

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. Appropriation Bill 2024; Appropriation \(Parliament\) Bill 2024; Revenue Legislation Amendment Bill 2024](#)

No issues identified

No issues identified

No issues identified

[2. Better Regulation Legislation Amendment Bill 2024](#)

No issues identified

[3. Coal Mine Subsidence Compensation Amendment Bill 2024](#)

No issues identified

[4. David Berry Hospital Amendment \(Prohibition of Sale\) Bill 2024*](#)

No issues identified

[5. Electricity Infrastructure Investment Amendment \(Tender Moratorium\) Bill 2024*](#)

No issues identified

[6. Regional Communities \(Consultation Standards\) Bill 2024*](#)

Issue identified	Conclusion of Committee
Incorporation of extrinsic material	No further comment

[7. Road Rules Amendment \(Mobile Phones as Navigation Aids for Provisional Licence Holders\) Bill 2024*](#)

No issues identified

[8. Road Transport Amendment \(Driving Through Floodwaters\) Bill 2024*](#)

Issue identified	Conclusion of Committee
Insufficiently defined penalty notice offence	Referred

[9. Water Management Amendment \(Central Coast Council\) Bill 2024](#)

No issues identified

PART TWO – REGULATIONS WITH COMMENT

1. Electoral Amendment (Technology Assisted Voting at By-elections) Regulation 2024

Issue identified	Conclusion of Committee
Right to participation in public elections – limitation of technology assisted voting	No further comment

2. Local Court of New South Wales Practice Note Civ 1

Issue identified	Conclusion of Committee
Right to fair trial and access to justice - Additional rules for legally represented parties	No further comment

3. NSW Admission Board Fifth Amendment Rule 2024

Issue identified	Conclusion of Committee
Insufficiently defined wide discretionary power	No further comment

Summary of Conclusions

PART ONE – BILLS

1. **Appropriation Bill 2024; Appropriation (Parliament) Bill 2024; Revenue Legislation Amendment Bill 2024**

The Committee makes no comment on the Appropriation Bill 2024 in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

The Committee makes no comment on the Appropriation (Parliament) Bill 2024 in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

The Committee makes no comment on the Revenue Legislation Amendment Bill 2024 in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

2. **Better Regulation Legislation Amendment (Miscellaneous) Bill 2024**

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

3. **Coal Mine Subsidence Compensation Amendment Bill 2024**

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

4. **David Berry Hospital Amendment (Prohibition of Sale) Bill 2024***

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

5. **Electricity Infrastructure Investment Amendment (Tender Moratorium) Bill 2024***

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

6. **Regional Communities (Consultation Standards) Bill 2024***

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

Incorporation of extrinsic material

The Bill proposes to insert a 'prescribed standard' for consultation and engagement in Government funded projects that affect regional communities.

Proposed subsection 4(4)(a) states the 'prescribed standard' is the '*Quality Assurance Standard for Community and Stakeholder Engagement*' published by the International Association for Public Participation (IAP2). The standard would regulate the Government approach to consultation and

engagement, requiring Government to act in accordance with the standard. The standard includes measures to define and measure a quality public participation process, along with allowing for auditing of the engagement process.

The Bill would create obligations on Government that are subject to the standards of an external, non-government body. The IAP2 instrument could be changed arbitrarily and create new duties on the Government without oversight. The Committee prefers substantive matters to be set out in primary legislation or to be published in the Gazette and tabled in Parliament as regulations, where they can be subject to disallowance and therefore to appropriate parliamentary scrutiny.

However, the Committee acknowledges the standard would be introduced to mandate Government to act in a transparent, fair and consistent manner when dealing with Government funded projects in regional communities. The Bill would standardise consultation and engagement, so regional communities can have a regulated and auditable process. The Committee also notes the standard has been drafted by a leading professional organisation, has been developed according to evidence-based best practice, and has the safeguard of proposed subsection 4(3) for the protection of the validity of consultations. For these reasons, the Committee makes no further comment.

7. Road Rules Amendment (Mobile Phones as Navigation Aids for Provisional Licence Holders) Bill 2024*

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

8. Road Transport Amendment (Driving Through Floodwaters) Bill 2024*

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

Insufficiently defined penalty notice offence

The Bill seeks to create an offence under the *Road Transport Act 2013* (the Act) for deliberately or recklessly driving a motor vehicle on a part of a road covered by floodwaters. Proposed subsection 118A(2)(b) would require amounts paid under a penalty notice issued for an alleged offence to be paid into the New South Wales State Emergency Service Fund. The proposed subsection therefore appears to allow for the offence to be dealt with by way of a penalty notice.

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 automatic right to have their matter heard by an impartial decision maker.

A penalty notice offence under section 195 of the Act is ordinarily prescribed under Schedule 5 of the *Road Transport (General) Regulation 2021* and does not prevent a person from electing to have their matter dealt with by a court. However, as the Bill does not refer to the Regulation, it is unclear whether the proposed offence would be considered a 'penalty notice offence' under the Act. In the absence of any additional terms setting out the operation of penalty notices for this offence, it is unclear whether a person would retain the right to have their matter determined by a court.

Key elements of the offence, including 'floodwaters' and 'deliberatively or recklessly' are also not defined within the proposed section, which may create ambiguity when determining whether the offence occurred.

For these reasons, the Committee refers the matter to Parliament for further consideration.

9. Water Management Amendment (Central Coast Council) Bill 2024

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

PART TWO – REGULATIONS WITH COMMENT

1. Electoral Amendment (Technology Assisted Voting at By-elections) Regulation 2024

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

Right to participation in public elections – limitation of technology assisted voting

The Regulation amends the Electoral Regulation 2018 to limit the use of technology assisted voting at a by-election held before the 2027 general election. Under the *Electoral Act 2017*, technology assisted voting is available to eligible voters for a broad range of reasons, including disability, illiteracy, and lack of proximity to a voting centre. The Regulation would limit technology assisted voting to telephone voting by voters who are blind or have low vision.

By restricting technology assisted voting to a very limited group of eligible voters, the Regulation impacts some individuals' right to vote and participate in public elections. The right to political franchise and democratic participation, contained in Article 25 of the International Covenant on Civil and Political Rights, protects the right of individuals to vote by universal and equal suffrage.

However, Article 25 also recognises that the right to vote may be subject to restrictions based on objective and reasonable criteria. The Committee acknowledges that technology assisted voting may present risks to electoral security and integrity, and that the limitation may be intended to address these risks. The Committee further notes that the limitation is only for by-elections held before the 2027 general election, and that telephone voting remains a feasible voting option for electors who are blind or have low vision. In the circumstances, the Committee makes no further comment.

2. Local Court of New South Wales Practice Note Civ 1

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

Right to fair trial and access to justice - Additional rules for legally represented parties

The Practice Note describes how Local Courts manage civil cases, and informs parties and lawyers about their duties to the Court. The Practice note creates new obligations and rules that apply during Court proceedings, specifically for parties who engage lawyers. These do not apply to self-represented parties. This may result in an inconsistent application of Court procedure that impacts a legally represented person's right to a fair trial.

However, the Committee acknowledges that Court rules are commonly used to improve the efficiency and consistency in litigation. In this case, the Practice Note is intended to ensure that civil cases can move through the Local Court quickly and easily. The Committee also notes that practice notes are not binding on Courts, and that decision makers may disregard them if they

are not suitable in a particular context. In the circumstances, the Committee makes no further comment.

3. NSW Admission Board Fifth Amendment Rule 2024

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

Insufficiently defined wide discretionary power

The NSW Admission Board Fifth Amendment Rule 2024 (Fifth Amendment Rule) inserts rule 66A(1) into the NSW Admission Board Rules 2015 (the Admission Board Rules). Rule 66A(1) excludes students who have not completed the examinations prescribed in rule 53 within ten years of enrolling in their first subject from taking any further examination prescribed by the Admission Board Rules. The Fifth Amendment Rule also inserts rule 67(3) which allows the Executive Officer to relax rule 66A 'in circumstances which he or she regards as sufficiently special and upon such conditions as he or she thinks fit'.

The Committee notes that rule 67(3) may grant the Executive Officer a wide discretionary power through insufficiently defined terms that could benefit from further clarification. The rule gives the Executive Officer the discretion to exclude a student from completing their examinations required for admission to practice Law. The Committee prefers provisions that affect rights and obligations of individuals to be drafted with sufficient precision so that their scope is clear.

The Committee acknowledges that it is important for the Executive Officer to retain flexibility and discretion, as the circumstances that may prevent a student from completing their examinations in time can vary. It further acknowledges that a student is able to apply for a review of an Executive Officer's decision made under rule 67(3). In these circumstances, the Committee makes no further comment.



Part One – Bills

1.

Appropriation Bill 2024;
Appropriation (Parliament) Bill
2024; Revenue Legislation
Amendment Bill 2024

Date introduced	18 June 2024
House introduced	Legislative Assembly
Member introducing	The Hon. Paul Scully MP on behalf of The Hon Chris Minns MP
Minister responsible	The Hon. Daniel Mookhey MLC
Portfolio	Treasurer

Purpose and description

Appropriation Bill 2024

- 1.1
- The object of this Bill is to appropriate from the Consolidated Fund various sums of money required for the 2024–25 financial year (the appropriation year) for the services of the Government, including—
- (a)

Departments of the Public Service, and
- (b)

various special offices.
- 1.2
- The Consolidated Fund largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.
- 1.3
- This Bill:
- (a)

appropriates a single sum for the services of each agency, including capital works and services, recurrent services and the repayment of debt
- (b)

contains an additional appropriation that allocates revenue raised in connection with gaming machine taxes to the Minister for Health for spending on health-related services
- (c)

contains provision for transfer payments from the Commonwealth to non-government schools and local government
- (d)

provides for appropriation for the whole of the appropriation year.

Appropriation (Parliament) Bill 2024

- 1.4 The object of this Bill is to appropriate from the Consolidated Fund a sum for the services of the Legislature for the 2024–25 financial year, including capital works and services, recurrent services and the repayment of debt.

Revenue Legislation Amendment Bill 2024

- 1.5 The objects of the Bill are to:
- (a) increase, from 8% to 9%, the surcharge purchaser duty and surcharges on acquisitions payable by foreign persons
 - (b) enable the Treasurer to make transfers between statutory funds
 - (c) increase, from 4% to 5%, the rate of surcharge land tax
 - (d) freeze the tax threshold and premium rate threshold for land tax for years after 2024
 - (e) provide for an exemption for past payroll tax that remains unpaid if it relates to certain general practitioners
 - (f) provide for a rebate of payroll tax for employers for the wages of general practitioners who work in a medical centre if the majority of general practitioner services provided through the medical centre are bulk billed.

Background

- 1.6 These bills give effect to the 2024-25 NSW State Budget.
- 1.7 The Hon. Paul Scully MP introduced the bills in the Legislative Assembly on behalf of the Premier, the Hon. Chris Minns MP. The Treasurer, the Hon. Daniel Mookhey MLC, was then admitted to the Legislative Assembly to give the Budget speech, which outlined the proposed budget and policy measures that the bills seek to implement.
- 1.8 Although they are separate Acts when operative, the Appropriation Bill 2024, Appropriation (Parliament) Bill 2024, and the Revenue Legislation Amendment Bill 2024 are cognate bills and were introduced together. Accordingly, all three bills are considered in this one report.
- 1.9 The bills passed Parliament on 20 June 2024 prior to the tabling of this Digest and, therefore, before the Committee could report on them. The Revenue Legislation Amendment Bill 2024 was amended in the Legislative Council before passing.
- 1.10 Section 8A(2) of the *Legislation Review Act 1987* permits the Committee to report on a bill which has passed or become an Act. In accordance with its usual practice, the Committee has considered the bills as introduced.

Issues considered by the Committee

Appropriation Bill 2024

The Committee makes no comment on the Appropriation Bill 2024 in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

Appropriation (Parliament) Bill 2024

The Committee makes no comment on the Appropriation (Parliament) Bill 2024 in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

Revenue Legislation Amendment Bill 2024

The Committee makes no comment on the Revenue Legislation Amendment Bill 2024 in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

2. Better Regulation Legislation Amendment (Miscellaneous) Bill 2024

Date introduced	20 June 2024
House introduced	Legislative Council
Member with carriage	The Hon. Penny Sharpe MLC
Portfolio	Customer Service and Digital Government Better Regulation and Fair Trading Building

Purpose and description

- 2.1 The object of this Bill is to amend legislation administered by the Minister for Customer Service and Digital Government, the Minister for Better Regulation and Fair Trading and the Minister for Building.
- 2.2 The Bill includes the following amendments:
- (a) minor amendments of a statute law revision nature,
 - (b) amendments to the *Home Building Act 1989* to dissolve the Building Insurers' Guarantee Corporation and the Building Insurers' Guarantee Fund, which are no longer required, and
 - (c) amendments to reflect machinery of government changes.

Background

- 2.3 In her second reading speech, the Member with carriage of the Bill, the Hon. Penny Sharpe MLC noted that the Bill would address the issues identified by NSW Fair Trading and the Building Commission NSW during the routine and ongoing departmental review of legislation. The Minister noted that the changes are 'designed to improve the clarity and accuracy of the laws and reduce regulatory burdens'.
- 2.4 The Statement of Public Interest tabled with the Bill also noted that the Bill would ensure the accuracy, coherence, quality and relevance of NSW legislation.
- 2.5 The Bill seeks to amend 24 Acts and four regulations to streamline regulatory processes and enhance legislative clarity. The Minister outlined the content of each schedule as follows:
- Schedule 1 proposes minor amendments to 17 Acts and regulations across the Customer Service and Digital Government, Better Regulation and Fair Trading, and Building portfolios. The amendments seek to clarify existing provisions, update terminology and remove outdated provisions.

- Schedule 2 seeks to dissolve the Building Insurers' Guarantee Corporation and the Building Insurers' Guarantee Fund (the **Fund**) under the *Home Building Act 1989*, noting that the last remaining claims on the Fund were finalised in December 2020 and no new claims can be made. This Schedule also seeks to make consequential amendments to other Acts and regulations that refer to the Corporation and the Fund.
- Schedule 3 proposes amendments to nine Acts to reflect updated administrative arrangements and machinery of government changes. This includes changing the definition of 'secretary' from 'Commissioner of Fair Trading' to 'Secretary of the Department' to avoid having to amend the definition if future machinery of government changes are made.

Issues considered by the Committee

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

3. Coal Mine Subsidence Compensation Amendment Bill 2024

Date introduced	19 June 2024
House introduced	Legislative Assembly
Minister with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Better Regulation and Fair Trading

Purpose and description

- 3.1 The object of this Bill is to amend the *Coal Mine Subsidence Compensation Act 2017* (the **Act**) to update the Act as a result of the 2023 statutory review.

Background

- 3.2 The Bill seeks to implement in full the nine recommendations of the 2023 statutory review of the Act to improve the effectiveness of the compensation framework for damage caused by coal mine subsidence.
- 3.3 In his second reading speech, the Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, noted:

The Bill will expand compensation to assist those who need it, improve the claims process to support claimants and enhance the capability of Subsidence Advisory to respond to subsidence impacts and risks.

- 3.4 The key amendments proposed by the Bill include:
- extending relocation compensation to tenants affected by subsidence (not just owner-occupiers) and providing additional support in subsidence events
 - adding powers for the Chief Executive of Subsidence Advisory NSW (the **Chief Executive**) to direct a pre-mining inspection where there is a risk of subsidence damage, and to limit compensation where a pre-mining inspection was required but not carried out
 - allowing claims to be lodged outside of the Subsidence Advisory NSW online portal
 - clarifying the responsibilities of Subsidence Advisory NSW and its Chief Executive in the assessment and determination of claims
 - expanding the scope of the approved procedures, made under section 14 of the Act, to include additional matters such as the assessment of subsidence risk and the review of determinations of claims
 - increasing penalties for existing offences under the Act to reflect changes in inflation and ensure that the 'deterrent effect of the penalties is maintained over time'.

- 3.5 The Bill proposes to add section 11A to clarify the existing responsibilities and process by which Subsidence Advisory NSW assesses compensation claims under the Act. This section explicitly provides that Subsidence Advisory NSW must assess the claim in accordance with the approved procedures, prepare an assessment report and provide that assessment to the Chief Executive. The Bill also provides that the Chief Executive must determine the claim in accordance with the Act and the approved procedures.
- 3.6 Section 14 of the Act currently allows the Chief Executive to approve procedures for the determination of claims. The Bill proposes to expand the matters that may be dealt with in the approved procedures, including the assessment of subsidence risk and the review of determinations for compensation

Issues considered by the Committee

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

4. David Berry Hospital Amendment (Prohibition of Sale) Bill 2024*

Date introduced	21 June 2024
House introduced	Legislative Assembly
Member responsible	Mr Gareth Ward, MP
*Private Member's Bill	

Purpose and description

- 4.1 The object of the Bill is to prohibit the sale or disposal of the lands on which the David Berry Hospital stands.

Background

- 4.2 The Bill seeks to amend the *David Berry Hospital Act 1906* by introducing a provision that would prohibit the sale or disposal of the hospital lands. The Act currently allows the government to sell the site if it is not required as a hospital.
- 4.3 In his second reading speech, Mr Gareth Ward MP referred to the Legislative Assembly public interest debate on 16 May 2024, where he raised concerns about the future of the David Berry Hospital and its potential closure.
- 4.4 Mr Ward explained that by preventing the sale of the hospital, the Bill 'seeks to ensure that the site is protected in perpetuity' because of its significance to the community and its 'historical and natural value'.

Issues considered by the Committee

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

5. Electricity Infrastructure Investment Amendment (Tender Moratorium) Bill 2024*

Date introduced	21 June 2024
House introduced	Legislative Assembly
Member responsible	Mr Roy Butler, MP
*Private Members Bill	

Purpose and description

- 5.1 The object of the Bill is to amend the *Electricity Infrastructure Investment Act 2020* (the **Act**) to prohibit the conduct of a competitive tender for a long-term energy service agreement (**LTES agreement**) until the completion of a parliamentary inquiry into the operation of that Act, including in relation to the following—
- (a) site selection
 - (b) impacts on agriculture and business
 - (c) the adequacy of regional community consultation
 - (d) the adequacy of related programs, projects, strategies and incentives for the relevant regions, including the adequacy of funding for the programs, projects, strategies and incentives.

Background

- 5.2 The Bill seeks to amend the Act to prohibit the Consumer Trustee from conducting a tender process for renewable energy infrastructure projects in New South Wales until a parliamentary inquiry has been conducted.
- 5.3 In his second reading speech, Mr Roy Butler MP, stated that the Bill 'will have a positive impact on the perception of regional people towards renewable energy projects, particularly within the renewable energy zones in regional New South Wales'.
- 5.4 Specifically, he noted that the existing mechanisms under the Act had not achieved the desired outcomes in regional communities. Mr Butler stated that the Bill seeks to 'find out why by pausing and reviewing the Act and its regulatory framework' until a review has been conducted and a report has been tabled in each House of Parliament.

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*.

6. Regional Communities (Consultation Standards) Bill 2024*

Date introduced	20 June 2024
House introduced	Legislative Assembly
Member responsible	Mr Roy Butler MP
	*Private Members Bill

Purpose and description

- 6.1 The object of the Bill is to provide that the consultation of regional communities by government bodies and agencies must be carried out in a proper and effective manner.

Background

- 6.2 The Bill seeks to create a new Act that would require the State, a NSW Government agency, or a statutory body representing the Crown to consult and engage with regional communities for government funded projects, in line with a prescribed standard.
- 6.3 In his second reading speech, Mr Roy Butler MP stated that 'consultation should be carried out properly and effectively in regional communities with accountability and transparency'.
- 6.4 Mr Butler further explained that the Bill also 'sets out the prescribed standard until regulations provide otherwise'. The proposed prescribed standard for the new Act is the '*Quality Assurance Standard for Community and Stakeholder Engagement*' published by the International Association for Public Participation¹.
- 6.5 The Bill also seeks to define the term 'regional community' as a community 'outside the Greater Sydney Region'.

Issues considered by the Committee

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

Incorporation of extrinsic material

- 6.6 The Bill requires that consultation with regional communities by the State or a Crown representative must be carried out in accordance with the 'prescribed standard'.

¹ International Association for Public Participation (IAP2), [Quality Assurance Standard for Community and Stakeholder Engagement](#), endorsed by the IAP2 Federation in May 2015.

- 6.7 Proposed subsection 4(4)(a) states the 'prescribed standard' is the 'Quality Assurance Standard for Community and Stakeholder Engagement' published by the International Association for Public Participation (IAP2).
- 6.8 Among other things, the objectives of the 'prescribed standard' are to:
- better assure the quality of engagement and engagement audit services
 - regulate practitioner activity by standardising the process of community and stakeholder engagement
 - validate engagement activity by defining and measuring (rating) a quality public participation process.²
- 6.9 In his second reading speech, Mr Butler said the introduction of the standard would provide 'consistency, accountability and transparency' which are issues that regional communities are 'consistently demanding through the engagement and consultation process'. He further explained that the Bill 'sets out the prescribed standard until regulations provide otherwise' and that it 'allows any process to be audited'.
- 6.10 Proposed subsection 4(3) of the Bill provides that 'a failure to comply with this section does not affect the validity of a consultation'.

The Bill proposes to insert a 'prescribed standard' for consultation and engagement in Government funded projects that affect regional communities.

Proposed subsection 4(4)(a) states the 'prescribed standard' is the 'Quality Assurance Standard for Community and Stakeholder Engagement' published by the International Association for Public Participation (IAP2). The standard would regulate the Government approach to consultation and engagement, requiring Government to act in accordance with the standard. The standard includes measures to define and measure a quality public participation process, along with allowing for auditing of the engagement process.

The Bill would create obligations on Government that are subject to the standards of an external, non-government body. The IAP2 instrument could be changed arbitrarily and create new duties on the Government without oversight. The Committee prefers substantive matters to be set out in primary legislation or to be published in the Gazette and tabled in Parliament as regulations, where they can be subject to disallowance and therefore to appropriate parliamentary scrutiny.

However, the Committee acknowledges the standard would be introduced to mandate Government to act in a transparent, fair and consistent manner when dealing with Government funded projects in regional communities. The Bill would standardise consultation and engagement, so regional communities can have a regulated and auditable process. The Committee also notes the standard has been drafted by a leading professional organisation, has been developed according to evidence-based best practice, and has the safeguard of

² International Association for Public Participation (IAP2), [Quality Assurance Standard for Community and Stakeholder Engagement](#), endorsed by the IAP2 Federation in May 2015, pg 5.

proposed subsection 4(3) for the protection of the validity of consultations. For these reasons, the Committee makes no further comment.

7. Road Rules Amendment (Mobile Phones as Navigation Aids for Provisional Licence Holders) Bill 2024*

Date introduced	19 June 2024
House introduced	Legislative Council
Member responsible	The Hon. John Ruddick MLC
*Private Members Bill	

Purpose and description

- 7.1 The object of this Bill is to amend the *Road Rules 2014* to allow provisional P1 and P2 drivers to use mobile phone devices for navigational purposes.

Background

- 7.2 The Bill seeks to allow a provisional driver who holds a P1 or P2 licence and is 25 years of age or older to use a mobile phone solely as a navigational aid when the motor vehicle is moving or stationary, if the phone is secured in a mounting affixed to the vehicle.
- 7.3 The proposed amendments would be repealed 12 months after commencement.
- 7.4 In his second reading speech, the Hon. John Ruddick MLC said that 'brain development is not complete until the mid-twenties' and that the exemption proposed by the Bill would provide provisional drivers over the age of 25 with 'all the tools they need to navigate it safely'.
- 7.5 Mr Ruddick noted that a 12-month trial period would allow the legislation to assess whether provisional drivers over the age of 25 would be able to 'manage controlled distractions' properly and to decide whether to extend or make these proposed amendments permanent.

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*.

8. Road Transport Amendment (Driving Through Floodwaters) Bill 2024*

Date introduced	20 June 2024
House introduced	Legislative Assembly
Member responsible	Mr Gareth Ward, MP
*Private Members Bill	

Purpose and description

- 8.1 The objects of the Bill are to amend the *Road Transport Act 2013* (the **Act**) to:
- a) prohibit deliberately or recklessly driving through floodwaters, and
 - b) require penalties for breach of the prohibition to be paid into the New South Wales State Emergency Services (**SES**) Fund.

Background

- 8.2 The Bill seeks to make it an offence to deliberately or recklessly drive a motor vehicle on road covered by floodwaters. The proposed maximum penalty for the offence is 5 penalty units (a \$550 fine), with any penalties to be directed to the NSW SES.
- 8.3 In his second reading speech, Mr Gareth Ward, MP noted that people continue to 'ignore the warnings and obvious dangers' of driving through floodwaters and put others' lives at risk. Mr Ward explained that the proposed penalty is intended to act as a deterrent, as 'community awareness and educations programs can only do so much'.
- 8.4 Mr Ward further noted that the Bill's provision to support the SES recognises the countless hours that SES volunteers spend preparing for and responding to flood risks.

Issues considered by the Committee

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

Insufficiently defined penalty notice offence

- 8.5 Proposed subsection 118A(2)(b) of the Act provides that an amount paid under a penalty notice issued for an 'alleged offence' against section 118A is to be paid into the SES Fund. Section 118A would make it an offence to deliberately or recklessly drive a motor vehicle on a part of a road covered by floodwaters.
- 8.6 Section 195 of the Act allows a 'penalty notice offence' to be prescribed by the statutory rules. However, the Bill does not refer to the *Road Transport (General) Regulation 2021* or any other relevant regulations.

- 8.7 Unlike the existing offence of negligent, furious or reckless driving (section 117 of the Act), proposed section 118A does not set out any relevant factors in considering whether an offence has been committed under this section.
- 8.8 In his second reading speech, Mr Ward commented that 'police will exercise their discretion, as they do in all things' in determining whether an offence has been made out.

The Bill seeks to create an offence under the *Road Transport Act 2013* (the Act) for deliberately or recklessly driving a motor vehicle on a part of a road covered by floodwaters. Proposed subsection 118A(2)(b) would require amounts paid under a penalty notice issued for an alleged offence to be paid into the New South Wales State Emergency Service Fund. The proposed subsection therefore appears to allow for the offence to be dealt with by way of a penalty notice.

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 automatic right to have their matter heard by an impartial decision maker.

A penalty notice offence under section 195 of the Act is ordinarily prescribed under Schedule 5 of the *Road Transport (General) Regulation 2021* and does not prevent a person from electing to have their matter dealt with by a court. However, as the Bill does not refer to the Regulation, it is unclear whether the proposed offence would be considered a 'penalty notice offence' under the Act. In the absence of any additional terms setting out the operation of penalty notices for this offence, it is unclear whether a person would retain the right to have their matter determined by a court.

Key elements of the offence, including 'floodwaters' and 'deliberately or recklessly' are also not defined within the proposed section, which may create ambiguity when determining whether the offence occurred.

For these reasons, the Committee refers the matter to Parliament for further consideration.

9. Water Management Amendment (Central Coast Council) Bill 2024

Date introduced	21 June 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. David Harris MP
Minister responsible	The Hon. Rose Jackson MLC
Portfolio	Water

Purpose and description

- 9.1 The objects of this Bill are as follows:
- (a) to amend the *Water Management Act 2000* (the **Water Management Act**) as follows
 - (i) to provide that Central Coast Council (the **Council**) is no longer a water supply authority
 - (ii) to provide for the transition from the Council levying service charges, including for water, sewerage and drainage, under the *Water Management Act* to levying special rates or charges for the same services under the *Local Government Act 1993* (the **Local Government Act**) like other councils
 - (b) to amend the *Local Government Act* to enable the Council to use special rates and charges received for water supply or sewerage services under the *Local Government Act* to provide either water supply or sewerage services
 - (c) to amend the *Independent Pricing and Regulatory Tribunal Act 1992* (the **IPART Act**) to provide that the Independent Pricing and Regulatory Tribunal (**IPART**) continues to have standing reference to determine the pricing for certain services provided by the Council, including water supply and sewerage services, but excluding stormwater drainage services
 - (d) to repeal the *Central Coast Water Corporation Act 2006*
 - (e) to make consequential amendments to other legislation.

Background

- 9.2 The Bill proposes to amend several Acts to modify the framework regulating the provision of water and sewerage services by the Council.
- 9.3 During his second reading speech, the Hon. David Harris, Minister for the Central Coast, explained that the Bill addresses findings from the 2021 public inquiry into the Council. The inquiry found that the Council's financial performance and operations

were impacted by 'regulatory complexity and ambiguity', as its water supply and sewerage services are regulated by two legislative frameworks under the Local Government Act and the Water Management Act.

- 9.4 The Minister explained that the Bill will provide a 'clear and streamlined regulatory and legislative framework' by removing the Council as a water supply authority under the Water Management Act. This will 'align the regulation of Central Coast Council's water supply and sewerage services more closely with the regulatory framework that applies to all other New South Wales councils that provide such services.'
- 9.5 By proposing to amend the IPART Act, the Bill seeks to ensure that IPART continues to independently regulate the prices of the Council's water services. The Bill proposes to insert a new part into Schedule 4 to clarify that an existing IPART determination that currently applies to the Council will continue to apply.
- 9.6 The Bill would also amend the Local Government Act to remove restrictions on transfers of money between the water supply fund and the sewerage fund, which would allow the Council to use revenue raised by levies to provide both water and sewerage services. The Minister noted that removing the existing restrictions will allow the Council to 'effectively manage cash flow and debt funding for the delivery of priority assets', by enabling surpluses in one fund to be used for 'necessary investments' in the other.
- 9.7 Finally, the Bill proposes to repeal the *Central Coast Water Corporation Act 2006*. The Minister noted that this Act was never fully implemented and repealing it would improve regulatory clarity.

Issues considered by the Committee

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



Part Two – Regulations with comment

1.

Electoral Amendment (Technology Assisted Voting at By-elections) Regulation 2024

Date tabled	LA: 18 June 2024
	LC: 18 June 2024
Disallowance date	LA: 24 September 2024
	LC: 26 September 2024
Minister responsible	The Hon. John Graham MLC
	The Hon. Chris Minns MP
Portfolio	Special Minister of State

Purpose and description

- 1.1
- The object of the Regulation is to provide that technology assisted voting, other than telephone voting for electors who are blind or have low vision, is not to be used at a by-election held before the 2027 general election.
- 1.2
- The Regulation is made under the *Electoral Act 2017* (the **Act**) and amends the Electoral Regulation 2018.

Issues considered by the Committee

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

Right to participation in public elections – limitation of technology assisted voting

- 1.3
- The Regulation amends the Electoral Regulation 2018 by inserting clause 9, which limits the use of technology assisted voting at a by-election held before the 2027 general election.
- 1.4
- Clause 9 creates an exception for telephone voting by voters who are blind or have low vision. However, despite this exception, subclause 9(2) allows the Electoral Commissioner to determine at any time that telephone voting cannot be used during a specified period during a by-election. The determination must be in writing and published on the Electoral Commission's website.
- 1.5
- Under section 151 of the Act, technology assisted voting is available for an eligible voter and includes voting by means of an electronic device, such as by a telephone or by a computer. The eligibility requirements under section 152 allow technology assisted voting for a broad range of reasons, including disability, illiteracy, and lack of proximity to a voting centre.

- 1.6 Section 161 of the Act allows the regulations to make provision for, or with respect to technology assisted voting. Subsection 161(3) also allows the regulations to provide that technology assisted voting is not to be used at a specified election.

The Regulation amends the Electoral Regulation 2018 to limit the use of technology assisted voting at a by-election held before the 2027 general election. Under the *Electoral Act 2017*, technology assisted voting is available to eligible voters for a broad range of reasons, including disability, illiteracy, and lack of proximity to a voting centre. The Regulation would limit technology assisted voting to telephone voting by voters who are blind or have low vision.

By restricting technology assisted voting to a very limited group of eligible voters, the Regulation impacts some individuals' right to vote and participate in public elections. The right to political franchise and democratic participation, contained in Article 25 of the International Covenant on Civil and Political Rights,³ protects the right of individuals to vote by universal and equal suffrage.

However, Article 25 also recognises that the right to vote may be subject to restrictions based on objective and reasonable criteria. The Committee acknowledges that technology assisted voting may present risks to electoral security and integrity, and that the limitation may be intended to address these risks. The Committee further notes that the limitation is only for by-elections held before the 2027 general election, and that telephone voting remains a feasible voting option for electors who are blind or have low vision. In the circumstances, the Committee makes no further comment.

³ United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966.

2. Local Court of New South Wales Practice Note Civ 1

Date tabled	LA: 18 June 2024 LC: 18 June 2024
Disallowance date	LA: 24 September 2024 LC: 26 September 2024
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 2.1 The Local Court of New South Wales Practice Note Civ 1 (the **Practice Note**) describes how the Local Court manages civil cases, including what is expected of parties and lawyers during Court proceedings.
- 2.2 The Practice Note is made under section 15 of the *Civil Procedure Act 2005* and section 27 of the *Local Court Act 2007*.
- 2.3 It was issued in the Government Gazette on 7 June 2024, but commences retrospectively on 3 June 2024. It replaces its previous iteration which was issued on 25 June 2022.

Issues considered by the Committee

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

Right to fair trial and access to justice - Additional rules for legally represented parties

- 2.4 The amendments to the Practice Note create additional obligations and rules that apply during court proceedings, specifically for parties who engage lawyers. These obligations and rules do not apply to self-represented parties.
- 2.5 New section 6.1 of the Practice Note states that:
- Where a party is legally represented, the legal representative (or their agent) must appear on behalf of the party at the Pre-trial Review, Call-over or Directions hearing.
- 2.6 New sections 13.6. and 13.7 of the Practice Note set out standard directions the Local Court is encouraged to make for parties during case management:
- 13.6.** If legally represented, the parties are to exchange any objections to statements or affidavits at least 14 days prior to the trial. Objections must not be raised at trial where this requirement has not been complied with, unless the Court directs otherwise.

13.7. If legally represented, the parties are to file a statement of agreed facts and issues at least seven days prior to the trial.

2.7 New sections 16.2 and 16.5 of the Practice Note state that where a party has requested a review of an earlier decision:

16.2. Where parties are legally represented, the legal representative for each party must file and serve a complete and signed civil listing advice (see Annexure B) no later than eight weeks prior to the hearing date.

16.5. If the Court's earlier directions have not been complied with, then the Court may make such orders as it considers appropriate including:

- (a) Dismissing the proceedings or a cross-claim;
- (b) Striking out a defence; and
- (c) Making a costs order.

The Practice Note describes how Local Courts manage civil cases, and informs parties and lawyers about their duties to the Court. The Practice note creates new obligations and rules that apply during Court proceedings, specifically for parties who engage lawyers. These do not apply to self-represented parties. This may result in an inconsistent application of Court procedure that impacts a legally represented person's right to a fair trial.

However, the Committee acknowledges that Court rules are commonly used to improve the efficiency and consistency in litigation. In this case, the Practice Note is intended to ensure that civil cases can move through the Local Court quickly and easily. The Committee also notes that practice notes are not binding on Courts, and that decision makers may disregard them if they are not suitable in a particular context. In the circumstances, the Committee makes no further comment.

3. NSW Admission Board Fifth Amendment Rule 2024

Date tabled	LA: 18 June 2024 LC: 18 June 2024
Disallowance date	LA: 24 September 2024 LC: 26 September 2024
Minister responsible	The Hon. Michael Daley, MP
Portfolio	Attorney General

Purpose and description

- 3.1 The object of the NSW Admission Board Fifth Amendment Rule 2024 (the **Fifth Amendment Rule**) is to amend the NSW Admission Board Rules 2015 (the **Admission Board Rules**) to exclude students who have not completed the required examinations for the Diploma in Law course within ten years from taking any further examination prescribed by the Admission Board Rules. The Fifth Amendment Rule also allows for students to seek to have this rule relaxed.

Issues considered by the Committee

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

Insufficiently defined wide discretionary power

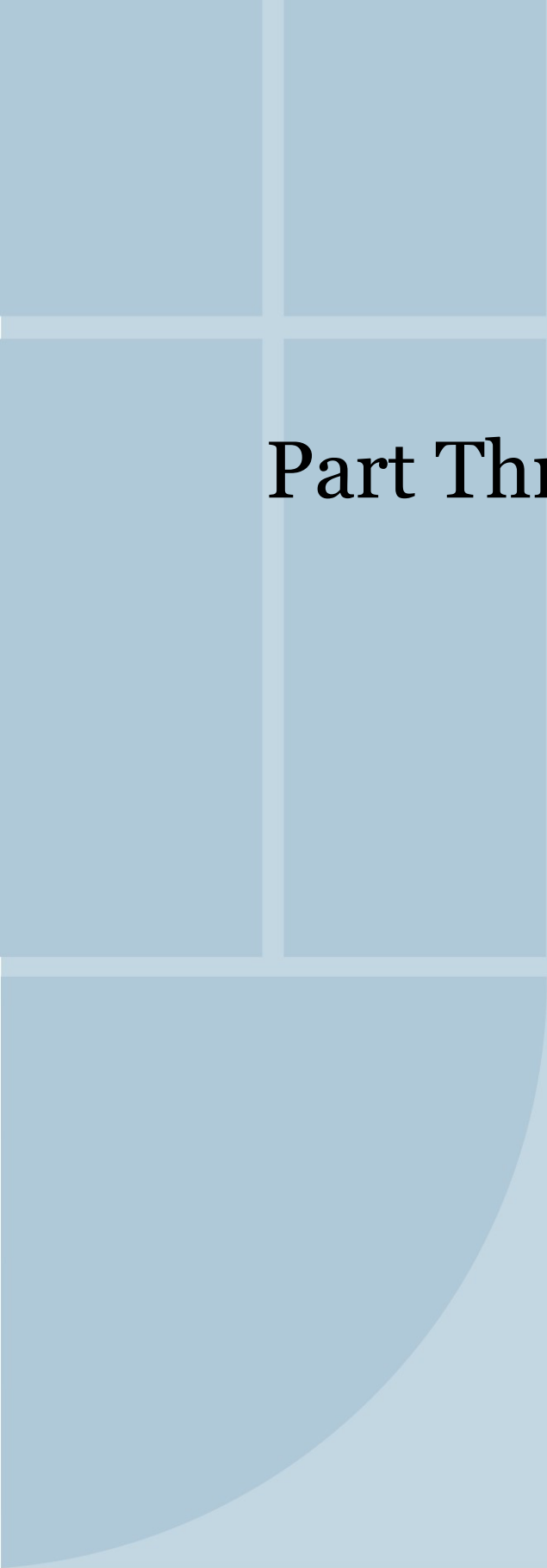
- 3.2 The Fifth Amendment Rule inserts rule 66A(1) which excludes a student who has not completed the examinations prescribed in rule 53 within ten years from taking any further examination prescribed by the Admission Board Rules. The time limit commences on a student enrolling in their first subject.
- 3.3 The Fifth Amendment Rule also inserts rule 67(3) which allows the Executive Officer to relax rule 66A 'in circumstances which he or she regards as sufficiently special and upon such conditions as he or she thinks fit'. A student may apply for review under rule 71.

The NSW Admission Board Fifth Amendment Rule 2024 (Fifth Amendment Rule) inserts rule 66A(1) into the NSW Admission Board Rules 2015 (the Admission Board Rules). Rule 66A(1) excludes students who have not completed the examinations prescribed in rule 53 within ten years of enrolling in their first subject from taking any further examination prescribed by the Admission Board Rules. The Fifth Amendment Rule also inserts rule 67(3) which allows the Executive Officer to relax rule 66A 'in circumstances which he or she regards as sufficiently special and upon such conditions as he or she thinks fit'.

The Committee notes that rule 67(3) may grant the Executive Officer a wide discretionary power through insufficiently defined terms that could

benefit from further clarification. The rule gives the Executive Officer the discretion to exclude a student from completing their examinations required for admission to practice Law. The Committee prefers provisions that affect rights and obligations of individuals to be drafted with sufficient precision so that their scope is clear.

The Committee acknowledges that it is important for the Executive Officer to retain flexibility and discretion, as the circumstances that may prevent a student from completing their examinations in time can vary. It further acknowledges that a student is able to apply for a review of an Executive Officer's decision made under rule 67(3). In these circumstances, the Committee makes no further comment.



Part Three – Regulations without comment

Regulations without comment

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

1. Births, Deaths and Marriages Registration Amendment (Fees) Regulation 2024

The object of this Regulation is to provide for the indexation of fees charged under the *Births, Deaths and Marriages Registration Act 1995* and the *Relationships Register Act 2010* for the 2024-25, 2025-26 and 2026-27 financial years in line with the Consumer Price Index (CPI) published by the Australian Bureau of Statistics.

This Regulation is made under:

- (a) the *Births, Deaths and Marriages Registration Act 1995*, including sections 50(2), 54 and 62, the general regulation-making power, and
- (b) the *Relationships Register Act 2010*, including sections 6(c), 11(2)(c) and 17, the general regulation-making power.

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

2. Casino Control Amendment (Manager Appointment Extension) Regulation 2024

The object of this Regulation is to extend the term of appointment of the manager of the casino operated by The Star Pty Limited at Pyrmont from 30 June 2024 to 30 September 2024.

The Regulation is made under the *Casino Control Act 1992*, section 28(4) and amends the Casino Control Regulation 2019, which had extended the appointment of the manager until 30 June 2024.

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

3. Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024

The objects of this Regulation are to:

- (c) exclude temporary accommodation facilities from being building work for the purposes of the *Design and Building Practitioners Act 2020*,
- (d) continue to exclude certain work relating to specified class 3 or 9c buildings from being building work until 30 June 2025, and
- (e) provide that registered building practitioners are exempt from the insurance requirements under the Act until 30 June 2025.

The Regulation is made under the *Design and Building Practitioners Act 2020* and amends the Design and Building Practitioners Regulation 2021.

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

4. [District Court General Practice Note 1 – Pronunciation of Names and Forms of Address](#)

The Practice Note, made under subsection 161(7) of the *District Court Act 1973*, commenced on 27 May 2024 and applies to all District Court proceedings. It replicates the [Supreme Court Practice Note SC Gen 22](#), which commenced on 22 April 2024 and applies to Supreme Court proceedings.

The object of the Practice Note is to encourage the correct pronunciation and forms of address for all participants in judicial proceedings, including counsel, solicitors, parties, witnesses, and interpreters. It sets out the processes for how information regarding pronunciation and forms of address may be provided to the Court. The Practice Note does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Erratum of Report and Determination Pursuant to Section 14\(2\) of the Statutory and Other Offices Remuneration Act 1975 – President, Vice-President, Deputy Presidents and Acting Judge of the Industrial Relations Commission \[n2024-0881\]](#)

The erratum notice amends the *Report and Determination of the Statutory and Other Offices Remuneration Act 1975 – President, Vice President, Deputy Presidents and Acting Judge of the Industrial Relations Commission*, published in NSW Government Gazette No 152, notice number n2024-0740 of 26 April 2024.

The original notice made a special determination regarding remuneration for the specified offices. However, that notice included three errors, including incorrect legislative references. The erratum notice corrects the original notice to ensure that it amends the correct instruments.

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

6. [Land Tax Management Regulation 2024](#)

The object of this Regulation is to repeal and remake, without substantive changes, the Land Tax Management Regulation 2019, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides that a lessee of land from the New South Wales Land and Housing Corporation is not required to pay land tax on the land in certain circumstances.

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

7. [Notice of Reservation of a National Park \[n2024-0971\]](#)

The Notice of Reservation is made under section 30A(1)(a) of the *National Parks and Wildlife Act 1974*. It reserves an area of land for the Narriearra Caryapundy Swamp National Park.

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

8. [NSW Admission Board Amendment \(Fees\) Rule 2024 \[n2024-1093\]](#)

The Rule, made under subsection 21A(1) of the *Legal Profession Uniform Law Application Act 2014*, commenced on 1 July 2024.

The object of the Rule is to amend the NSW Admission Board Rules 2015 to increase the fees payable for the services provided by the Board. It updates the Schedule of Fees in the Third Schedule of the NSW Admission Board Rules 2015 to list the fees for additional services and increase the fees for some pre-existing services.

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

9. [Road Transport Amendment \(Automated Seatbelt Enforcement\) Rule 2024](#)

The objects of the Rule are to:

- (a) amend the *Road Rules 2014* to provide for the enforcement of camera detected seatbelt offences by penalty infringement notice, and
- (b) make consequential amendments to the *Road Transport (Driver Licensing) Regulation 2017* and the *Road Transport (General) Regulation 2021*.

The Rule is made under subsection 23(1) of the *Road Transport Act 2013*.

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

10. [State Debt Recovery Regulation 2024](#)

The object of this Regulation is to repeal and remake, with minor changes, the State Debt Recovery Regulation 2018, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (c) prescribes the debt recovery costs payable under a debt recovery order
- (d) declares Essential Energy and Water NSW as public authorities for the *State Debt Recovery Act 2018*.

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

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

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

11. [Uniform Civil Procedure \(Amendment No 101\) Rule 2024](#)

This Rule makes amendments to the Uniform Civil Procedure Rules 2005 (the **UCPR Rules**) consequential on the amendment of the *Defamation Act 2005* (the **Defamation Act**) that provides a defence for publications involving digital intermediaries.

The Rule is made under section 9 of the *Civil Procedure Act 2005* and amends the UCPR Rules. It clarifies the particulars required to rely on a defence for publications involving digital intermediaries under section 31A of the Defamation Act.

The Committee notes that clarifying the scope of available defences under the Defamation Act, and the particulars required for those defences, is common practice within the Rules. This practice increases administrative efficiency, giving the court certainty that a litigant has the required material to substantiate the defence.

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



Appendices

Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- (1) The functions of the Committee with respect to Bills are:
- (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties, or
 - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to regulations

- (1) The functions of the Committee with respect to regulations are:
- (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties,
 - (ii) that the regulation may have an adverse impact on the business community,
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- (v) that the objective of the regulation could have been achieved by alternative and more effective means,
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the [Subordinate Legislation Act 1989](#), or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (1A) The Committee is not precluded from exercising its functions under subsection (1) in relation to a regulation after it has ceased to be subject to disallowance if, while it is subject to disallowance, the Committee resolves to review and report to Parliament on the regulation.
- (2) Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee with respect to regulations do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

Appendix Two – Unconfirmed extracts of minutes

Meeting no.17

TIME & DATE: 3:01PM, 5 AUGUST 2024

LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

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

APOLOGIES

Ms Higginson

OFFICERS PRESENT

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

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 17 June 2024 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 16/58

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

- a) Regional Communities (Consultation Standards) Bill 2024
- b) Road Transport Amendment (Driving Through Floodwaters) Bill 2024

4. Consideration of bills without comment for Legislation Review Digest 16/58

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

- a) Appropriation Bill 2024; Appropriation (Parliament) Bill 2024; Revenue Legislation Amendment Bill 2024
- b) Better Regulation Legislation Amendment (Miscellaneous) Bill 2024
- c) Coal Mine Subsidence Compensation Amendment Bill 2024

- d) David Berry Hospital Amendment (Prohibition of Sale) Bill 2024
- e) Electricity Infrastructure Investment Amendment (Tender Moratorium) Bill 2024
- f) Road Rules Amendment (Mobile Phones as Navigation Aids for Provisional Licence Holders) Bill 2024
- g) Water Management Amendment (Central Coast Council) Bill 2024

5. Consideration of regulations with comment for Legislation Review Digest 16/58

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

- a) Electoral Amendment (Technology Assisted Voting at By-elections) Regulation 2024
- b) Local Court of New South Wales Practice Note Civ 1
- c) NSW Admission Board Fifth Amendment Rule 2024

6. Regulations without comment for Legislation Review Digest 16/58

Resolved, on the motion of Ms Stuart: That the Committee adopts the regulations without comment as Part Three to Digest 16/28.

7. Legislation Review Digest 16/58

Resolved, on the motion of Ms Davis:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 16/58 and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

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

9. ***

10. Next meeting

The meeting adjourned at 3:05pm until 12 August 2024 at 3.00pm.