regulations, this decision would not be subject to the same level of transparency or parliamentary scrutiny. This scrutiny is particularly important because it relates to the use of public funds for payment to Members of Parliament. For these reasons, the Committee refers to the Parliament the issue of whether this permits an inappropriate delegation of legislative power.

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**6. Energy Legislation Amendment (Clean Energy Future) Bill 2024**

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

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*Commencement by proclamation – removal of offences from the Act*

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Schedule 3 of the Bill proposes to 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 personal rights or obligations.

In this case, the Committee notes that the amendments would not impact on personal rights or liberties. There would be no change to the current regulatory framework or penalty unit amounts upon proclamation, as the relevant offences would already have moved to the regulations. Therefore, the Committee makes no further comment.

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*Wide regulation making powers – power to create offences*

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The Bill amends the *Pipelines Act 1967* to create broad regulation making powers, including the power to create offences and the power to create regulations about matters that are 'necessary or convenient' to give effect to the Act. Offences created under the regulations are limited to those with a maximum penalty of 5,000 penalty units (for individuals), but there does not appear to be any provisions that define or narrow the meaning of 'convenient'.

Unlike primary legislation, regulations are subordinate legislation and are not required to be passed by Parliament. However, the Committee notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*.

The Committee also recognises that these kinds of regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. In this case, the Committee notes that addressing offences and penalties through the regulations would make it easier to review and update penalty units to reflect risks and potential impacts on the public from any breach of the Bill's provisions. For this reason, the Committee makes no further comment.

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*Making of guidelines and ministerial powers determining compensation*

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The Bill seeks to amend the *Electricity Supply Act 1995* to provide for strategic benefit payments as compensation for eligible landowners in accordance with guidelines issued by the Minister and published in the Gazette. The Bill seeks to outline matters that the guidelines may provide for, including 'other matters the Minister considers necessary'. It is unclear if these guidelines are to be tabled in Parliament, which means the Bill may incorporate extrinsic documents into law.

The Committee generally comments on any legislative provisions that permit the incorporation of external materials like guidelines and gives these materials legal force. It also prefers substantive matters to be set out in legislation or otherwise tabled in Parliament, where they can be subject to disallowance, and therefore subject to appropriate parliamentary scrutiny.

However, the Committee acknowledges that Ministerial issue of the guidelines would allow the payment of strategic benefits to be flexible and responsive to the changing regulatory environment. Further, it notes that the guidelines would not impact existing compensation entitlements to landowners under the *Land Acquisition (Just Terms Compensation) Act 1991*. For these reasons, the Committee makes no further comment.

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## **7. Energy Security Corporation Bill 2024**

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

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*Insufficiently defined administrative powers – Requirements of Investment Mandate*

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Proposed section 25 of the *Energy Security Corporation Bill 2024* provides the Minister and Treasurer with the power to direct the exercise of the Corporation's investment function, through an 'Investment Mandate' ('the Mandate'). Proposed section 28 of the Bill requires that the Board must take reasonable steps to comply with the Mandate.

The Committee notes that in creation of the Mandate, proposed section 26(1)(a) requires the Minister to have regard to the objects of the Corporation. Proposed section 26 (1)(b) creates a discretion for the Minister to include matters that *may* be considered relevant and proposed section 26 (2) creates a suggestive, non-exhaustive list of policies with which the Corporation must comply, that *may* be included in the Mandate. The Committee notes that the function of the Corporation significantly hinges on the direction of the Minister and Treasurer. Proposed section 26(1)(b) and section 26(2) create a non-binding obligation on the Minister as to what may be included in the Mandate. The Committee notes some of the policies include matters of risk and return, the making of capital investments and the nature of guarantees which may be given.

The Committee acknowledges that the provisions seek to build flexibility into the scheme and provide clarity and scope to the Corporation. However, given the consequential nature of the Mandate for the exercise of the investment function, and the significance of factors listed in s 26(2), the Committee refers the matter to Parliament for its consideration.

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

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*Matters deferred to regulations*

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The Bill would defer a number of matters to regulations. In particular, the bill would provide a power to make regulations in respect of core functions of the Corporation and the Operational Fund including a power under proposed section 10(1)(c) to delegate the exercise of 'any function'

of the Corporation to a person, body, or class of persons prescribed by the regulations. Proposed section 47(1)(c) would also allow for payments out of the operational fund that are 'authorised by the regulations' and section 48(2) allows for regulations to 'provide for other circumstances in which the Corporation may borrow money'.

The Committee notes there are no limitations on the functions that could be delegated by regulation, nor on the terms 'person' or 'body', which are broad and loosely defined. The regulation-making power also extends to payments out of the Operational Fund and to circumstances in which the Corporation may borrow money. The Committee acknowledges that the Operational Fund is separate to the \$1 billion ESC Fund, and safeguards exist regarding the transfer of money, being the approval of the Minister, Treasurer and Corporation. However, given the Operational Fund exists to manage the expenditure and investment function of the Corporation, the regulation-making powers may unduly allow the money to be used for any type of expense or reason.

The Committee also notes that the Bill allows the Corporation to borrow money in prescribed circumstances connected to its functions. The proposed regulation-making power would broaden this to 'other circumstances' as provided by the regulations.

The Committee generally prefers substantive matters to be dealt with in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. The Committee acknowledges that the provisions build flexibility into the Corporation and its ability to perform its functions. However, given the regulation-making powers in the Bill are wide and deal with significant matters of the legislative scheme. For these reasons, the Committee refers the matter to Parliament for its consideration.

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## **8. Environmental Planning and Assessment Amendment (Disallowance of Transport Oriented Development SEPP) Bill 2024\***

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

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## **9. Government Sector Employment and Other Legislation Amendment Bill 2024**

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

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#### *Commencement by proclamation*

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The Bill commences by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly if legislation affects individual rights and liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, for the effective transfer of functions from the Public Service Commissioner to the Secretary of the Premier's Department. Because of this, and because the Bill does not create new powers or impact personal rights and liberties, the Committee makes no further comment.

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## 10. Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024

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

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#### *Absolute liability offences and penalty notice offences*

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The Bill proposes to insert Division 1AA into the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act), which would enable the Minister to appoint officers or inspectors, for the purpose of the POCTA Act. Proposed section 24AE provides that the Minister would be able to direct a person who ceases to be an appointed officer or appointed inspector to return the evidence of the person's authority as an appointed officer or appointed inspector. Non-compliance with the direction would be an absolute liability offence with a maximum penalty of 25 penalty units. Schedule 2 of the Bill prescribes the offence under proposed section 24AE(4) as a penalty notice offence under the *Prevention of Cruelty to Animals Regulation 2012*, for which individuals would be issued a penalty notice with an amount payable of \$500.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that penalty notices allow a person to pay the amount specified for an offence within a certain time should they not wish to have the matter determined by a court. This may impact on a person's right to a fair trial, specifically, to have a matter heard by an impartial decision maker.

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 the integrity of the animal welfare enforcement agencies. The Committee also notes that the offences only carry a monetary penalty, not a custodial penalty, and that individuals retain the right to elect to have their matter dealt with before a court. Further, the Committee notes that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notices, including cost effectiveness and ease of administration. In the circumstances, the Committee makes no further comment.

#### *Presumption to make a disqualification order – limits on judicial discretion*

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The Bill proposes to amend subsection 31(1AA) of the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act) which would extend the circumstances where a court must make a disqualification order for persons committing an offence under section 5 of the POCTA Act. Under proposed subsection 31(1AA) of the Bill, there would be a presumption that a Court must make a disqualification order for a person who has been convicted of either repeat animal cruelty offences or multiple animal cruelty offences unless it is satisfied that 'special circumstances' exist. The Bill therefore may effectively limit the court's judicial discretion to determine whether a disqualification order should be made.

The Committee acknowledges that the Court retains appropriate discretions to determine whether there is any special circumstance justifying not making the order. It also acknowledges that the proposed amendment is intended to deliver on the 'fit and proper person' regime along with enhancing animal welfare protections. However, the Committee notes that this change may impact on the procedural fairness of a person convicted under section 5. For these reasons, the Committee refers the matter to Parliament for consideration.

### *Privacy rights – authority to require disclosure of information*

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The Bill proposes to insert section 34BA into of the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act) which would allow a relevant agency to collect, use or disclose information to another relevant agency. Such information can be collected for the purposes of administering or enforcing the POCTA Act, or the regulations. Under proposed subsection 34BA(2), a 'relevant agency' may disclose information to another relevant agency if they consider it 'appropriate' to give the information in relation to a significant risk to safety. Under proposed subsection 34BA(3), the term 'information' would include personal information and the term 'relevant agency' would include another entity prescribed by the regulations. Further, the Bill does not include any provision regarding the criteria of what amounts to 'appropriate' when deciding the disclosure or specifying what amounts to 'another entity' prescribed by the regulations.

The Committee acknowledges that the proposed amendment may be intended to ensure the government and enforcement agencies could efficiently and appropriately share relevant information to support the administration and enforcement of animal welfare.

However, the Bill may impact individual's privacy rights by requiring a relevant agency to provide personal information for collection and use, as an individual's personal information is otherwise protected from disclosure and use under the *Privacy and Personal Information Protection Act 1998*. The Committee notes that these provisions would empower a relevant agency, even a private entity, to require disclosure of personal information by another relevant agency without any requirement to notify a person that their information would be disclosed or given an opportunity to object. For these reasons, the Committee refers the matter to Parliament for consideration.

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

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#### *Wide power of delegation*

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The Bill proposes to insert section 34BB into the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act) which would provide the Minister with the power to delegate the exercise of functions under the Bill. Secondly, the delegate would be able to further sub-delegate the functions (other than the power of subdelegation) to another person. Under proposed section 34BB of the Bill, delegation by the Minister could be made to 'a person or classes of persons prescribed by the regulations'. The Bill does not include any provision specifying or limiting what amounts to 'a person or classes of persons' prescribed by the regulations, or set any qualification requirements for a person to be delegated functions. Therefore, the Bill may provide for a wide power of delegation of statutory functions.

The Committee notes that the provision may effectively delegate statutory powers and functions without any oversight by the Parliament. Under proposed section 34BB, private individuals could be delegated statutory functions that the public may expect to be performed by public officials. The Committee prefers that the delegation of statutory functions be detailed in primary legislation to ensure appropriate parliamentary scrutiny over the exercise of these functions. For these reasons, the Committee refers the matter to Parliament for consideration.

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## **11. Protection of the Environment Operations Amendment (Balloons) Bill 2024\***

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The Committee makes no comment on the Bill in respect of the issues set out in section 8A of the *Legislation Review Act 1997*.



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## 12. Rice Marketing Amendment Bill 2024

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

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## 13. Road Rules Amendment (Helmets-Sikh Exemption) Bill 2024\*

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

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## 14. Statute Law (Miscellaneous Provisions) Bill 2024

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

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

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Schedule 3, clause 5 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on enactment of the proposed Act. Despite being of limiting effect, it would also provide that those provisions may take effect on a date earlier than the date of publication of those regulations on the NSW legislation website. The Committee notes that this would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under this Bill and the laws applying to them. This is contrary to the rule of law principle that people are entitled to know the law to which they are subject at any given time. For these reasons, the Committee refers the matter to Parliament for consideration.

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## 15. Transport Administration Amendment Bill 2024

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

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#### *Wide powers of TAM*

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The Bill seeks to amend the *Transport Administration Act 1988* to convert the Transport Asset Holding Entity of New South Wales into the Transport Asset Manager of New South Wales (TAM). The Bill also prescribes the functions of TAM at proposed section 7, which includes providing facilities or services that are 'necessary', 'ancillary' or 'incidental' to its functions, conducting a business or activities 'whether or not related to its functions', and carrying out its functions 'outside of the State'. The Bill would also allow for TAM's functions to be ceased or limited at the direction of the Minister for Transport. The Bill may therefore provide TAM with a wide power to conduct its statutory functions, including acting outside of the State.

The Committee acknowledges that the incidental powers may be intended to facilitate policy reform of State rail assets and also may enable TAM to transition and operate flexibly and responsibly. The Committee also acknowledges that proposed section 7 permits the broad extraterritorial application of TAM's functions, but only if the Minister for Transport authorises it to



carry out those functions. Further, the Committee recognises that the power of the Minister's direction is intended to support collaboration and engagement between TAM and TfNSW.

However, the Committee notes that the terms like 'necessary', 'incidental' and 'whether or not related' may be, without legislative definitions or limitations, broadly defined to include any and all matters, actions or steps. The Committee also generally comments where legislation may have extraterritorial effect because it may create uncertainty for individuals about what laws apply to them at any one time and may create conflict between the Act and another jurisdiction's laws concerning transport assets and networks. For these reasons, the Committee refers the matter to Parliament for consideration.

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

#### *Wide power of delegation*

Proposed section 14 of the Bill would provide TAM with the power to delegate the exercise any of its functions under the Bill to 'an authorised person', and the delegate would be able to sub-delegate the functions to another 'authorised person'. Under proposed subsection 14(3) of the Bill, 'authorised person' may mean 'a person of a class prescribed by the regulations or approved by the Minister'. The Bill does not include any provision specifying or limiting what amounts to 'a person of a class prescribed by the regulations or approved by the Minister', or set any qualification requirements for a person to be delegated functions.

Therefore, the Bill may provide for a wide power of delegation of statutory functions. The Committee notes that the provision may effectively delegate statutory powers and functions without any oversight by the Parliament. Under proposed section 14, private individuals could be delegated statutory functions that the public may expect to be performed by public officials. The Committee prefers that the delegation of statutory functions be detailed in primary legislation to ensure appropriate parliamentary scrutiny over the exercise of these functions. For these reasons, the Committee refers the matter to Parliament for consideration.

#### *Commencement by proclamation*

Schedule 1.3 of the Bill prescribes the transitional provisions consequent on the proposed amendments being enacted. Under proposed section 240 of Schedule 1.3, the chief executive officer and other directors of TAHE would cease to hold office on the commencement of the Schedule. Proposed subsection 240(3) provides that no compensation or remuneration is payable to a person ceasing to hold an office by operation of the Schedule. Clause 2 of the Bill provides that Schedule 1.3, in addition to other schedules, would commence 'on a day or days to be appointed by proclamation'.

The Committee notes that part of the Bill would commence by proclamation and 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 recognises that commencement by proclamation would enable greater flexibility to facilitate the reform and transition of management of rail assets and the transport network. In the circumstances, the Committee makes no further comment.

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## 16. Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

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

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#### *Commencement by proclamation - custodial penalty*

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The Bill introduces a new industrial manslaughter offence and maximum penalty of 25 years' imprisonment for individuals or \$20 million for a body corporate. The provision setting out the maximum penalty is to 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.

The Committee notes that the proposed new offence carries a custodial penalty that is significantly higher than the existing penalty for Category 1 (gross negligence) offences under the *Work Health and Safety Act 2011*. This significant increase in the maximum custodial penalty has the potential to adversely impact the personal rights of individuals charged with the offence. It is generally recognised that a person should be able to understand how the law applies to them at any one time.

However, in this case, the Committee acknowledges that the increase in custodial penalty is intended to deter and prevent workplace deaths and injuries. The Committee also notes that the proposed commencement by proclamation is intended to allow consultation to take place among relevant agencies, and for processes to be thoroughly considered and established before the offence provisions commence. Therefore, in the circumstances, the Committee makes no further comment.



# Part One – Bills

# 1. Alcohol Consumption in Public Places (Liberalisation) Bill 2024\*

Date introduced	5 June 2024
House introduced	Legislative Council
Member responsible	The Hon. John Ruddick, MLC
*Private Members Bill	

## Purpose and description

- 1.1 The object of the Bill is to remove restrictions and prohibitions on the consumption of alcohol in public places other than:
- in public places prescribed by the regulations that are of cultural or religious significance, or
  - where a person is intoxicated or disorderly.

## Background

- 1.2 The Bill seeks to create the *Alcohol Consumption in Public Places (Liberalisation) Act 2024* (the **Act**). Sections 7 and 8 of the proposed Act would allow people to lawfully consume alcohol in public places in NSW without that alcohol being confiscated.
- 1.3 In his second reading speech, the Hon. John Ruddick, MLC stated that the proposed Act would restore 'the right of individuals to consume alcohol in public spaces' by removing the existing offence of public consumption. Mr Ruddick noted that the proposed Act would bring legislative arrangements in line with what he considered to be a 'perceived normal social practice' among families and friends.
- 1.4 Proposed subsection 8(2) and sections 9 and 10 set out the following exceptions:
- Alcohol can still be confiscated where a police officer gives a direction under Part 14 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (**LEPRA**).
  - Alcohol cannot be consumed in places of cultural or religious significance, as declared by the regulations.
  - Police officers can still give a direction to an intoxicated person in a public place to leave the place and not return for a specified period (**move on direction**) under Part 14, section 19B of the LEPRA.
  - Where a person has been given a move on direction, and they are found intoxicated or disorderly in the same or another public place within 6 hours, they would still be guilty of an offence under section 9 of the *Summary Offences Act 1988*.

- 1.5 Mr Ruddick also clarified that public authorities would still have existing powers to take action against public anti-social behaviour.

### 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*.**

## 2. Automated External Defibrillators (Public Access) Bill 2024 (No 2)\*

Date introduced	6 June 2024
House introduced	Legislative Assembly
Member responsible	Mr Gareth Ward MP
*Private Members Bill	

### Purpose and description

- 2.1 The objects of this Bill are to:
- (a) require the installation of automated external defibrillators (**defibrillators**) in certain buildings and vehicles
  - (b) require the registration and maintenance of the defibrillators, and
  - (c) require the Minister responsible for the administration of the proposed Act to:
    - (i) keep a publicly accessible register of the defibrillators, including the location of the defibrillators, and
    - (ii) develop a strategy to inform the public about defibrillators.

### Background

- 2.2 In his second reading speech, Mr Gareth Ward MP referred Members to the second reading speech he gave in the Legislative Assembly on 21 March 2024 for the Automated External Defibrillators (Public Access) Bill 2024 (the **AED (No. 1) Bill**).
- 2.3 The Bill includes the same provisions as the AED (No. 1) Bill, which was introduced by Mr Ward earlier in the 58<sup>th</sup> Parliament on 21 March. That Bill lapsed on 20 April 2024, in accordance with Legislative Assembly Standing Order 105.
- 2.4 In his 21 March second reading speech, the Mr Ward said that the Bill is intended to ensure that 'life-saving devices are where they need to be and that they are adequately maintained' by mandating defibrillators in 'public buildings such as schools, libraries and sporting facilities along with all modes of public transport.' He further emphasised that it would also 'require defibrillators to be tested every 12 months and require signage highlighting the presence of a defibrillator in a building or a vehicle.'
- 2.5 The Bill seeks to create a new Act that would mandate the installation, registration and maintenance of defibrillators in certain buildings and vehicles. If enacted, it would commence two years after the date of assent. Mr Ward explained that the proposed two year commencement period:

... allows time for the work that has been already started to be properly analysed and for the register to be reviewed, improved upon and consolidated with other versions of AED registers in the State. It also allows time for the departments of health and emergency services to prioritise locations, distribute the defibrillators and roll out education and awareness programs so that the public is aware of the devices and understands how to use them.

- 2.6 The Committee reported on the AED (No. 1) Bill in Digest No. 12/58.<sup>1</sup> In this Digest, the Committee noted that the provisions of the AED Bill imposed significant custodial penalty, operated retrospectively, created penalty notice offences, had wide powers of delegation, and deferred significant matters to regulations. The comments in this report are consistent with the comments in that Digest.

## Issues considered by the Committee

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

#### *Absolute liability offences*

- 2.7 Section 7 of the Bill would require a responsible person of a relevant building or vehicle to ensure that:
- (a) defibrillators are installed, maintained and tested (subsection (1)), and
  - (b) a sign indicating the location of a defibrillator is installed (subsection (2)).
- 2.8 The terms 'relevant building', 'relevant vehicle' and 'responsible person' are defined under sections 4 and 5 of the Bill. Proposed subsection 4(1) sets out a number of categories that are captured by the term 'relevant buildings', which would include large commercial buildings, government buildings, educational establishments and correctional centres. Under proposed subsection 4(2), 'relevant vehicles' would include an emergency services vehicle and a public passenger vehicle.
- 2.9 Under proposed section 5, 'responsible person' would mean:
- (a) for a relevant building, the owner of the building.
  - (b) for an emergency services vehicle, the head of the emergency services organisation.
  - (c) for a public passenger vehicle, the operator of the service provided using the vehicle.
  - (d) for another vehicle prescribed as a relevant vehicle, the prescribed person.
- 2.10 The Bill also proposes to establish absolute liability offences regarding the requirements for the installation, maintenance and signage of defibrillators. Failure to

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<sup>1</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 12/58](#), 7 May 2024.

comply with the requirements under section 7 would carry a maximum penalty ranging from a \$2,420 fine (22 penalty units) to a \$19,800 fine (180 penalty units).

- 2.11 In his second reading speech, Mr Ward emphasised that the Bill would ensure 'defibrillators are working, are accessible and are there when people need them.'

**Section 7 of the Bill proposes to establish absolute liability offences for failure to comply with the requirements for the installation, maintenance and signage of automated external defibrillators. These offences carry a maximum penalty ranging from a \$2,420 fine (22 penalty units) to a \$19,800 fine (180 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 to encourage compliance. In this case, compliance with the regulatory regime is intended to ensure defibrillator devices are adequately installed and well maintained in order to protect public health and safety during potential medical emergencies. The Committee also notes that the offences only carry a monetary penalty and do not carry a custodial penalty. In the circumstances, the Committee makes no further comment.**

#### *Significant custodial penalty*

- 2.12 Proposed section 9 of the Bill prohibits a person from intentionally and without a reasonable excuse:

- (a) damaging or destroying a defibrillator, or
- (b) removing a defibrillator from where it is installed, as required under the Bill.

- 2.13 Failure to comply with section 9 would carry a maximum penalty of a \$9,900 fine (90 penalty units) and/or five years imprisonment.

**Proposed section 9 of the Bill prohibits a person from intentionally, and without a reasonable excuse, damaging, destroying or removing a defibrillator. Non-compliance would be an offence carrying a maximum penalty of a \$9,900 fine and/or five years imprisonment.**

**The Committee notes that this maximum penalty range is broad and the Bill does not appear to specify what circumstances or aggravating factors may warrant a custodial penalty for the commission of the offence. The Committee also notes that a maximum custodial penalty of five years imprisonment is a serious punishment which would render the offence a 'serious indictable offence' under the *Crimes Act 1900*. Therefore, the Bill may impose a wide range of penalties for an offence which may include a disproportionate imprisonment sentence.**

**The Committee acknowledges that the offence may be intended to prevent damaging or removing potentially life-saving medical equipment, to ensure it is ready and accessible during medical emergencies. However, the Committee notes that without specifying**



**circumstances or differentiating tiers of the seriousness of the offence, it may be difficult for an accused to understand what circumstances may attract a custodial sentence. Additionally, imposing a maximum custodial penalty of five years imprisonment renders the offence a serious indictable offence under the *Crimes Act 1900*, which may significantly change how the criminal prosecution of the offence is conducted. Given the significant impacts of a custodial sentence on an individual's rights, the Committee refers this matter to Parliament for consideration**

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

- 2.14 Under section 39(1) of the *Interpretation Act 1987*, a statutory rule (including regulations) must be published on the NSW legislation website and commence on the date of publication or a later specified date. Subsection 39(2A) provides that a statutory rule is not invalid merely because it is expressed to commence (wholly or partly) before the date of publication, and is instead taken to commence on the date of publication rather than the earlier stated date.
- 2.15 Schedule 1 of the Bill seeks to establish a regulation-making power to make savings, transitional and other provisions. Subclauses 1(4) and 5 of Schedule 1 would allow a savings or transitional provision which is made as a consequence of the commencement of a provision to take effect before that provision has commenced, including before publication of the regulation on the NSW legislation website.

**Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill or other Act amending the Bill once enacted. It also provides that the regulation may take effect on a date earlier than the date that provision commenced, including a date before the publication of those regulations on the NSW legislation website. 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 also notes that this would conflict with section 39(2A) of the *Interpretation Act 1987*, which requires that statutory rules commence either on the day of publication or a later specified date. For these reasons, the Committee refers this matter to the Parliament for its consideration.**

*Penalty notice offences and wide powers of delegation*

- 2.16 Proposed subsection 14(1) of the Bill would enable an authorised officer to issue a penalty notice to a person 'if it appears to the officer that the person has committed a penalty notice offence'. Under proposed subsection 14(2), the regulations may prescribe an offence as a penalty notice offence.
- 2.17 An authorised officer is defined under proposed subsection 14(6) as any of the following persons designated by the relevant Department Secretary:
- (a) a person employed in the Department, or
  - (b) another person prescribed by the regulations.

**Proposed section 14 of the Bill would enable authorised officers to issue a penalty notice to a person who appears to the officer to have committed a penalty notice offence (as prescribed by regulations). Under proposed subsection 14(6), an authorised officer is a person designated by the Department Secretary as an authorised officer.**

**The Committee notes that penalty notices allow an individual to pay a specified monetary amount instead of appearing before a court to have their matter heard. This may impact on a person's right to a fair trial, specifically their right to have their matter heard by an impartial decision maker. The Committee also notes that, by permitting authorised officers to issue penalty notices if it 'appears' to them that a person has committed a penalty notice offence, it may result in people being penalised for offences before guilt has been proven to the criminal standard of proof. Therefore, the Bill may also impact on a person's right to the presumption of innocence.**

**The Committee recognises that individuals still retain the right to elect to have their matter heard and decided by a court. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice.**

**However, the Committee notes that the Bill allows the Secretary to designate a departmental employee or 'person prescribed by the regulations' as an authorised officer. The Bill may therefore provide for a wide power of delegation of the function to issue penalty notices under proposed section 14, including to an unknown or unclear group or class of persons prescribed by the regulations. For these reasons, the Committee refers this matter to Parliament for consideration.**

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

#### *Matters deferred to regulations – creation of offences*

- 2.18 The Bill seeks to establish a number of regulation-making powers under proposed section 15, including a general regulation-making power that would allow regulations to be made about anything required or permitted to be prescribed, or 'necessary or convenient' to be prescribed for carrying out or giving effect to the Bill.
- 2.19 Proposed subsection 15(3) would further allow the regulations to create offences about the matters under proposed subsection (2). These offences may carry a maximum penalty of a \$1,100 fine (10 penalty units).
- 2.20 Proposed subsection 15(5) would also permit regulations to 'exempt specified persons or entities from specified provisions' of the Bill.

**Section 15 of the Bill seeks to provide a general regulation-making power to prescribe anything 'necessary or convenient' for carrying out or giving effect to the Bill. The Committee notes that there does not appear to be any provisions that define or narrow the meaning of 'convenient'. Section 15 would also allow regulations to broadly exempt specified persons or entities from specified provisions of the Bill, once enacted. The Bill may therefore provide for a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required**

to be passed by Parliament, and which the Parliament has no control over when they commence.

The Bill would also permit regulations to create offences punishable by a maximum penalty of a \$1,100 fine (10 penalty units). The Committee generally prefers that offences are established in primary legislation in order to facilitate an appropriate level of Parliamentary scrutiny.

The Committee recognises that these regulation-making powers may allow for more flexible regulatory responses and encourage compliance with the broader regulatory framework. It notes that regulations can only create offences that carry monetary penalties. The Committee also acknowledges that any regulations would still have to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the proposed general regulation-making power may effectively allow regulations to prescribe matters with little limit. It may enable the Executive to create offences and also broadly exempt the application of the parent Act without reference to Parliament. For these reasons, the Committee refers this matter to Parliament for consideration.

### 3. Catholic Cemeteries and Crematoria Trust Bill 2024

Date introduced	6 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Stephen Kamper MP
Portfolio	Lands and Property

#### Purpose and description

- 3.1 The objects of this Bill are to:
- (a) deal with matters arising from the decision in *Catholic Metropolitan Cemeteries Trust v Attorney General of New South Wales* [2024] NSWCA 30 (**'Catholic Metropolitan Cemeteries Trust'**),
  - (b) make consequential amendments to the Crown Land Management Act 2016 (the **Crown Land Act**).

#### Background

- 3.2 The Bill seeks to create a new Act named the *Catholic Cemeteries and Crematoria Trust Act 2024* (the **Trust Act**). The Bill also proposes consequential amendments to the **Crown Land Act**.
- 3.3 In his second reading speech, the Hon. Stephen Camper MP, Minister for Lands and Property (the **Minister**), noted the recent NSW Court of Appeal decision in *Catholic Metropolitan Cemeteries Trust*<sup>2</sup>, which relates to the dissolution, on 29 February 2024, of the Catholic Metropolitan Cemeteries Trust. The Minister explained that assets held by that trust are to be transferred to the Catholic Cemeteries Board on 1 July 2024, which is a privately owned entity controlled by the Catholic Archdiocese of Sydney.
- 3.4 The Trust Act seeks to vest all land held under the equitable trust to the Crown. It would transfer the remainder of the assets, rights and liabilities in an equitable trust to a trustee, Catholic Cemeteries and Crematoria Ltd.
- 3.5 The Trust Act would also amend the purpose of the relevant equitable trust. The Minister explained that the purpose of this amendment is to allow those funds to be used to:

... bury people of all faiths, and those without a faith, across all its Crown cemeteries...

<sup>2</sup> [Catholic Metropolitan Cemeteries Trust v Attorney General of New South Wales](#) [2024] NSWCA 30

- 3.6 The Minister noted that because of the uncertainty about the status of the trust before the Court's decision, the Catholic Metropolitan Cemeteries Trust had
- ... inadvertently breached the trust in two ways: by interring the dead of all faiths and those without a faith, and by using proceeds from Rookwood to provide burial services at other sites.
- 3.7 The Trust Act would retrospectively enact the expanded purpose of the equitable trust so that those inadvertent breaches would be excused.
- 3.8 The Bill also seeks to insert provisions into the Crown Land Act to extinguish any legacy equitable interests over cemeteries or funds that were managed by the Catholic Metropolitan Cemeteries Trust.

### 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*.**

## 4. Community Services Sector (Portable Long Service Leave) Bill 2024

Date introduced	5 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations

### Purpose and description

- 4.1 The object of the Bill is to establish a scheme for the portability of long service leave for workers in the community services sector.

### Background

- 4.2 The Bill seeks to create the *Community Services Sector (Portable Long Service Leave) Act 2024* (the **Act**). The Act provides for a new scheme for eligible full-time, part-time and casual employees in the community services sector (**employees**). Employees will be entitled to long service leave after seven years of work in the sector, even where they have worked for multiple employers.
- 4.3 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, noted that community services sector workers 'struggle to access' existing long service leave entitlements due to changing organisations and working for more than one employer at a time. The Minister explained that the new scheme would bridge the gap where workers are unable to meet the requirement to access their long service leave entitlements.

### Issues considered by the Committee

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

##### *Absolute liability offences*

- 4.4 The Act would establish new offences, including for:
- the Long Service Corporation (the **Corporation**) failing to give written notice of a change in details on an employer's certification of registration change within 7 days (proposed section 11), which would carry a maximum penalty of a \$550 fine (5 penalty units).
  - a person applying to the Corporation for registration as an employer failing to give the Corporation evidence or information required by written notice within the set period without reasonable excuse (proposed subsection 23(3)), which would carry a maximum penalty of a \$4,400 fine (40 penalty units).
  - a person who the Corporation believes is, or was an employer, but not a registered employer failing to give the Corporation the information or evidence

requested by written notice by the set period (proposed subsection 25(4)), which would carry a maximum penalty of a \$4,400 fine (40 penalty units).

- a person who is, or was an employer during the return period failing to give the Corporation a return within 14 days after the end of a return period (proposed subsection 34(1)), which would carry a maximum penalty of a \$4,400 fine (40 penalty units).
- the return not including the required information for each worker who was an employee during the return period (proposed subsection 34(2)), which would carry a maximum penalty of a \$4,400 fine (40 penalty units).
- a person failing to give notice to the Corporation about a change relating to the above information within one month from the change (proposed subsection 34(4)), which would carry a maximum penalty of a \$4,400 fine (40 penalty units).
- a person failing to verify the information specified in the return as requested by the Corporation (proposed subsection 34(3)), which would carry a maximum penalty of a \$4,400 fine (40 penalty units).
- a contractor who was a registered worker during the return period failing to give the Corporation a return with the required information within 14 days after the end of the return period (proposed section 36), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- an employer or contractor failing to pay an additional amount after the Corporation fixes a new amount as the total ordinary remuneration of the worker for the return period within one month of receiving notice (or the longer period set by the Corporation) (proposed subsection 38(4)), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- an employer failing to keep written records for each worker who is an employee (proposed subsection 39(1)), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- an employer failing to keep a copy of the employment contract for each employee (proposed subsection 39(2)), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- an employer failing to keep records about an employee for 7 years after the day the employee ceases employment (proposed subsection 39(3)), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- a contractor who is registered as a worker failing to keep written records of certain things (proposed subsection 40(1)), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- a contractor failing to keep the written records for seven years after the year that the record is made (proposed subsection 40(2)), which would carry a maximum penalty of a \$2,200 fine (20 penalty units).
- an employer not granting a worker long service leave within six months of them becoming entitled to it, or a longer period set by the corporation, or a longer period agreed to by the employer and worker (proposed section 49), which would carry a maximum penalty of a \$5,500 fine (50 penalty units).

- a person failing to comply with an inspector's requirement without reasonable excuse (proposed subsection 83(1)), which would carry a maximum penalty of a \$5,500 fine (50 penalty units).
- a person refusing an inspector's entry onto premises when it is lawful (proposed subsection 83(3)), which would carry a maximum penalty of a \$5,500 fine (50 penalty units).
- a person disclosing relevant information where an exception doesn't apply (proposed section 104), which would carry a maximum penalty of a \$5,500 fine (50 penalty units).

**The Bill proposes to create the *Community Services Sector (Portable Long Service Leave) Act 2024*, which would introduce a number of new offences in relation to record keeping, providing information, making payments on time and not obstructing an inspector's powers. The offences carry maximum penalties ranging from a \$2,200 fine to a \$5,500 fine.**

**The Committee notes that the new offences do not require a mental element to be proven. A small number of the new offences provide that a person may not be guilty if they have a 'reasonable' excuse. The Committee notes that 'reasonable excuse' does not amount to either a defence in respect to a criminal offence or a mental element to prove guilt. Therefore, the Bill may establish a number of absolute liability offences.**

**The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. However, the Committee recognises that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. The Committee also acknowledges that the maximum penalties carried by these proposed offences would only be monetary and not custodial. In the circumstances, the Committee makes no further comment.**

*Right of autonomy – worker's consent not required for registration*

- 4.5 Subsections 14(1)(c) and (3) of the proposed Act would allow the Corporation to register a person as a worker where the Corporation:
- becomes aware of information outside of an application indicating the person is, or was, a worker, and
  - is satisfied the person should be registered as a worker.
- 4.6 Under proposed subsection 19(4)(b) the Corporation is required to cancel a worker's registration at the worker's request.
- 4.7 Proposed section 17 provides that the Corporation must have as much of the following information in the workers register as possible:
- the worker's name
  - the worker's employer(s)



- the worker's ABN (if the worker is a contractor)
- the number of days of service credited to the worker
- the total ordinary remuneration paid to the worker for community service work
- the details of the worker's long service leave entitlements
- the worker's registration day
- the day the worker stopped doing community service work (if applicable).

4.8 Under subsection 17(2) the Corporation can also include any other information the Corporation 'considers necessary for the administration of [the] Act' in the register.

**The Bill seeks to create the *Community Services Sector (Portable Long Service Leave) Act 2024*. Subsections 14(1)(c) and (3) of the Act provide that the Long Service Corporation (the Corporation) may register a person as a worker where the person has not applied but they have evidence that they are, or were a worker and are satisfied that they should be registered. The subsections may impact an individual's right to personal autonomy by permitting them to be registered without their consent. The Committee notes that the register would contain personal information about workers under section 17, which may infringe on privacy rights.**

**However, the Committee acknowledges that under proposed subsection 19(4)(b) a worker can request to have their worker's registration cancelled, which the Corporation must comply with. The Committee also acknowledges that the information that would be collected by the Corporation is intended to facilitate the establishment of the Portable Long Service Leave scheme. For these reasons, the Committee makes no further comment.**

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

4.9 Under subsection 75(1) of the Act, the Corporation can authorise a person, or class of persons, to be an inspector for the purposes of the Act.

4.10 Divisions 2, 3 and 4 of the Act would set out an inspector's powers to:

- (a) enter premises at any time (excluding premises used only for residential purposes) to determine whether any workers are at the premises, or if there has been compliance with the Act or regulations (subsection 76(1)).
- (b) use reasonable force, with or without assistance, to enter premises (subsection 76(2)).
- (c) enter a premises used only for residential purposes with the permission of the occupier or with a search warrant (subsection 76(3)).
- (d) apply to an authorised officer for a search warrant of premises the inspector reasonably believes was the site of a contravention, or that there is an item

connected with an offence under the Act or regulations at the premises (subsection 77(1)).

- (e) enter a premises with a search warrant and exercise a function of an inspector under Part 8 (subsection 77(2)).
- (f) after entering a premises lawfully, do anything the inspector considers necessary for the purposes of Part 8, including (subsection 78(1)):
  - (i) carrying out surveillance activities
  - (ii) examining and inspecting the premises or an item at the premises
  - (iii) making examinations and inquiries the inspector considers necessary
  - (iv) requiring records and other documents required to be kept for this Act or the regulations to be produced for inspection
  - (v) examining and inspecting records or other documents
  - (vi) seizing a thing if the inspector reasonably believes the thing is connected with an offence under the Act or the regulations
  - (vii) anything else the inspector is empowered to do under Part 8.
- (g) give written notice to an employer or other person they reasonably believe has possession of the employer's records requiring them to produce specified records at a specified time and place (subsection 81(1)).
- (h) once the record is produced, take possession of the record if the inspector considers it necessary for the purpose of obtaining evidence or protecting evidence from destruction (subsection 82(1)).

4.11 Under subsection 84(2), a person is not excused from a requirement to give records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty. However, information, or an answer given by a person, is not admissible in evidence against the person in criminal proceedings other than offences under the Act if (subsection 84(3)):

- (a) the person objected at the time on the ground that it might incriminate the person, or
- (b) the person was not warned that that the person may object to giving the information or answer on the ground that it might incriminate the person.

4.12 Under subsection 84(4), a record given under Part 8 is not inadmissible in evidence against a person in criminal proceedings on the ground that the record might incriminate the person.

- 4.13 Under subsection 84(5)(b), further information obtained as a result of a record, information or answer given under Part 8 is not inadmissible on the ground that the record, information or answer might incriminate the person.

**The proposed *Community Services Sector (Portable Long Service Leave) Act 2024* would grant broad entry, search and seizure powers to inspectors under Part 8. These include powers to enter premises with or without a search warrant, examine and inspect the premises and any records or other documents, and seize any documents or things suspected to relate to an offence under the Act or regulations. Entry to, and search of, non-residential premises without the occupier's consent can occur at any time using 'reasonable force'. Entry to, and search of, residential premises without the occupier's consent can be authorised by applying for a search warrant from an authorised officer. By providing for broad powers to enter, search and seize items, the Bill may impact on a person's privacy and property rights.**

**The Committee notes that inspectors may only enter non-residential premises to determine whether workers are at the premises, or if there has been non-compliance with the Act or regulations. The Committee further notes that inspectors may only enter residential premises where the inspector reasonably believes that there has been a contravention of the Act or regulations, or that there is an item at the premises connected with an offence under the Act or regulations. The Committee acknowledges that the enforcement powers may be intended to protect against fraud or stealing of public money.**

**However, the Committee notes that section 84 may impact on individual's privilege from self-incrimination. Under subsection 84(4) of the Act, any record provided at the request of an inspector is admissible evidence against the person in criminal proceedings. Further, under subsection 84(3), information or responses given can be admissible evidence in criminal proceedings. The Committee acknowledges that a safeguard has been included in subsection 84(3) by prohibiting the use of that information in criminal proceedings where objection on grounds of self-incrimination were, or could have been raised. However, these powers may be exercised without a warrant and on broadly defined grounds like determining compliance as well as 'anything necessary for the purpose of... Part [8]'. For these reasons, the Committee refers the matter to Parliament for consideration.**

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

##### *Deferral of powers to regulations*

- 4.14 The proposed Act would defer the following powers to the regulations:

- (a) defining 'community service' (subsection 4(2)(b)).
- (b) defining a class of 'worker' (subsection 5(1)(c)).
- (c) excluding a person as a worker (subsection 5(2)(b)).
- (d) defining a class of 'employers' (subsection 6(1)(b)).

- (e) prescribing a compound interest rate for a long service leave levy that is not paid (subsection 43(1)).
- (f) determining the minimum and maximum amounts of the highest of the weekly averages of the ordinary remuneration received by the worker, in consultation with the Community Services Sector Long Service Leave Committee (subsections 56(1) and (2)).
- (g) setting out the way in which appeals must be made and the procedure for hearing and determining appeals (subsection 61(2)).
- (h) prescribing the circumstances in which a person or body is taken to be an employer for the purposes of reimbursing an employer under section 87 (subsection 87(4)).
- (i) prescribing a person or body as a 'relevant agency' that the Secretary may share or exchange information with under an information sharing arrangement (subsection 102(4)(d)).

**The proposed *Community Services Sector (Portable Long Service Leave) Act 2024* would defer a number of significant matters to the regulations, including: what 'workers' and 'community services' are eligible to partake in the scheme, the procedure and processes for appeals, and part of the formula for determining long service leave payments.**

**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 the provisions may be intended to build more flexibility into the regulatory framework, and to allow regulators to better respond to changing circumstances, including changing community services. However, the Committee considers that the powers being deferred to the regulations, which include prescribing who is eligible to partake in the scheme and how much long service leave they are entitled to, are substantive matters that effect individual workers. The Committee therefore refers the matter to Parliament for further consideration.**

#### *Henry VIII clause*

- 4.15 Subsection 4(3) of the proposed Act would allow the regulations to amend Schedule 1 of the Act by:
- inserting a new service into the schedule,
  - omitting a service from the schedule, or
  - amending a service specified in the schedule.
- 4.16 Schedule 1 lists the services that are 'community services'.

**The Bill proposes to create the *Community Services Sector (Portable Long Service Leave) Act 2024*. Subsection 4(3) of the proposed Act allows for Schedule 1 to be amended by the regulations. The subsection**

may therefore amount to a Henry VIII clause by allowing the Executive to alter the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses to be an inappropriate delegation of legislative powers.

The Committee further notes that regulations made under this subsection would not have to be tabled in Parliament and are not subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee notes that the proposed Act has included other deferrals of power to the Minister that are required to be tabled in Parliament and are subject to disallowance.

The Committee acknowledges the administrative efficiency of deferring the amendment of Schedule 1 to the regulations. However, as the regulation-making power relates to which workers are eligible to apply for long service leave, the Committee refers the matter to Parliament for further consideration.

*Commencement by proclamation*

- 4.17 Section 2 of the Act provides that the Act is to commence on a day(s) to be appointed by proclamation.
- 4.18 In her second reading speech, the Minister explained that it was intended the Act 'will begin on 1 July 2025' which would allow time to 'develop the regulations and for employers, non-government organisations, workers and the corporation to prepare for rollout'.

The Bill would create the *Community Services Sector (Portable Long Service Leave) Act 2024*. Section 2 of the Act allows for the Minister to choose a date for the Act to commence, which will be published in the Government Gazette. The Committee generally prefers for the commencement date to be included in the Bill, which makes it subject to parliamentary scrutiny. However, the Committee notes that an estimate for the commencement date has been provided to Parliament and therefore Committee makes no further comment.

# 5. Electoral Funding Amendment Bill 2024

Date introduced	4 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Jo Haylen, MP
Portfolio	Transport

## Purpose and description

- 5.1 The object of this Bill is to make further provision regarding administrative expenditure payable from the Administration Fund (the **Fund**).

## Background

- 5.2 The Bill proposes to amend the *Electoral Funding Act 2018* (the **Act**) to change the definition of 'administrative expenditure' under the Act. Under Division 2, administrative expenditure is paid to eligible political parties and independent members from the Fund, which is managed by the NSW Electoral Commission.
- 5.3 The current definition of 'administrative expenditure' under section 84 explicitly excludes administrative expenditure for which a member may claim a parliamentary allowance. Parliamentary allowances are paid to members under the *Parliamentary Remuneration Act 1989* and include electoral allowances, which are set annually by a determination from the Parliamentary Remuneration Tribunal (the **Tribunal**).
- 5.4 The Tribunal's annual determination on 15 June 2023 provided, for the first time, a non-exhaustive list of the types of expenses that may be met from a Member's electoral allowance. The determination also provided that nothing would prevent the use of the electoral allowance for 'legitimate electorate expenses which might fall within other categories of expenses'.
- 5.5 Following the publication of the Tribunal's determination, the NSW Electoral Commission published a new statutory guideline, *Guideline 23*, setting out its approach to assessing claims for expenditure for which a member may claim a parliamentary allowance (and thereby expenditure which is not permitted to be claimed from the Fund).
- 5.6 In her second reading speech, the Hon. Jo Haylen MP, Minister for Transport (the **Minister**), noted concerns raised by independent members of the Legislative Assembly that they could no longer claim certain items of administrative expenditure from the Fund where that expenditure may also be met by the electoral allowance. The Minister stated that 'legislative clarity' was required to ensure that members could continue to claim these expenses from the Fund.
- 5.7 The Bill therefore seeks to create an exception within the existing exclusion under subsection 84(1)(b)(ii) by providing that expenditure which may be met from a member's electoral allowance may also be claimed from the Fund. The Minister stated

that this would 'provide certainty and clarity for stakeholders who are both making and determining claims for payment' from the Fund.

- 5.8 The Bill would also insert an additional power for regulations to prescribe additional types of administrative expenditure that may be claimed from the Fund.

### Issues considered by the Committee

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

##### *Retrospective change to definition of administrative expenditure*

- 5.9 The current definition of 'administrative expenditure' that may be claimed from the Fund, under section 84 of the Act, explicitly excludes administrative expenditure for which a member may claim a parliamentary allowance.

- 5.10 The Bill seeks to create an exception for electoral allowances (a type of parliamentary allowance) within the existing exclusion of parliamentary allowances under section 84 of the Act. The proposed subsection 84(1)(b)(ii) states that administrative expenditure does not include:

*'expenditure for which a member may claim a parliamentary allowance as a member, other than expenditure for which an electoral allowance is payable under the Parliamentary Remuneration Act 1989, Part 3'.*

- 5.11 The proposed amendments would retrospectively apply from 1 April 2023. The proposed section 26 also states that transitional regulations made under section 84(1)(a)(xi), for a period before 1 July 2024, may take effect from 1 April 2023.

- 5.12 In her second reading speech, the Minister noted that this retrospective application of the amendments would align with the date of the Tribunal's 2023 determination and the financial year to provide certainty for stakeholders in making and determining claims for payment from the Fund. It would also allow members to re-submit claims that have already been determined.

**The Bill seeks to expand the definition of administrative expenditure that can be claimed from the Administration Fund under the *Electoral Funding Act 2018*. The Act currently provides that if a Member of Parliament can claim an expenditure item through their parliamentary allowance, they cannot claim this expenditure through the Administration Fund. The proposed amendments would create a specific exception for members' electoral allowances, which are a type of parliamentary allowance. These amendments would apply retrospectively from 1 April 2023.**

**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.**

**However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact person rights or liberties. The Committee also notes that the retrospective application is intended to provide legislative clarity for those making and**

**determining claims for payment from the Fund. For this reason, the Committee makes no further comment.**

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

*Inappropriate regulation-making power - new categories of administrative expenditure*

- 5.13 The objects of the Act include 'to establish a fair and transparent electoral funding, expenditure and disclosure scheme'.
- 5.14 Section 84(1)(b)(iv) of the Act currently allows regulations to specify expenditure that cannot be claimed from the Fund.
- 5.15 The proposed section 84(1)(a)(xi) would allow regulations to prescribe additional types of administrative expenditure that *could* be claimed from the Fund.
- 5.16 As noted above, regulations made under section 84(1)(a)(xi), for a period before 1 July 2024 only, may take affect from 1 April 2023 to provide certainty for stakeholders in making and determining claims for payment from the Fund. It would also allow members to re-submit claims that have already been determined.

**The Bill proposes a new regulation-making power under the *Electoral Funding Act 2018*. Regulations made under this power could create new categories of administrative expenditure for eligible political parties and independent members to claim from the Administration Fund. Regulations made before 1 July 2024 may apply retrospectively from 1 April 2023.**

**The Committee acknowledges that the intention of the regulation-making power may be to allow flexibility in identifying types of administrative expenditure. However, the Committee notes that the objects of the Act include the administration of a 'fair and transparent' electoral funding scheme. If a decision to expand the definition of administrative expenditure is delegated to regulations, this decision would not be subject to the same level of transparency or parliamentary scrutiny. This scrutiny is particularly important because it relates to the use of public funds for payment to Members of Parliament. For these reasons, the Committee refers to the Parliament the issue of whether this permits an inappropriate delegation of legislative power.**



## 6. Energy Legislation Amendment (Clean Energy Future) Bill 2024

Date introduced	5 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Penny Sharpe MLC
Member introducing	The Hon. Jihad Dib MP
Portfolio	Energy

### Purpose and description

- 6.1 The object of this Bill is to make miscellaneous amendments relating to the supply of energy in NSW to the following Acts:
- (a) the *Electricity Infrastructure Investment Act 2020* (the **EII Act**)
  - (b) the *Electricity Supply Act 1995* (the **ES Act**)
  - (c) the *Pipelines Act 1967* (the **Pipelines Act**)
  - (d) the *Energy and Utilities Administration Act 1987* (as amended by the *Energy Legislation Amendment Act 2023*) (the **EUA Act**)
  - (e) the *Land Acquisition (Just Terms Compensation) Act 1991* (the **Just Terms Act**).

### Background

- 6.2 The Bill proposes a number of amendments to the legislative framework regulating the energy system in NSW to support the delivery of the transition to renewable energy. The amendments impact five different Acts which relate to the supply, storage and transmission of energy.
- 6.3 In his second reading speech, the Member introducing the Bill, the Hon. Jihad Dib MP, noted that the Bill seeks to:
- streamline approval processes for critical electricity system infrastructure,
  - strengthen the NSW transmission licensing framework,
  - incentivise storage projects,
  - clarify existing positions regarding support for green hydrogen, and regulation making powers to ensure the safe operation of pipelines,
  - refine governance arrangements for the Energy Corporation of NSW (**EnergyCo**), and

- enable strategic benefit payments to be paid to eligible landowners and others with interests in land who host new transmission infrastructure.
- 6.4 Schedule 1 of the Bill seeks to amend the EII Act to clarify when the Minister for Energy (the **Minister**) can make a direction regarding transmission infrastructure projects. Mr Dib noted that the proposed amendments will allow 'an accelerated regulatory approval process to recover the costs of electricity system security infrastructure projects'.
- 6.5 Schedule 2 of the Bill proposes to introduce a requirement under the ES Act for a network operator authorised to carry out renewable energy zone (**REZ**) network infrastructure projects to hold and maintain a network operator licence. It proposes to insert section 93B, which would make it an offence to operate a transmission system without an operator's licence. The Bill also proposes to amend the ES Act to modify matters the regulations can deal with.
- 6.6 Schedule 3 of the Bill seeks to amend the Pipelines Act by:
- removing multiple offences and penalties,
  - replacing current regulation making power by inserting a new schedule of regulation making powers, including regulations creating offences and penalties,
  - modifying the directions the Minister can make regarding the operation and maintenance of pipelines, and
  - clarifying the circumstances of continuing offences.
- 6.7 Schedule 4 of the Bill would amend the EUA Act to strengthen the governance arrangements for EnergyCo.
- 6.8 Schedule 5 proposes to make various amendments to the EUA Act, the ES Act and the Just Terms Act to implement the Strategic Benefits Payments Scheme. The Bill provides for the Minister to impose a condition on a transmission operator's licence to make strategic benefit payments, and for the Minister to issue guidelines for those payments under the ES Act. It also outlines the matters that may be included in the strategic benefits payments guidelines.

## Issues considered by the Committee

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

#### *Commencement by proclamation – removal of offences from the Act*

- 6.9 Schedule 3 of the Bill proposes to omit offences and penalties from the Pipelines Act 'at a date determined by proclamation', and to move these into the regulations following consultation with industry and other stakeholders.
- 6.10 In his second reading speech, Mr Dib noted that the removal of offences from the Act would commence by proclamation once the new regulation for offences and penalties was in force. These amendments would not change the current regulatory framework or penalty unit amounts upon proclamation.

**Schedule 3 of the Bill proposes to 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 personal rights or obligations.**

**In this case, the Committee notes that the amendments would not impact on personal rights or liberties. There would be no change to the current regulatory framework or penalty unit amounts upon proclamation, as the relevant offences would already have moved to the regulations. Therefore, the Committee makes no further comment.**

*Wide regulation making powers – power to create offences*

- 6.11 The Bill would amend the current regulation making power in section 69 of the Pipelines Act to provide that regulations can be made for a matter that is 'required or permitted to be prescribed or that is necessary or convenient' for giving effect to the Act.
- 6.12 Subsection 69(4) would also allow the regulations to create an offence for an individual punishable by a penalty not exceeding 5,000 penalty units (a \$550,000 fine) or 5,000 penalty units for each day on which the offence occurs.
- 6.13 As noted above, the Bill seeks to create regulation making powers and address offences and penalties through regulations rather than the Act. In his second reading speech, Mr Dib explained that this would 'make it easier to regularly review and update penalty units to ensure consistency with other jurisdictions and to reflect risks and potential impacts on the public from any breach of provisions'.

**The Bill amends the *Pipelines Act 1967* to create broad regulation making powers, including the power to create offences and the power to create regulations about matters that are 'necessary or convenient' to give effect to the Act. Offences created under the regulations are limited to those with a maximum penalty of 5,000 penalty units (for individuals), but there does not appear to be any provisions that define or narrow the meaning of 'convenient'.**

**Unlike primary legislation, regulations are subordinate legislation and are not required to be passed by Parliament. However, the Committee notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*.**

**The Committee also recognises that these kinds of regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. In this case, the Committee notes that addressing offences and penalties through the regulations would make it easier to review and update penalty units to reflect risks and potential impacts on the public from any breach of the Bill's provisions. For this reason, the Committee makes no further comment.**

*Making of guidelines and ministerial powers determining compensation*

- 6.14 Schedule 5 of the Bill would amend the ES Act to allow the Minister to issue strategic benefit payment guidelines that provide for payments to eligible landowners impacted by electricity transmission infrastructure.

- 6.15 The Bill seeks to insert a definition of 'strategic benefit payment', and provides that those payments must be made in accordance with the strategic benefit payment guidelines issued by the Minister and published in the Gazette.
- 6.16 The Bill also sets out matters that the guidelines may provide for under Schedule 2 of the ES Act. This includes 'other matters the Minister considers necessary'.
- 6.17 In his second reading speech, Mr Dib noted that the amendments will ensure that payments made under the scheme are separate, in addition to, and will not reduce the compensation payable under the Just Terms Act.

**The Bill seeks to amend the *Electricity Supply Act 1995* to provide for strategic benefit payments as compensation for eligible landowners in accordance with guidelines issued by the Minister and published in the Gazette. The Bill seeks to outline matters that the guidelines may provide for, including 'other matters the Minister considers necessary'. It is unclear if these guidelines are to be tabled in Parliament, which means the Bill may incorporate extrinsic documents into law.**

**The Committee generally comments on any legislative provisions that permit the incorporation of external materials like guidelines and gives these materials legal force. It also prefers substantive matters to be set out in legislation or otherwise tabled in Parliament, where they can be subject to disallowance, and therefore subject to appropriate parliamentary scrutiny.**

**However, the Committee acknowledges that Ministerial issue of the guidelines would allow the payment of strategic benefits to be flexible and responsive to the changing regulatory environment. Further, it notes that the guidelines would not impact existing compensation entitlements to landowners under the *Land Acquisition (Just Terms Compensation) Act 1991*. For these reasons, the Committee makes no further comment.**

# 7. Energy Security Corporation Bill 2024

Date introduced	4 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Jihad Dib MP
Portfolio	Customer Service and Digital Government

## Purpose and description

- 7.1 The purpose of this Bill is to establish the Energy Security Corporation (the **Corporation**) for the following purposes:
- (a) to accelerate private sector investments in clean energy projects in NSW that improve the reliability, security and sustainability of the electricity supply in NSW,
  - (b) to support the NSW Government in meeting its emissions reduction targets under the *Climate Change (Net Zero Future) Act 2023*,
  - (c) to complement other Government initiatives and partner with the private sector for clean energy projects in NSW,
  - (d) to achieve a Government-mandated rate of return through a portfolio approach.

## Background

- 7.2 The *Energy Security Corporation Bill 2024* (the **Bill**) sets out the legislative framework for the creation and function of the Energy Security Corporation (the **Corporation**).
- 7.3 In his second reading speech, The Hon. Jihad Dib MP, Minister for Customer Service and Digital Government explained that the Bill seeks 'to accelerate the transition to a zero emissions grid and help meet ... State decarbonisation targets' through investment in technologies which are 'necessary for the transition but are not attracting enough investment'.
- 7.4 The Minister noted that the Bill seeks to 'encourage and catalyse private sector funding' in green technologies by creating a \$1 billion fund to aid the energy transition in New South Wales.
- 7.5 The Bill provides the mandate for the Corporation. The Minister noted that it is the goal of the ESC is to 'co-finance and crowd in additional private investment in clean technology projects with funding gaps'.
- 7.6 The Bill provides for the workings of the Corporation, namely,

- the appointment of a board and CEO,
- policy investment, function and risk assessment,
- requirements and guidelines for investment decisions, including definitions of 'clean energy' and 'prohibited' technologies,
- financial considerations, including payments, borrowing power and guarantees,
- reporting requirements,
- disclosure of information and delegation powers of relevant Ministers,
- transitional provisions and dictionary.

### Issues considered by the Committee

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

##### *Insufficiently defined administrative powers – Requirements of Investment Mandate*

- 7.7 The Bill creates a number of requirements on the Minister and Treasurer in exercising their function in relation to the Corporation.
- 7.8 Proposed section 25 of the Bill requires that the Minister and the Treasurer must provide the Board of the Corporation with directions via an 'Investment Mandate'. The Investment Mandate concerns the exercise of the Corporation's investment function.
- 7.9 In his second reading speech, the Minister explained that 'the Minister for Energy and the Treasurer may direct the Corporation through an investment mandate but cannot direct the Corporation to make or not make a specific investment'.
- 7.10 Proposed section 26 (1)(a) of the Bill requires that the Minister *must* have regard to the objects of the Corporation in the Investment Mandate. Proposed section 26(1)(b) gives discretion to the Minister that they *may* include 'other matters the Minister considers relevant' and proposed section 26(2) sets out a suggestive, non-exhaustive list of policies that *may* be included 'with which the Corporation must comply' including policies about:
- (a) matters of risk and return,
  - (b) clarification of types of technologies, projects and businesses that are eligible for investment,
  - (c) making capital investments,
  - (d) the types of financial instruments in which the Corporation may invest,
  - (e) the types of derivatives that the Corporation may acquire,

- (f) the nature of the guarantees the Corporation may give and the circumstances in which the guarantees may be given,
- (g) operational matters,
- (h) the public policy goals and societal benefits being considered in investment decisions,
- (i) the role of the Corporation in relation to other entities operating in clean energy.

7.11 Proposed section 28 requires that the Board must 'take all reasonable steps to ensure the Corporation complies with the Investment Mandate'. Proposed section 16(3)(a) would require a 'statement of business intent' to provide an overview of how the Corporation intends to carry out the Investment Mandate.

**Proposed section 25 of the *Energy Security Corporation Bill 2024* provides the Minister and Treasurer with the power to direct the exercise of the Corporation's investment function, through an 'Investment Mandate' ('the Mandate'). Proposed section 28 of the Bill requires that the Board must take reasonable steps to comply with the Mandate.**

The Committee notes that in creation of the Mandate, proposed section 26(1)(a) requires the Minister to have regard to the objects of the Corporation. Proposed section 26 (1)(b) creates a discretion for the Minister to include matters that *may* be considered relevant and proposed section 26 (2) creates a suggestive, non-exhaustive list of policies with which the Corporation must comply, that *may* be included in the Mandate. The Committee notes that the function of the Corporation significantly hinges on the direction of the Minister and Treasurer. Proposed section 26(1)(b) and section 26(2) create a non-binding obligation on the Minister as to what may be included in the Mandate. The Committee notes some of the policies include matters of risk and return, the making of capital investments and the nature of guarantees which may be given.

The Committee acknowledges that the provisions seek to build flexibility into the scheme and provide clarity and scope to the Corporation. However, given the consequential nature of the Mandate for the exercise of the investment function, and the significance of factors listed in s 26(2), the Committee refers the matter to Parliament for its consideration.

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

##### *Matters deferred to regulations*

- 7.12 The Bill would insert several provisions that create broad regulation-making powers, including:
- Proposed section 10(1)(c) allows the delegation of the 'exercise of any function of the Corporation ... other than this power of delegation, to ... a person or body, or a class of persons or bodies, prescribed by the regulations'.

- Proposed section 47(1)(c) allows for payments out of the operational fund that are 'authorised by the regulations'.
- Proposed section 48(2) prescribes that 'the regulations may provide for other circumstances in which the Corporation may borrow money'.

**The Bill would defer a number of matters to regulations. In particular, the bill would provide a power to make regulations in respect of core functions of the Corporation and the Operational Fund including a power under proposed section 10(1)(c) to delegate the exercise of 'any function' of the Corporation to a person, body, or class of persons prescribed by the regulations. Proposed section 47(1)(c) would also allow for payments out of the operational fund that are 'authorised by the regulations' and section 48(2) allows for regulations to 'provide for other circumstances in which the Corporation may borrow money'.**

**The Committee notes there are no limitations on the functions that could be delegated by regulation, nor on the terms 'person' or 'body', which are broad and loosely defined. The regulation-making power also extends to payments out of the Operational Fund and to circumstances in which the Corporation may borrow money. The Committee acknowledges that the Operational Fund is separate to the \$1 billion ESC Fund, and safeguards exist regarding the transfer of money, being the approval of the Minister, Treasurer and Corporation. However, given the Operational Fund exists to manage the expenditure and investment function of the Corporation, the regulation-making powers may unduly allow the money to be used for any type of expense or reason.**

**The Committee also notes that the Bill allows the Corporation to borrow money in prescribed circumstances connected to its functions. The proposed regulation-making power would broaden this to 'other circumstances' as provided by the regulations.**

**The Committee generally prefers substantive matters to be dealt with in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. The Committee acknowledges that the provisions build flexibility into the Corporation and its ability to perform its functions. However, given the regulation-making powers in the Bill are wide and deal with significant matters of the legislative scheme. For these reasons, the Committee refers the matter to Parliament for its consideration.**



## 8. Environmental Planning and Assessment Amendment (Disallowance of Transport Oriented Development SEPP) Bill 2024\*

Date introduced	5 June 2024
House introduced	Legislative Council
Member responsible	The Hon. Scott Farlow MLC
	*Private Members Bill

### Purpose and description

- 8.1 The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the **Act**) to enable *State Environmental Planning Policy (Housing) Amendment (Transport Oriented Development) 2024* (**TOD SEPP**), which commenced on 13 May 2024, to be disallowed by Parliament.

### Background

- 8.2 The Bill seeks to enable the TOD SEPP to be subject to sections 40 and 41 of the *Interpretation Act 1987* (the **Interpretation Act**) so that either House of Parliament may pass a resolution disallowing the TOD SEPP within 15 sitting days of the commencement of the proposed Act.
- 8.3 The TOD SEPP was published on the NSW legislation website on 29 April 2024. It was a State environmental planning policy under the Act, aiming to:
- (a) increase housing density within 400m of existing and planned public transport,
  - (b) deliver mid-rise residential flat buildings and shop top housing around rail and metro stations, and
  - (c) encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.<sup>3</sup>
- 8.4 Under clauses 2 and 3 of the TOD SEPP, the policy commenced on 13 May 2024 and was repealed at the beginning of 14 May 2024. Section 30C of the Interpretation Act provides that an amending act is repealed on the day after all of its provisions have commenced and the repeal does not affect any amendment made by the amending act.

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<sup>3</sup> [State Environmental Planning Policy \(Housing\) Amendment \(Transport Oriented Development\) 2024](#).

8.5 Schedule 1 of the Bill provides that if either House of Parliament disallowed the TOD SEPP, the State Environmental Planning Policy (Housing) 2021 (the **Housing SEPP**), which was amended by the TOD SEPP, would be restored and would take effect on the date of disallowance of the TOD SEPP.

8.6 In his second reading speech, Mr Farlow noted that the intention of the bill was to allow for community consultation regarding the TOD SEPP.

8.7 Mr Farlow further stated:

...the passage of this legislation does not automatically disallow the TOD SEPP but gives the House the power to disallow the provisions of the TOD SEPP with a further motion of the House within 15 days of the commencement of this Act.

### 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*.**

## 9. Government Sector Employment and Other Legislation Amendment Bill 2024

Date introduced	6 June 2024
House introduced	Legislative Council
Minister with carriage	The Hon. John Graham MLC
Portfolio	Special Minister of State

### Purpose and description

- 9.1 The objects of this Bill are as follows:
- (a) to amend the functions and objectives of the Public Service Commissioner (the **Commissioner**) and the Secretary of the Premier's Department (the **Secretary**) under the *Government Sector Employment Act 2013* (the **GSE Act**)
  - (b) to amend the employment arrangements for the chief executive officer (the **CEO**) of the NSW Reconstruction Authority (the **Authority**) under the *NSW Reconstruction Authority Act 2022*
  - (c) to make consequential amendments to certain Acts and regulations.

### Background

- 9.2 The Bill proposes to modify the functions and objectives of the Commissioner and the Secretary by amending the GSE Act.
- 9.3 During his second reading speech, the Hon. John Graham MLC, Special Minister of State, said that the Bill will implement interim findings of a review by the Cabinet Office into the GSE Act by providing that 'certain functions are no longer to be exercised by the Public Service Commission' and are instead to be performed by the Secretary.
- 9.4 The Bill proposes to replace sections 10 and 11(1) of the Act with new sections that specify modified objectives and functions of the Commissioner. The Bill also requires that the Premier table a report on the state of the government sector each financial year and specifies the matters that must be included in the report.
- 9.5 Further, the Bill proposes to amend the *Reconstruction Authority Act 2022* to remove the requirement that the CEO is employed in a band four secretary role. The Minister said that this 'will ensure that employment arrangements for the CEO of the Reconstruction Authority are consistent with the *Government Sector Employment Act 2013* framework and employment arrangements for other executive agency heads.'

- 9.6 Finally, the Bill makes consequential amendments to multiple Acts to replace references to the 'Public Service Commissioner' with the 'Secretary of the Premier's Department'.

### Issues considered by the Committee

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

##### *Commencement by proclamation*

- 9.7 The Bill proposes to commence on a day or days to be appointed by proclamation.

**The Bill commences by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly if legislation affects individual rights and liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.**

**The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, for the effective transfer of functions from the Public Service Commissioner to the Secretary of the Premier's Department. Because of this, and because the Bill does not create new powers or impact personal rights and liberties, the Committee makes no further comment.**

# 10. Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024

Date introduced	6 June 2024
House introduced	Legislative Council
Minister with carriage	The Hon. Tara Moriarty MLC
Portfolio	Agriculture

## Purpose and description

- 10.1 The object of this Bill is to:
- (a) amend the *Prevention of Cruelty to Animals Act 1979* (the **POCTA Act**) and the *Prevention of Cruelty to Animals Regulation 2012* (the **POCTA Regulation**) to expand and improve the transparency of animal welfare enforcement,
  - (b) amend the *Government Information (Public Access) Regulation 2018* (the **GIPA Regulation**) to declare a charitable organisation approved by the Minister (an approved charitable organisation) as a public authority under the *Government Information (Public Access) Act 2009*,
  - (c) amend the *Ombudsman Regulation 2016* (the **Ombudsman Regulation**) to declare an approved charitable organisation as a public authority under the *Ombudsman Act 1974*, and
  - (d) make consequential amendments to certain Acts and a regulation.

## Background

- 10.2 In her second reading speech, the Hon. Tara Moriarty MLC, Minister for Agriculture, said that the Bill would 'increase transparency of the animal welfare enforcement activities of approved charitable organisations' and would ensure that individuals involved in animal welfare enforcement are fit and proper persons.
- 10.3 The Minister noted that the Bill was designed to address issues identified in previous enforcement activities and to provide a clear framework for the roles and responsibilities of approved charitable organisations, which would facilitate better coordination between various agencies and organisations involved in this field.
- 10.4 The Statement of Public Interest tabled with the Bill noted that the Bill would deliver the Government commitments to provide clear guidelines for the administration and enforcement of animal welfare laws and improve approved charitable organisations' accountability.

10.5 The Bill seeks to amend the POCTA Act, the GIPA Regulation and the Ombudsman Regulation to:

- introduce provisions for appointing officers and inspectors, which would specify the appointment process for officers and inspectors, their terms of appointment and identification requirements,
- introduce penalties for appointed officers and inspectors failing to comply with directives related to the return of identification upon cessation of their role,
- extend the circumstances where the court must make a disqualification order to expand the fit and proper person regime,
- require annual reports of approved charitable organizations to be submitted to the Presiding Officer of each House of Parliament, with provisions for redacting sensitive information,
- introduce new information sharing provisions between relevant agencies and new delegation powers for the Minister administering the POCTA Act, and
- classify charitable organizations involved in animal welfare enforcement as public authorities under various regulations.

10.6 The Bill also proposes to amend several other Acts and regulations to ensure consistency, transparency and accountability in animal welfare enforcement.

## Issues considered by the Committee

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

#### *Absolute liability offences and penalty notice offences*

10.7 The Bill proposes to insert Division 1AA into the POCTA Act, which would enable the Minister to appoint officers and inspectors for the purposes of the POCTA Act.

10.8 Under proposed section 24AE, the Minister would be able to direct a person, who ceases to be an appointed officer or appointed inspector, to return the evidence of the person's authority as an appointed officer or appointed inspector.

10.9 Proposed subsection 24AE(4) provides that failure to comply with the direction would be an absolute liability offence, which carries a maximum penalty of \$2,750 (25 penalty units).

10.10 Schedule 2 of the Bill prescribes the offence under proposed section 24AE(4) as a penalty notice offence under the POCTA Regulation for which individuals would be issued a penalty notice with an amount payable of \$500.

**The Bill proposes to insert Division 1AA into the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act), which would enable the Minister to appoint officers or inspectors, for the purpose of the POCTA Act. Proposed section 24AE provides that the Minister would be able to direct a person who ceases to be an appointed officer or appointed inspector to return the evidence of the person's authority as an appointed officer or appointed inspector. Non-compliance with the direction would be an**

**absolute liability offence with a maximum penalty of 25 penalty units. Schedule 2 of the Bill prescribes the offence under proposed section 24AE(4) as a penalty notice offence under the *Prevention of Cruelty to Animals Regulation 2012*, for which individuals would be issued a penalty notice with an amount payable of \$500.**

**The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that penalty notices allow a person to pay the amount specified for an offence within a certain time should they not wish to have the matter determined by a court. This may impact on a person's right to a fair trial, specifically, to have a matter heard by an impartial decision maker.**

**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 the integrity of the animal welfare enforcement agencies. The Committee also notes that the offences only carry a monetary penalty, not a custodial penalty, and that individuals retain the right to elect to have their matter dealt with before a court. Further, the Committee notes that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notices, including cost effectiveness and ease of administration. In the circumstances, the Committee makes no further comment.**

*Presumption to make a disqualification order – limits on judicial discretion*

- 10.11 Currently, section 31 of the POCTA Act requires a court to make a disqualification order for persons convicted of certain serious animal cruelty offences, unless it is satisfied that 'special circumstances' exist.
- 10.12 The Bill proposes to amend subsection 31(1AA) of the POCTA Act which would extend the circumstances where a court must make a disqualification for persons convicted of either repeat animal cruelty offences or multiple animal cruelty offences under section 5 of the POCTA Act.
- 10.13 Among other subsections, subsection 5(1) of the POCTA Act provides that 'a person shall not commit an act of cruelty upon and animal'.
- 10.14 Subsection 31(1AB) of the POCTA Act provides that a Court will not apply a disqualification order under subsection 31(1AA), if the court is satisfied 'special circumstances' justify not making the order.
- 10.15 Under section 26 of the POCTA, a disqualification order will prevent a person, among other prohibitions, from purchasing or keeping an animal for the period specified in the order.
- 10.16 In her second reading speech, the Minister said that the proposed amendment would bridge a legislation 'gap' by introducing a presumption that a Court would apply a disqualification order in the relevant circumstances and 'deliver the Governments fit and proper persons commitment to prevent certain convicted persons from being involved with animals'.

The Bill proposes to amend subsection 31(1AA) of the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act) which would extend the circumstances where a court must make a disqualification order for persons committing an offence under section 5 of the POCTA Act. Under proposed subsection 31(1AA) of the Bill, there would be a presumption that a Court must make a disqualification order for a person who has been convicted of either repeat animal cruelty offences or multiple animal cruelty offences unless it is satisfied that 'special circumstances' exist. The Bill therefore may effectively limit the court's judicial discretion to determine whether a disqualification order should be made.

The Committee acknowledges that the Court retains appropriate discretions to determine whether there is any special circumstance justifying not making the order. It also acknowledges that the proposed amendment is intended to deliver on the 'fit and proper person' regime along with enhancing animal welfare protections. However, the Committee notes that this change may impact on the procedural fairness of a person convicted under section 5. For these reasons, the Committee refers the matter to Parliament for consideration.

*Privacy rights – authority to require disclosure of information*

- 10.17 The Bill proposes to insert section 34BA into the POCTA Act, which would allow a relevant agency to 'collect, use or disclose information if it is reasonably necessary for the purposes of administering or enforcing the POCTA Act or the regulations'.
- 10.18 Proposed subsection 34BA(2) provides, a 'relevant agency' may disclose information to another relevant agency if they consider it 'appropriate' to give the information in relation to a significant risk to safety.
- 10.19 Under proposed subsection 34BA(3), the term 'information' would include personal information and the term 'relevant agency' would include another entity prescribed by the regulations.

The Bill proposes to insert section 34BA into of the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act) which would allow a relevant agency to collect, use or disclose information to another relevant agency. Such information can be collected for the purposes of administering or enforcing the POCTA Act, or the regulations. Under proposed subsection 34BA(2), a 'relevant agency' may disclose information to another relevant agency if they consider it 'appropriate' to give the information in relation to a significant risk to safety. Under proposed subsection 34BA(3), the term 'information' would include personal information and the term 'relevant agency' would include another entity prescribed by the regulations. Further, the Bill does not include any provision regarding the criteria of what amounts to 'appropriate' when deciding the disclosure or specifying what amounts to 'another entity' prescribed by the regulations.

The Committee acknowledges that the proposed amendment may be intended to ensure the government and enforcement agencies could efficiently and appropriately share relevant information to support the administration and enforcement of animal welfare.



However, the Bill may impact individual's privacy rights by requiring a relevant agency to provide personal information for collection and use, as an individual's personal information is otherwise protected from disclosure and use under *the Privacy and Personal Information Protection Act 1998*. The Committee notes that these provisions would empower a relevant agency, even a private entity, to require disclosure of personal information by another relevant agency without any requirement to notify a person that their information would be disclosed or given an opportunity to object. For these reasons, the Committee refers the matter to Parliament for consideration.

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

#### *Wide power of delegation*

- 10.20 Under proposed section 34BB of the Bill, the Minister would be able to delegate the exercise of a function of the Minister under the POCTA Act to
- (a) person employed in the Department, or
  - (b) a person, or class of persons, authorised by the regulations.
- 10.21 Under proposed section 34BB(2) that person would be able to sub-delegate the exercise of the function to another person (other than the power of subdelegation).

The Bill proposes to insert section 34BB into the *Prevention of Cruelty to Animals Act 1979* (the POCTA Act) which would provide the Minister with the power to delegate the exercise of functions under the Bill. Secondly, the delegate would be able to further sub-delegate the functions (other than the power of subdelegation) to another person. Under proposed section 34BB of the Bill, delegation by the Minister could be made to 'a person or classes of persons prescribed by the regulations'. The Bill does not include any provision specifying or limiting what amounts to 'a person or classes of persons' prescribed by the regulations, or set any qualification requirements for a person to be delegated functions. Therefore, the Bill may provide for a wide power of delegation of statutory functions.

The Committee notes that the provision may effectively delegate statutory powers and functions without any oversight by the Parliament. Under proposed section 34BB, private individuals could be delegated statutory functions that the public may expect to be performed by public officials. The Committee prefers that the delegation of statutory functions be detailed in primary legislation to ensure appropriate parliamentary scrutiny over the exercise of these functions. For these reasons, the Committee refers the matter to Parliament for consideration.

11. Protection of the Environment  
Operations Amendment (Balloons)  
Bill 2024\*

Date introduced	6 June 2024
House introduced	Legislative Assembly
Member responsible	Ms Kobi Shetty MP
*Private Members Bill	

Purpose and description

- 11.1 The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* (the **Act**) to prohibit the release of balloons inflated with a gas that causes them to rise in the air (**lighter-than-air balloons**).

Background

- 11.2 The Bill proposes to amend the Act to make it an offence to release one or more lighter-than-air balloons. Currently, under section 146E of the Act, it is an offence to release 20 or more balloons.
- 11.3 During her second reading speech, Ms Kobi Shetty MP noted that the proposed change would bring NSW legislation in line with 'recognised best practice' in other states (Vic, Qld and WA) and 'would help to significantly reduce plastic pollution in our environment.'

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 1997*.**

## 12. Rice Marketing Amendment Bill 2024

Date introduced	6 June 2024
House introduced	Legislative Council
Minister with carriage	The Hon. Tara Moriarty MLC
Portfolio	Agriculture

### Purpose and description

- 12.1 The object of this Bill is to amend the *Rice Marketing Act 1983* (the **Act**) to:
- (a) initially exclude rice cultivated and harvested in the Northern Rivers region from the operation of the Act,
  - (b) provide that all other rice vests in the Rice Marketing Board for the State of New South Wales (the **Board**) until 30 June 2025 only,
  - (c) provide for the winding up and dissolution of the Board,
  - (d) enable the Governor to repeal the Act by proclamation after the Board is dissolved,
  - (e) provide for consequential and savings and transitional matters.

### Background

- 12.2 In her second reading speech, the Hon. Tara Moriarty MLC, Minister for Agriculture, explained that the amendments proposed by the Bill would deregulate the rice industry in NSW. This measure is in line with recommendations made in a 2021 Government review and an Australian Bureau of Agricultural and Resource Economics and Sciences ('ABARES') independent report.
- 12.3 The Minister explained that the amendments are intended to end the regulated marketing arrangements which currently exist for rice harvesting, sale and exports in NSW. In ending the regulated marketing arrangements, the Minister stated that the amendments are 'supporting the continued development of the industry and ensuring that the marketing arrangements are fit for purpose to meet the current and future needs of rice growers ... across New South Wales'.
- 12.4 The Bill proposes the following amendments relating to the growing of rice and the functions of the Board:
- Proposed section 67B excludes rice cultivated and harvested in the Northern Rivers region from the principal Act and provides that this area will be outside the Board's jurisdiction after 1 September 2024.

- The transitional provisions specify that rice cultivated and harvested in the Northern Rivers region before 1 September 2024 will be vested in the Board.
- Proposed section 67C(1) provides that rice cultivated and harvested in the rest of NSW before 30 June 2025 will vest in the Board.
- Proposed section 67C(2)(a) provides that rice grown and harvested in the rest of NSW on and after 1 July 2025 will no longer be a product to which the Act applies.
- Proposed section 67C(2)(b) provides that the Board must wind up its affairs before 1 July 2026.

### Issues considered by the Committee

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

## 13. Road Rules Amendment (Helmets-Sikh Exemption) Bill 2024\*

Date introduced	5 June 2024
House introduced	Legislative Council
Member responsible	Ms Cate Faehrmann MLC
*Private Members Bill	

### Purpose and description

- 13.1 The object of this Bill to amend the *Road Rules 2014* (the **Rules**) to exempt a follower of the Sikh religion who is wearing a turban from the requirement to wear an approved helmet while riding a motor bike, electric scooter or bicycle.

### Background

- 13.2 The Bill proposes changes to the Rules so that members of the Sikh religion who wear a turban are exempt from the requirement to wear bicycle and motorcycle helmets.
- 13.3 In her second reading speech, Ms Faehrmann noted that the amendment seeks to address concerns raised by the Sikh community about how the existing Rules are 'discriminating against them because of their faith'.

### 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*.**

# 14. Statute Law (Miscellaneous Provisions) Bill 2024

Date introduced	6 June 2024
House introduced	Legislative Council
Minister with carriage	The Hon. John Graham MLC
Portfolio	Special Minister of State

## Purpose and description

- 14.1 The objects of this Bill are to:
- (a) make minor amendments to various Acts and instruments (Schedule 1),
  - (b) amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and
  - (c) make other provisions of a consequential or ancillary nature (Schedule 3).

## Background

- 14.2 In his second reading speech, the Hon. John Graham MLC, Special Minister of State, noted that the Bill 'continues the Statute Law Revision program which has been in place for 40 years'. He said that those statute law revisions bills:
- ... are an effective method for making minor policy changes. They also serve as an important mechanism to maintain the quality of the New South Wales statute book ... by updating references arising from machinery of government changes, removing typographical errors, updating cross-references and repealing redundant provisions.
- 14.3 The Statement of Public Interest tabled with the Bill noted that the Statute Law Revision program would ensure that 'the NSW statute book remains current and accurate'.
- 14.4 The Bill seeks to amend a number of unrelated Acts and regulations which are grouped into schedules according to the nature of the specific amendments. The Minister outlined the content of each schedule as follows:
- (a) Schedule 1 contains proposed amendments to 27 Acts and regulations, which relate to policy changes of 'a minor and non-controversial nature'.
  - (b) Schedule 2 contains proposed amendments to 13 Acts and regulations, which deal with matters of 'pure statute law revisions' and consist of 'minor technical changes to legislation that 'the Parliamentary Counsel considers are appropriate for inclusion in the bill'.

- (c) Schedule 3 contains general savings, transitional and other provisions that are standard to statute law revision bills.

### Issue considered by the Committee

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

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

- 14.5 Schedule 3, subclause 5(1) of the Bill provides that the Governor may make regulations with provisions of a savings or transitional nature consequent on the enactment of the proposed Act. Subclause 5(2) states that, if the regulations provide, its provisions may take effect from the date of assent of the Bill as an Act, or a later date.
- 14.6 Subclause 5(3) would limit the effect of such provisions to the extent they take effect from a date before the regulation is published on the NSW legislation website. Specifically, to prevent those provisions operating in a way that would prejudicially affect any pre-existing rights of a person or impose liabilities on a person in respect to actions or omissions done before publication.

**Schedule 3, clause 5 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on enactment of the proposed Act. Despite being of limiting effect, it would also provide that those provisions may take effect on a date earlier than the date of publication of those regulations on the NSW legislation website. The Committee notes that this would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).**

**The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under this Bill and the laws applying to them. This is contrary to the rule of law principle that people are entitled to know the law to which they are subject at any given time. For these reasons, the Committee refers the matter to Parliament for consideration.**

# 15. Transport Administration Amendment Bill 2024

Date introduced	4 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Jo Haylen MP
Portfolio	Transport

## Purpose and description

- 15.1 The object of this Bill is to amend the Transport Administration Act 1988 (the **Act**) as follows:
- (a) to enable Transport for NSW (**TfNSW**) to promote active transport and improve the activation of public spaces, and
  - (b) to convert the Transport Asset Holding Entity of New South Wales (**TAHE**) into the Transport Asset Manager New South Wales (**TAM**) and provide for TAM's functions.

## Background

- 15.2 In her second reading speech, the Hon. Jo Haylen MP, Minister for Transport, said that the Bill was part of a Government reform aimed at maximising the 'safety and reliability' of transport assets. The Minister noted that the Bill would adopt a new model for the management of 'an integrated transport network' and 'the ongoing delivery of safe, integrated and reliable transport services'. Further, the Minister stated that the Bill would reinforce TfNSW's role as the leading agency for delivering the Government's vision for mode shift to active transport.
- 15.3 The Bill seeks to amend the Act to:
- establish TAM, in place of TAHE, as the NSW government agency with responsibility for the management of rail assets,
  - broaden TfNSW's functions and objectives to retain accountability for a safe, efficient and integrated transport system across NSW, and
  - transfer the Cities Revitalisation and Place team and the Smart Places team from the Department of Planning and Environment to TfNSW, to enable a more collaborative approach.
- 15.4 The Bill also makes consequential changes to other Acts.



## Issues considered by the Committee

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

### *Wide powers of TAM*

- 15.5 The Bill proposes to amend Part 2 of the Act, which changes the corporate name of TAHE to TAM and makes provisions for various functions of TAM.
- 15.6 Proposed section 7 of the Bill would allow TAM to:
- provide facilities or services that are 'necessary', 'ancillary' or 'incidental' to its functions (proposed subsection 7(2)(a)),
  - conduct a business or activities, 'whether or not related to its functions' that it considers will further its objectives (proposed subsection 7(2)(b)), and
  - carry out its functions 'outside of the State' with the authorisation of the Minister for Transport (proposed subsection 7(6)).
- 15.7 Under proposed section 3B(1B) and (1C), TAM would be subject to the control and direction of the Minister for Transport and may be directed by the Minister to cease exercising one or more of its functions, or to exercise its functions in a limited way.
- 15.8 The Minister explained that the power of direction by the Minister for Transport was intended to 'support the collaboration and engagement between TAM and TfNSW', which would be necessary to 'deliver an integrated transport network'.

**The Bill seeks to amend the *Transport Administration Act 1988* to convert the Transport Asset Holding Entity of New South Wales into the Transport Asset Manager of New South Wales (TAM). The Bill also prescribes the functions of TAM at proposed section 7, which includes providing facilities or services that are 'necessary', 'ancillary' or 'incidental' to its functions, conducting a business or activities 'whether or not related to its functions', and carrying out its functions 'outside of the State'. The Bill would also allow for TAM's functions to be ceased or limited at the direction of the Minister for Transport. The Bill may therefore provide TAM with a wide power to conduct its statutory functions, including acting outside of the State.**

The Committee acknowledges that the incidental powers may be intended to facilitate policy reform of State rail assets and also may enable TAM to transition and operate flexibly and responsibly. The Committee also acknowledges that proposed section 7 permits the broad extraterritorial application of TAM's functions, but only if the Minister for Transport authorises it to carry out those functions. Further, the Committee recognises that the power of the Minister's direction is intended to support collaboration and engagement between TAM and TfNSW.

However, the Committee notes that the terms like 'necessary', 'incidental' and 'whether or not related' may be, without legislative definitions or limitations, broadly defined to include any and all matters, actions or steps. The Committee also generally comments where

**legislation may have extraterritorial effect because it may create uncertainty for individuals about what laws apply to them at any one time and may create conflict between the Act and another jurisdiction's laws concerning transport assets and networks. For these reasons, the Committee refers the matter to Parliament for consideration.**

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

*Wide power of delegation*

15.9 Under proposed section 14 of the Bill, TAM would be able to delegate any of its functions to 'an authorised person'. Further, that delegate would be able to sub-delegate the functions to 'an authorised person' with TAM's written authorisation.

15.10 Proposed subsection 14(3) provides that 'authorised person' means

- (a) a member of staff of TAM, or
- (b) a person of a class prescribed by the regulations or approved by the Minister.

**Proposed section 14 of the Bill would provide TAM with the power to delegate the exercise any of its functions under the Bill to 'an authorised person', and the delegate would be able to sub-delegate the functions to another 'authorised person'. Under proposed subsection 14(3) of the Bill, 'authorised person' may mean 'a person of a class prescribed by the regulations or approved by the Minister'. The Bill does not include any provision specifying or limiting what amounts to 'a person of a class prescribed by the regulations or approved by the Minister', or set any qualification requirements for a person to be delegated functions.**

**Therefore, the Bill may provide for a wide power of delegation of statutory functions. The Committee notes that the provision may effectively delegate statutory powers and functions without any oversight by the Parliament. Under proposed section 14, private individuals could be delegated statutory functions that the public may expect to be performed by public officials. The Committee prefers that the delegation of statutory functions be detailed in primary legislation to ensure appropriate parliamentary scrutiny over the exercise of these functions. For these reasons, the Committee refers the matter to Parliament for consideration.**

*Commencement by proclamation*

15.11 Schedule 1.3 of the Bill prescribes the transitional provisions consequent on the proposed amendments being enacted. Under proposed section 240, the chief executive officer and other directors of TAHE would cease to hold office on the commencement of the Schedule. Proposed subsection 240(3) provides that no compensation or remuneration is payable to a person ceasing to hold an office by operation of the Schedule.

15.12 Clause 2 of the Bill provides that the Bill (if enacted), apart from Schedule 1.1, would commence 'on a day or days to be appointed by proclamation'.

- 15.13 In her second reading speech, the Minister explained that commencement by proclamation would 'enable time for TAHE and TfNSW to work together on the supporting contractual, commercial and administrative arrangements needed for this new operating model'.

**Schedule 1.3 of the Bill prescribes the transitional provisions consequent on the proposed amendments being enacted. Under proposed section 240 of Schedule 1.3, the chief executive officer and other directors of TAHE would cease to hold office on the commencement of the Schedule. Proposed subsection 240(3) provides that no compensation or remuneration is payable to a person ceasing to hold an office by operation of the Schedule. Clause 2 of the Bill provides that Schedule 1.3, in addition to other schedules, would commence 'on a day or days to be appointed by proclamation'.**

**The Committee notes that part of the Bill would commence by proclamation and 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 recognises that commencement by proclamation would enable greater flexibility to facilitate the reform and transition of management of rail assets and the transport network. In the circumstances, the Committee makes no further comment.**

# 16. Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

Date introduced	4 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations and Work Health and Safety

## Purpose and description

- 16.1 The objects of this Bill are as follows:
- (a) to amend the *Work Health and Safety Act 2011* (the **Act**) to create an offence of industrial manslaughter and to provide for matters relating to gross negligence,
  - (b) to make consequential amendments to the *Industrial Relations Amendment Act 2023*.

## Background

- 16.2 The Bill proposes to amend the Act, which would establish an industrial manslaughter offence within the NSW work health and safety framework.
- 16.3 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations and Work Health and Safety (the **Minister**), noted that NSW is the last mainland state without an industrial manslaughter offence. She explained that the Bill would 'deter and prevent workplace deaths and injuries' in NSW by 'discouraging unsafe work practices and holding those individuals responsible to account'.
- 16.4 The Minister noted that the proposed industrial manslaughter offence would not create any new work health and safety obligations or duties, but would reinforce the importance of complying with these duties by introducing a significant new offence into the work health and safety framework.
- 16.5 The Minister also noted that the Bill is consistent with the recommendation in Marie Boland's 2018 report, *Review of the model Work Health and Safety laws: Final report*, and consistent with how other jurisdictions in Australia have constructed their own industrial manslaughter offences.
- 16.6 Under proposed section 34C, industrial manslaughter would be established if:
- (a) a person conducting a business or undertaking has a health and safety duty (**duty**), and

- (b) the person engages in conduct that fails to comply with that duty and causes the death of a worker or a person who is owed the duty (such as a subcontractor), and
  - (c) the conduct was grossly negligent.
- 16.7 The proposed maximum penalty for the offence is 25 years' imprisonment for individuals or \$20 million for a body corporate. The Minister notes that this maximum penalty for individuals would be consistent with the existing maximum penalty for manslaughter under the *Crimes Act 1900*.
- 16.8 The Bill also seeks to clarify liability for a body corporate and modify how gross negligence for a body corporate can be established under the Act.
- 16.9 Proposed section 244BA provides that gross negligence for a body corporate could be established even if no individual person has engaged in conduct with gross negligence, if the aggregated conduct of more than one person was substantially attributable to:
- inadequate corporate management, control or supervisions of the conduct of one or more authorised persons, or
  - failure to provide adequate systems for conveying information to relevant persons in the body corporate.

## Issues considered by the Committee

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

#### *Commencement by proclamation - custodial penalty*

- 16.10 The Bill provides that schedules 1-[1] – [4] are to commence by proclamation. The relevant schedules include proposed section 34C, which would create the offence of industrial manslaughter and set the maximum penalty for that offence (25 years imprisonment for individuals and \$20 million for a body corporate).
- 16.11 As noted above, the proposed new offence would not necessarily create any new work health and safety obligations or duties for individuals under the Act, as the existing section 31 sets out the Category 1 offences of gross negligence or reckless conduct.
- 16.12 However, the existing Category 1 offences under the Act carry significantly lower custodial penalties, with a maximum penalty of 5 years' imprisonment and/or 6,925 penalty units (a \$761,750 fine) for individuals.
- 16.13 In her second reading speech, the Minister explains that this commencement by proclamation is to 'ensure that all procedures and processes can be thoroughly considered and well established prior to the commencement of the offence'.

**The Bill introduces a new industrial manslaughter offence and maximum penalty of 25 years' imprisonment for individuals or \$20 million for a body corporate. The provision setting out the maximum penalty is to 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.

The Committee notes that the proposed new offence carries a custodial penalty that is significantly higher than the existing penalty for Category 1 (gross negligence) offences under the *Work Health and Safety Act 2011*. This significant increase in the maximum custodial penalty has the potential to adversely impact the personal rights of individuals charged with the offence. It is generally recognised that a person should be able to understand how the law applies to them at any one time.

However, in this case, the Committee acknowledges that the increase in custodial penalty is intended to deter and prevent workplace deaths and injuries. The Committee also notes that the proposed commencement by proclamation is intended to allow consultation to take place among relevant agencies, and for processes to be thoroughly considered and established before the offence provisions commence. Therefore, 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. Education and Care Services National Amendment Regulations 2024

The Regulation amends the *Education and Care Services National Regulations (the **National Regulations**)* under the *Education and Care Services National Law (NSW) (the **National Law**)*. The Regulation makes various changes to the National Regulations including new requirements for approval in principle of proposed education and care service premises, and updates to various prescribed fees in the National Law.

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

## 2. Education and Care Services National Further Amendment Regulations 2024

The Regulation amends the *Education and Care Services National Regulations (the **National Regulations**)* under the *Education and Care Services National Law (NSW) (the **National Law**)*. The Regulation makes further amendments to the National Regulations that update and specify the qualification requirements for certain educators under the National Law.

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

## 3. Liquor Amendment (Same Day Liquor Delivery) Regulation 2024

The objects of this regulation are as follows:

- (a) to permit a person to be a provisionally accepted provider of identification verification services if the person's application for accreditation, lodged before 1 October 2022, has not been refused
- (b) to provide that a provisionally accepted provider no longer needs to be undergoing the process for accreditation
- (c) to continue to permit, beyond 31 May 2024, the use of provisionally accepted providers to verify the age of persons receiving same day deliveries of liquor for the first time
- (d) to continue to include, beyond 31 May 2024, provisionally accepted providers as persons who may provide identity authentication services in relation to persons receiving subsequent same day deliveries of liquor
- (e) to continue, beyond 31 May 2024, an alternative process for age verification for same day deliveries.

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

## 4. Notice of Reservation of a National Park [n2024-0810]

The Notice of Reservation is made under the *National Parks and Wildlife Act 1974*. It reserves a formerly public road for the Arakoon National Park.



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

5. [Notice of Reservation of a National Park \[n2024-0811\]](#)

The Notice of Reservation is made under the *National Parks and Wildlife Act 1974*. It reserves a formerly public road for the Rouse Hill Regional Park.

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

6. [Notice of Reservation of a National Park \[n2024-0812\]](#)

The Notice of Reservation is made under the *National Parks and Wildlife Act 1974*. It reserves a formerly public road for the Royal National Park.

The Notice of Reservation does not appear to engage with any issues set out at 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. 16

**TIME & DATE: 3.04PM, 17 JUNE 2024**

**LOCATION: ROOM 1254 AND WEBEX**

### MEMBERS PRESENT

Ms Voltz (**Chair**), Ms Stuart (**Deputy Chair**) (via Webex), Mr Hagarty, Ms Higginson, Mr Layzell, Mr Murphy

### APOLOGIES

Ms Davis, Ms Munro

### OFFICERS PRESENT

Rohan Tyler, Kate McCorquodale, Carly McKenna, Charlie King, Mengyuan Chen, Alice Zwar, Alex Read, Oliver Sinclair, Nicolle Gill and Elizabeth Hawken.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: that the minutes of the meeting of 3 June 2024 be confirmed.

#### 2. \*\*\*

#### 3. Consideration of bills with comment for Legislation Review Digest 15/58

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

- a. Automated External Defibrillators (Public Access) Bill (No 2) 2024
- b. Community Services Sector (Portable Long Service Leave) Bill 2024
- c. Electoral Funding Amendment Bill 2024
- d. Energy Legislation Amendment (Clean Energy Future) Bill 2024
- e. Energy Security Corporation Bill 2024
- f. Government Sector Employment and Other Legislation Amendment Bill 2024
- g. Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024
- h. Statute Law (Miscellaneous Provisions) Bill 2024
- i. Transport Administration Amendment Bill 2024
- j. Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024

**4. Consideration of bills without comment for Legislation Review Digest 15/58**

Resolved, on the motion of Mr Layzell: that the Committee adopts the following draft bill reports without comment *in globo*:

- a. Alcohol Consumption in Public Places (Liberalisation) Bill 2024
- b. Catholic Cemeteries and Crematoria Trust Bill 2024
- c. Environmental Planning and Assessment Amendment (Disallowance of Transport Oriented Development SEPP) Bill 2024
- d. Protection of the Environment Operations Amendment (Balloons) Bill 2024
- e. Rice Marketing Amendment Bill 2024
- f. Road Rules Amendment (Helmets – Sikh Exemption) Bill 2024

**5. Regulations without comment for Legislation Review Digest 15/58 (Appendix Two)**

Resolved, on the motion of Ms Stuart: that the Committee adopts the regulations without comment as Part Two to Digest 15/58.

**6. Legislation Review Digest 15/58**

Resolved, on the motion of Mr Murphy, that:

- appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- the Committee adopts the Legislation Review Digest 15/58 and that it be signed by the Chair and presented to the House.

**7. Regulations to be reviewed**

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

**8. \*\*\***

**9. Next Meeting**

The meeting adjourned at 3.07pm until 6 August 2024 at 3.00pm.