

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



Digest No. 17/58 – 13 August 2024

New South Wales Parliamentary Library cataloguing-in-publication data:



A catalogue record for this
book is available from the
National Library of Australia

ISSN: 1448-6954

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

Contents

Membership.....	4
Guide to the Digest.....	5
Digest Snapshot.....	12
Summary of Conclusions.....	14
PART ONE – BILLS	20
1. Government Sector Finance Amendment (Integrity Agencies) Bill 2024	21
2. Industrial Relations Amendment (Administrator) Bill 2024.....	23
3. Local Government Amendment (Rural and Remote Councils) Bill 2024	27
4. NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024.....	31
5. Regional Development Amendment Bill 2024.....	33
6. Retail Trading Amendment (Anzac Day Trading Hours) Bill 2024	35
7. Universities Legislation Amendment Bill 2024	36
8. Water Management Amendment (Water Access Licence Register Reform) Bill 2024*	38
PART TWO – REGULATIONS WITH COMMENT	42
1. Liquor Amendment (Vibrancy Reforms) Regulation 2024.....	43
PART THREE – REGULATIONS WITHOUT COMMENT.....	45
APPENDICES.....	48
Appendix One – Functions of the Committee.....	49
Appendix Two – Unconfirmed extracts of minutes.....	51

Membership

Chair	Ms Lynda Voltz MP, Member for Auburn
Deputy Chair	Ms Maryanne Stuart MP, Member for Heathcote
Members	Ms Donna Davis MP, Member for Parramatta Mr Nathan Hagarty MP, Member for Leppington Ms Sue Higginson MLC Mr Dave Layzell MP, Member for Upper Hunter The Hon. Jacqui Munro MLC The Hon. Cameron Murphy MLC
Contact details	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
Telephone	(02) 9230 2745 / (02) 9230 2821
E-mail	Legislation.Review@parliament.nsw.gov.au
Website	www.parliament.nsw.gov.au/lrc

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. Government Sector Finance Amendment \(Integrity Agencies\) Bill 2024](#)

No issues identified

[2. Industrial Relations Amendment \(Administrator\) Bill 2024](#)

Issue identified	Conclusion of Committee
Strict liability offences	No further comment
Ministerial power to make orders without notice	No further comment
Henry VIII clause	No further comment

[3. Local Government Amendment \(Rural and Remote Councils\) Bill 2024](#)

Issue identified	Conclusion of Committee
Designation of 'rural and remote council' – fundamental criteria delegated to regulations	Referred
Power of regulations to disapply or modify provision of Act - Henry VIII clause	No further comment
Right to participate in public affairs through freely chosen representatives	No further comment

[4. NSW Self Insurance Corporation Amendment \(Special Liability Insurance\) Bill 2024](#)

No issues identified

[5. Regional Development Amendment Bill 2024](#)

No issues identified

[6. Retail Trading Amendment \(Anzac Day Trading Hours\) Bill 2024](#)

No issues identified

[7. Universities Legislation Amendment Bill 2024](#)

No issues identified

[8. Water Management Amendment \(Water Access Licence Register Reform\) Bill 2024*](#)

Issue identified	Conclusion of Committee
Commencement by proclamation	Referred

Wide power of Secretary to publish details of offences	Referred
Broad delegation of power – regulations to prescribe broad offences	Referred

PART TWO – REGULATIONS WITH COMMENT

1. Liquor Amendment (Vibrancy Reforms) Regulation 2024

Issue identified	Conclusion of Committee
Absolute liability offences and commencement by proclamation	No further comment

Summary of Conclusions

PART ONE – BILLS

1. Government Sector Finance Amendment (Integrity Agencies) Bill 2024

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

2. Industrial Relations Amendment (Administrator) Bill 2024

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

Strict liability offences

The Bill seeks to amend the *Industrial Relations Act 1996* to place the Construction and General Division of the Construction, Forestry and Maritime Employees Union (NSW) (the CFMEU, C & G Division) into administration and make provisions for the administrator. This includes providing the administrator with investigative powers. The powers granted to the administrator also include the power to request relevant persons, such as employees, former employees, agents and contractors, to produce documents or any other information that is reasonably required to exercise the administrator's functions.

The Bill creates penalties for non-compliance with any notice provided by the administrator, or for preventing the administrator from effectively administering the administration scheme without a 'reasonable excuse'. The maximum penalty for both offences is 100 penalty units, or \$11,000.

The Committee notes that the term 'reasonable excuse' may not always include a defence of 'honest and reasonable mistake of fact'. Therefore, the Bill may create strict liability offences. The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish a criminal liability.

However, the Committee acknowledges that the provisions relate to the administration of a complex administration scheme. It also recognises that the scheme is intended to address serious issues and allegations, and that strict liability offences are not uncommon in regulatory settings to encourage compliance. The Committee notes that the exercise of the administrator's powers is tied to what is 'reasonably required', which inherently constrains what documents and information can be sought. In the circumstances, the Committee makes no further comment.

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

Ministerial power to make orders without notice

The Bill seeks to amend the *Industrial Relations Act 1996* to provide for the creation and functioning of a scheme for the administration of the CFMEU, C & G Division and introduce provisions that would allow the Minister for Industrial Relations, by order published in the Gazette, to vary or revoke an administration order, without notice. The Committee notes that the administration order makes provisions for the administration scheme, including the appointment of the administrator and details of the scheme's remit. This includes provisions covering the

termination of employment, suspension (with or without remuneration) or removal of office holders, and the taking of disciplinary action.

As the Bill gives broad scope for what the administration order may do or require without notice, it may provide for a wide Ministerial power. The Committee generally comments on provisions that provide for a wide Ministerial power to make orders giving directions, as it may impact upon the rights, liberties or obligations of individuals that would be subject to those orders.

However, the Committee acknowledges that the Ministerial issue of administration orders, including administration orders that vary or revoke the original order, would allow the administration scheme to be flexible and responsive to the changing administrative environment, and enable the government to respond to serious issues and allegations in a flexible and timely manner. Further, the Committee recognises that the order must be published in the NSW Government Gazette for transparency. In the circumstances, the Committee makes no further comment.

Henry VIII Clause

The Bill seeks to amend the *Industrial Relations Act 1996* to provide for the creation and functioning of a scheme for the administration of the CFMEU, C & G Division. The Bill inserts a regulation-making power that allows for regulations to directly amend the parent Act for any matters considered 'necessary or convenient' for the administration of the scheme.

This provision may, therefore, amount to a Henry VIII clause by allowing the Executive to amend the operation of the parent Act without reference to Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

However, the Committee notes that regulations made under this provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. It also acknowledges that the regulation-making power would allow for consistency with any Commonwealth administration scheme, should an administrator be appointed under the Commonwealth Act. In the circumstances, the Committee makes no further comment.

3. Local Government Amendment (Rural and Remote Councils) Bill 2024

Inappropriate delegation of legislative powers: s 8A(1)(b)(iv)

Designation of 'rural and remote council' – fundamental criteria delegated to regulations

The Bill seeks to amend the *Local Government Act 1993* to allow the Governor to designate a council as 'rural and remote' if an administrator has been appointed, and if 'the council meets the criteria specified by the regulations, if any'. Once designated a 'rural and remote council', the council would be required to have a mix of elected and appointed councillors, with at least one appointed councillor. A designation under Schedule 11, clause 3 may have effect for a period of up to 10 years, and designations may be extended by one or more subsequent proclamations by the Governor.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

The Committee notes that deferring the eligibility criteria for rural and remote councils to the regulations would defer significant matters to the Executive, and a designation under Schedule 11 would have significant implications for the composition of a council. The length of a designation, and the ability to make subsequent declarations would also allow these implications to be extended for a significant period of time, based on the criteria in the regulations. For these reasons, the Committee refers the matter to Parliament for consideration.

Power of regulations to disapply or modify provision of Act - Henry VIII clause

The Bill seeks to insert Schedule 11 into the *Local Government Act 1993* to allow for the designation of rural and remote councils. Proposed subclause 16(2) would allow the regulations to disapply or modify a provision of Chapter 13, Parts 1-4 of the Act in relation to a rural and remote council. This means that the regulations could effectively exempt rural and remote councils from accountability mechanisms, including strategic planning, financial management and annual reporting. This provision may, therefore, amount to a Henry VIII clause by allowing the Executive to amend the operation of the parent Act without reference to the Parliament.

The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation. However, the Committee notes that regulations made under this provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

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

Right to participate in public affairs through freely chosen representatives

The Bill proposes to amend the *Local Government Act 1993* to allow the Governor to designate a council as 'rural and remote.' Rural and remote councils must be comprised of a mix of elected and appointed councillors, including at least one councillor to be appointed by the Minister for Local Government.

By requiring the appointment of councillors that would otherwise be democratically elected, the Bill may impact the right to democratic participation. This right, contained in Article 25 of the International Covenant on Civil and Political Rights, includes the right to take part in the conduct of public affairs directly or through freely chosen representatives.

However, Article 25 also recognises that this right may be subject to restrictions based on objective and reasonable criteria. The Committee acknowledges that the Bill seeks to respond to the ongoing financial and governance risks of rural and remote councils in administration, and that these councils would otherwise be unable to operate. The Committee also acknowledges that at least half of the councillors on a rural and remote council must be elected, which seeks to ensure an appropriate balance of enabling democratic representation and providing stable governance. Therefore, in the circumstances, the Committee makes no further comment.

4. NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024

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

5. Regional Development Amendment Bill 2024

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

6. Retail Trading Amendment (Anzac Day Trading Hours) Bill 2024

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

7. Universities Legislation Amendment Bill 2024

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

8. Water Management Amendment (Water Access Licence Register Reform) Bill 2024*

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

Commencement 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 those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

The Bill introduces new powers for regulations to prescribe offences based on breaches of a code of conduct that is proposed to be developed. It specifically allows offences to be prescribed by regulations that carry a penalty of 100 penalty units, or \$11,000, a higher penalty than is currently authorised under the Act. This creates additional obligations on a person to comply with the provisions of the code of conduct. For this reason it is important that a person is able to determine the law that applies to them at any given time.

While the Committee acknowledges that commencement by proclamation allows flexibility to determine any necessary administrative arrangements, because the Bill creates additional significant personal obligations it may impact a person's ability to understand their legal duties. For this reason, the Committee refers this issue to Parliament for further consideration.

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

Wide power of Secretary to publish details of offences

The Bill amends the *Water Management Act 2000* to delegate a power to the regulations to prescribe a code of conduct for brokers of water licences. Proposed section 71ZB provides that the regulations may prescribe the code of conduct and that they may create offences for breaches of the code. Section 71ZB(3) would allow the Secretary of the Department of Climate Change, Environment, Energy and Water (the Secretary) to issue a statement, in a way they determine, to identify the broker found guilty of an offence against the code of conduct along with the details of that offence. Section 71ZB(3)(b) creates a broad executive discretion to determine what details of the offence are published.

The Committee notes that this may create broad powers of discretion to publish personal details of a person found guilty of an offence. The Secretary has the broad discretion to determine how they issue the public statement and the details of that public statement, which could impact the personal rights of person found guilty of an offence.

The Committee notes that there are no provisions limiting the kind of information that can be included in the Secretary's statement or the way in which the statement is issued. The Committee generally prefers administrative powers that impact personal rights to be clearly prescribed in legislation to ensure appropriate parliamentary oversight. For this reason, the Committee refers this issue to Parliament for further consideration.

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

Broad delegation of power – regulations to prescribe broad offences

The Bill inserts section 400(3A) into the *Water Management Act 2000* to allow the regulations to create offences related to breaches of a code of conduct, or provisions of a code of conduct. The offence can carry of penalty of 100 penalty units, or \$11, 000, despite section 400(3) of the Act limiting offences prescribed by regulations to a penalty of 10 penalty units, or \$1,100. The relevant code of conduct does not yet exist and it is not clear how the code of conduct will be prescribed in the regulations.

The Committee notes that this may be a broad delegation of regulatory power as the offences are not set out in the Bill and it is unclear how a person may determine the offences that apply to them. This may impact on personal rights or liberties as it would be difficult for a person to determine their liabilities. The Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, as the power allows for significantly increased penalties along with a lack of clarity around what the specific offences would be, the Committee refers this issue to Parliament for further consideration.

PART TWO – REGULATIONS WITH COMMENT

1. Liquor Amendment (Vibrancy Reforms) Regulation 2024

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

Absolute liability offences and commencement by proclamation

The Regulation amends the Liquor Regulation 2018 to enhance community safety and wellbeing by requiring licensees to 'preserve the quiet and good order of their neighbourhood' and to restrict minors from accessing liquor sales areas without a responsible adult. Failure to comply with these requirements results in an absolute liability offence with a maximum penalty of \$5,500 (50 penalty units). The commencement date of the Regulation, under clause 2, is tied to the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*, which will also commence 'on a day or days to be appointed by proclamation'.

The Committee generally comments on absolute liability offences as they depart from the common law principle that mental element of 'fault' should be proven to establish criminal liability. The Committee further notes that the Regulation will commence consequently with another piece

of legislation that will commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks as a means of encouraging compliance, and that the offences only carry a monetary penalty, not a custodial one. In this case, compliance with the regulatory regime may be intended to manage noise levels associated with licensed premises and to protect minors by requiring adult accompaniment in these areas. The Committee also notes that commencement by proclamation may enable greater flexibility to facilitate Vibrancy Reforms to NSW's night economy. In the circumstances, the Committee makes no further comment.

Part One – Bills

1. Government Sector Finance Amendment (Integrity Agencies) Bill 2024

Date introduced	8 August 2024
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Treasurer

Purpose and description

- 1.1 This Bill amends the *Government Sector Finance Act 2018* to:
- a) require the Treasurer to write to the head of an integrity agency confirming the amount to be appropriated in the annual Appropriation Act for the services of the integrity agency, and
 - b) require the Treasurer to consider certain factors when considering an application for funding to an integrity agency from a sum appropriated to the Treasurer for contingencies in relation to integrity agencies.

Background

- 1.2 The Bill proposes amendments that relate to the funding of the following integrity agencies and the functions of their relevant parliamentary oversight committees:
- the Audit Office, monitored and reviewed by the Public Accounts Committee
 - the Independent Commission Against Corruption (**ICAC**), monitored and reviewed by the Committee on the ICAC
 - the Law Enforcement Conduct Commission (**LECC**), monitored and reviewed by the Committee on the Ombudsman, the LECC and the Crime Commission
 - the Ombudsman's Office, monitored and reviewed by the Committee on the Ombudsman, the LECC and the Crime Commission
 - the NSW Electoral Commission (**Electoral Commission**), to be monitored and reviewed by the Joint Standing Committee on Electoral Matters for the purposes of the Bill.
- 1.3 In his second reading speech, the Hon. John Graham MLC, Special Minister of State, noted that these agencies are independent and 'not subject to the control or direction of the Executive Government'. The Minister explained that the Bill would 'provide arrangements to safeguard the independence of integrity agencies and enhance transparency with respect to their funding' through the parliamentary process.

- 1.4 The Statement of Public Interest (**SPI**) tabled with the Bill notes that several reports have recommended changes to the funding arrangements for integrity agencies, including reports by the former Chief Commissioner of the ICAC, the former Auditor-General and the former Legislative Council Public Accountability Committee.
- 1.5 The Bill seeks to address the concerns raised in these reports and complements the Treasurer's Direction *TD24-12 Charter of Independence for NSW integrity agencies*, published on 6 August 2024, which codifies special budget arrangements for integrity agencies.
- 1.6 The proposed amendments in the Bill would:
- require the Treasurer to give written notice to the head of each integrity agency, and copy in the relevant parliamentary oversight committee, to confirm the proposed budget allocation for the agency's services in the next annual Appropriation Act. This notice must be given within 7 days of the Appropriation Bill being introduced in the Legislative Assembly, and must include reasons if the amount of the appropriation differs from an integrity agency's budget proposal.
 - require the relevant parliamentary oversight committee to examine and report on the proposed appropriation to Parliament and the Treasurer within 3 months of receiving the notice.
 - require the Treasurer to respond to the relevant committee's report within 3 months of receiving the report.
- 1.7 By requiring relevant parliamentary oversight committees to examine and report on annual appropriations, the Bill would expand the existing legislated functions of these committees. However, the Minister noted that the additional function proposed would apply only after the introduction of the annual Appropriation Bill and, 'as is currently the case, the committees will not play a role in the Expenditure Review Committee process for determining the budget'.
- 1.8 The Bill also seeks to insert matters that the Minister must consider before deciding an integrity agency's application for contingency funding. These matters include the independence of the integrity agency, the urgency of expenditure, and whether refusing the application would cause the integrity agency to be unable to fulfil a statutory function. The Treasurer must decide the application 'as soon as reasonably practicable' after receiving the application and provide notice of the decision to the head of the integrity agency and the relevant parliamentary oversight committee.

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*.

2. Industrial Relations Amendment (Administrator) Bill 2024

Date introduced	8 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations

Purpose and description

- 2.1 The object of this Bill is to amend the *Industrial Relations Act 1996* (the **Act**) to provide for the administration of the Construction and General Division of the Construction, Forestry and Maritime Employees Union (NSW) (the **CFMEU, C & G Division**), including the establishment of an administration scheme and the appointment of an administrator.

Background

- 2.2 The Bill seeks to place the NSW registered CFMEU, C & G Division into administration by creating an administration scheme and appointing an administrator to implement the scheme.
- 2.3 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, noted that the Bill is intended to align with the proposed Federal scheme and foreshadowed that the Government might make 'technical amendments to the Bill when the Bill is debated to ensure consistency' with the Federal framework. The Minister stated that the proposed scheme aims to address the serious issues and allegations against the CFMEU, C & G Division and uphold 'the integrity of the building industry' and 'industrial relations system'.
- 2.4 The key amendments proposed by the Bill include:
- granting the administrator powers to manage the Union's affairs, including suspending or removing office holders, performing the functions of the state executive and divisional council, and controlling assets and funds
 - enabling the administrator to bring legal actions to recover funds, impose penalties or award compensation
 - allowing the administrator to request necessary documents or information
 - permitting the Minister for Industrial Relations (the **Minister**) to terminate or replace the administrator if needed
 - providing regulation making powers to amend the administration scheme, if necessary
 - a sunset clause to repeal relevant provisions.

Issues considered by the Committee

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

Strict liability offences

- 2.5 The Bill proposes to insert Schedule 6 into the Act, to make provisions for the administrator for CFMEU, C & G Division. Proposed section 9 of the schedule creates an offence for 'relevant persons' in certain circumstances for non-compliance with the administrator when exercising its functions under the administration scheme.
- 2.6 Section 9(3) defines 'relevant persons' to include employees, former employees, agents or former agents, contractors or former contractors of the CFMEU (NSW) or the CFMEU, C & G Division.
- 2.7 Section 9(1) sets out that 'relevant persons', when given written notice, must provide documents, information or assistance to the administrator, if reasonably required by the administrator to exercise its functions. Failure to comply, without a reasonable excuse, would constitute an offence carrying a maximum penalty of 100 penalty units, or \$11,000.
- 2.8 Proposed section 11 of the schedule creates an offence of anti-avoidance, which prohibits conduct or any course of conduct that interferes with the administration of the scheme. Proposed section 11(1) sets out that a person must not engage in conduct or a course of conduct that prevents another person or body from taking action under an administration scheme or prevents the administrator from effectively administering the administration scheme. Failure to comply, without a reasonable excuse, would constitute an offence carrying a maximum penalty of 100 penalty units, or \$11,000.

The Bill seeks to amend the *Industrial Relations Act 1996* to place the Construction and General Division of the Construction, Forestry and Maritime Employees Union (NSW) (the CFMEU, C & G Division) into administration and make provisions for the administrator. This includes providing the administrator with investigative powers. The powers granted to the administrator also include the power to request relevant persons, such as employees, former employees, agents and contractors, to produce documents or any other information that is reasonably required to exercise the administrator's functions.

The Bill creates penalties for non-compliance with any notice provided by the administrator, or for preventing the administrator from effectively administering the administration scheme without a 'reasonable excuse'. The maximum penalty for both offences is 100 penalty units, or \$11,000.

The Committee notes that the term 'reasonable excuse' may not always include a defence of 'honest and reasonable mistake of fact'. Therefore, the Bill may create strict liability offences. The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish a criminal liability.

However, the Committee acknowledges that the provisions relate to the administration of a complex administration scheme. It also recognises

that the scheme is intended to address serious issues and allegations, and that strict liability offences are not uncommon in regulatory settings to encourage compliance. The Committee notes that the exercise of the administrator's powers is tied to what is 'reasonably required', which inherently constrains what documents and information can be sought. In the circumstances, the Committee makes no further comment.

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

Ministerial power to make orders without notice

- 2.9 Proposed section 3 of the Bill makes provisions for the Minister's appointment of an administrator for the administration scheme. Section 3(1)(a) would allow the Minister to establish, by order ('administration order'), an administration scheme if it is considered in the public interest, while having regard to the objects of the Act and any other matters the Minister considers relevant.
- 2.10 Section 3(2) specifies what the administration scheme may provide for, including:
- (a) the termination of the employment of employees of the CFMEU, C & G Division or its branches
 - (b) the suspension, with or without remuneration, or removal from office of office holders of the CFMEU
 - (c) the taking of disciplinary action, including the expulsion of members and the disqualification of office holders (for up to 5 years).
- 2.11 Section 6(1) would allow the Minister to vary an administration order, including the administration scheme established by the order itself, at any time by publishing an order in the NSW Government Gazette. Section 6(2)(b) would go further to allow the Minister to revoke an administration order in similar terms, if 'the Minister is satisfied the administration scheme is no longer necessary because the CFMEU, C & G Division is able to function effectively without being under administration'.
- 2.12 Proposed section 4 makes provisions for when an administration order takes effect. Section 4(2) provides that the Minister is not required to give notice to any person or body, including the CFMEU, or its C & G Division, before making an administration order, or varying or revoking an administration order.

The Bill seeks to amend the *Industrial Relations Act 1996* to provide for the creation and functioning of a scheme for the administration of the CFMEU, C & G Division and introduce provisions that would allow the Minister for Industrial Relations, by order published in the Gazette, to vary or revoke an administration order, without notice. The Committee notes that the administration order makes provisions for the administration scheme, including the appointment of the administrator and details of the scheme's remit. This includes provisions covering the termination of employment, suspension (with or without remuneration) or removal of office holders, and the taking of disciplinary action.

As the Bill gives broad scope for what the administration order may do or require without notice, it may provide for a wide Ministerial power. The

Committee generally comments on provisions that provide for a wide Ministerial power to make orders giving directions, as it may impact upon the rights, liberties or obligations of individuals that would be subject to those orders.

However, the Committee acknowledges that the Ministerial issue of administration orders, including administration orders that vary or revoke the original order, would allow the administration scheme to be flexible and responsive to the changing administrative environment, and enable the government to respond to serious issues and allegations in a flexible and timely manner. Further, the Committee recognises that the order must be published in the NSW Government Gazette for transparency. In the circumstances, the Committee makes no further comment.

Henry VIII Clause

2.13 The Bill proposes to insert section 16(2) into the Act which would allow regulations to amend the Act, to 'make any changes necessary or convenient for the administration of the CFMEU, C & G Division by an administrator'.

2.14 In her second reading speech, the Minister explained that the regulation-making power would allow for consistency with any Commonwealth administration scheme so that the NSW scheme 'will operate effectively and consistently'.

The Bill seeks to amend the *Industrial Relations Act 1996* to provide for the creation and functioning of a scheme for the administration of the CFMEU, C & G Division. The Bill inserts a regulation-making power that allows for regulations to directly amend the parent Act for any matters considered 'necessary or convenient' for the administration of the scheme.

This provision may, therefore, amount to a Henry VIII clause by allowing the Executive to amend the operation of the parent Act without reference to Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

However, the Committee notes that regulations made under this provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. It also acknowledges that the regulation-making power would allow for consistency with any Commonwealth administration scheme, should an administrator be appointed under the Commonwealth Act. In the circumstances, the Committee makes no further comment.

3. Local Government Amendment (Rural and Remote Councils) Bill 2024

Date introduced	7 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Ron Hoenig MP
Portfolio	Local Government

Purpose and description

- 3.1 The object of this Bill is to amend the *Local Government Act 1993* (the **Act**) to provide that certain rural and remote councils may be comprised of both elected and appointed councillors.

Background

- 3.2 The Bill seeks to establish a new governance framework for local councils under administration to be declared 'rural and remote councils'. The proposed framework would require declared rural and remote councils under administration to be governed by a mix of democratically elected and government-appointed councillors.
- 3.3 In his second reading speech, the Hon. Ron Hoenig MP, Minister for Local Government (the **Minister**), explained that 'the rural and remote council model is intended for councils unable to operate sustainably under a traditional council model'. He noted that the Bill will 'provide a pathway forward for Central Darling Shire Council, which for many years has struggled to provide sustainable services under a typical local government model'.
- 3.4 The Minister stated that the proposed model was the 'best way to ensure both democratic representation and stable, experienced governance' for councils like the Central Darling Shire Council that 'risk remaining in perpetual administration'.

Issues considered by the Committee

Inappropriate delegation of legislative powers: s 8A(1)(b)(iv)

Designation of 'rural and remote council' – fundamental criteria delegated to regulations

- 3.5 Schedule 11 of the Bill would allow the Governor to designate a council as 'rural and remote' if an administrator has been appointed, and if 'the council meets the criteria specified by the regulations, if any'.
- 3.6 Once designated a 'rural and remote council', the council would be required to have a mix of elected and appointed councillors, with at least one appointed councillor, as per clause 5.

- 3.7 Under proposed clause 3, the designation would have effect for a specified period of up to 10 years. Designations may also be extended by one or more subsequent proclamations by the Governor, which would effectively allow the indefinite designation of a council as 'rural and remote' based on the criteria in the regulations, if any.

The Bill seeks to amend the *Local Government Act 1993* to allow the Governor to designate a council as 'rural and remote' if an administrator has been appointed, and if 'the council meets the criteria specified by the regulations, if any'. Once designated a 'rural and remote council', the council would be required to have a mix of elected and appointed councillors, with at least one appointed councillor. A designation under Schedule 11, clause 3 may have effect for a period of up to 10 years, and designations may be extended by one or more subsequent proclamations by the Governor.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

The Committee notes that deferring the eligibility criteria for rural and remote councils to the regulations would defer significant matters to the Executive, and a designation under Schedule 11 would have significant implications for the composition of a council. The length of a designation, and the ability to make subsequent declarations would also allow these implications to be extended for a significant period of time, based on the criteria in the regulations. For these reasons, the Committee refers the matter to Parliament for consideration.

Power of regulations to disapply or modify provision of Act - Henry VIII clause

- 3.8 Proposed subclause 16(2) states that the regulations may disapply or modify a provision of Chapter 13, Parts 1-4 of the Act in relation to a rural and remote council. These parts deal with accountability mechanisms for councils, including strategic planning, financial management and annual reporting. Therefore, the regulations would effectively create exemptions for rural and remote councils.
- 3.9 In his second reading speech, the Minister noted that this regulation-making power would allow adjustments to be made to a range of regulatory requirements that apply to general purpose councils, to ensure that rural and remote councils remain 'lean and effective'.

The Bill seeks to insert Schedule 11 into the *Local Government Act 1993* to allow for the designation of rural and remote councils. Proposed subclause 16(2) would allow the regulations to disapply or modify a provision of Chapter 13, Parts 1-4 of the Act in relation to a rural and remote council. This means that the regulations could effectively exempt rural and remote councils from accountability mechanisms, including strategic planning, financial management and annual reporting. This provision may, therefore, amount to a Henry VIII clause by allowing the Executive to amend the operation of the parent Act without reference to the Parliament.

The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation. However, the Committee notes that regulations made under this provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

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

Right to participate in public affairs through freely chosen representatives

- 3.10 As noted above, Schedule 11 of the Bill would allow the Governor to proclaim a council as 'rural and remote' if the council is in administration and meets the criteria specified in the regulations.
- 3.11 Once a council is designated 'rural and remote' under Schedule 11, the Governor must arrange for the council to be comprised of a mix of elected and appointed councillors. Clause 5 requires at least half of the councillors to be elected, and at least one councillor to be appointed by the Minister.
- 3.12 In his second reading speech, the Minister explained that appointed councillors would be 'selected based on specialist skills, expertise or attributes that they can bring to help the council'. Proposed clause 9 sets out the collective attributes that the Minister must consider when appointing councillors, including experience in local government administration, financial management and governance, emergency management, and conservation.
- 3.13 The Minister stated that the added support of appointed councillors would be the 'best way to ensure both democratic representation and stable, experienced governance' for councils in administration, before they can 'transition to a fully elected council'.

The Bill proposes to amend the *Local Government Act 1993* to allow the Governor to designate a council as 'rural and remote.' Rural and remote councils must be comprised of a mix of elected and appointed councillors, including at least one councillor to be appointed by the Minister for Local Government.

By requiring the appointment of councillors that would otherwise be democratically elected, the Bill may impact the right to democratic participation. This right, contained in Article 25 of the International Covenant on Civil and Political Rights,¹ includes the right to take part in the conduct of public affairs directly or through freely chosen representatives.

However, Article 25 also recognises that this right may be subject to restrictions based on objective and reasonable criteria. The Committee acknowledges that the Bill seeks to respond to the ongoing financial and governance risks of rural and remote councils in administration, and that

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

these councils would otherwise be unable to operate. The Committee also acknowledges that at least half of the councillors on a rural and remote council must be elected, which seeks to ensure an appropriate balance of enabling democratic representation and providing stable governance. Therefore, in the circumstances, the Committee makes no further comment.

4. NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024

Date introduced	6 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

Purpose and description

4.1 The object of this Bill is to amend the *NSW Self Insurance Corporation Act 2004* (the **Act**) to authorise the NSW Self Insurance Corporation (the **Corporation**) to:

- (a) create a special liability insurance for certain persons delivering out-of-home care and youth homelessness services to cover physical and sexual abuse claims, and
- (b) establish a Special Liability Insurance Fund for special liability insurance.

Background

4.2 The Bill seeks to establish a new insurance scheme and an associated statutory fund to support non-government service providers delivering out-of-home care and youth homelessness service on behalf of the NSW Government. This proposed insurance would cover liabilities arising from physical or sexual abuse of individuals in out of-home care or receiving youth homelessness services.

4.3 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Work Health and Safety, noted that the Bill would provide a 'replacement insurance solution' in response to the withdrawal of commercial public liability insurance from the market. The Minister stated that this proposed long-term solution would ensure that those non-government service providers have access to necessary insurance coverage to deliver 'continued and uninterrupted' services. It would also enable both the NSW Government and contracted non-government organisations to continue providing care and protection for vulnerable children and young people.

4.4 The key amendments proposed by the Bill include:

- establishing a statutory function for the Corporation to provide insurance coverage,
- establishing an associated statutory fund within the Special Deposits Account,
- limiting the proposed insurance to cover specific liabilities arising after 30 June 2007 or those not already covered by existing insurance, and

- mandating a reviewing of the insurance scheme by the Minister to assess the appropriateness of the policy objectives and the terms of the Act.

Issues considered by the Committee

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

5. Regional Development Amendment Bill 2024

Date introduced	7 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Steve Whan MP
Portfolio	Regional NSW

Purpose and description

- 5.1 The object of this Bill is to make miscellaneous amendments to the *Regional Development Act 2004* (the **Act**), including to update the administrative arrangements for the Regional Development Trust Fund (the **Fund**).

Background

- 5.2 In his second reading speech, the Hon. Steve Whan MP noted that the Bill intends to modernise the Act to sustainably support the New South Wales regions while ensuring transparency around the use of public funds.

- 5.3 The key amendments proposed by the Bill include:

- updating the objects of the Act under section 3 to broaden the scope for providing financial assistance and the types of financial assistance available under the Act
- broadening the types of financial assistance that can be provided by the Fund to include: grants, subsidies, loans, payroll tax rebates and other assistance determined by the Minister
- allowing for financial assistance to be granted in response to an application and on the Minister's own initiative (where the purpose is consistent with one or more of the purposes set out in the objects of the Act)
- providing for terms and conditions to be placed on grants of financial assistance and securities against loans
- updating the ways that money can be paid into the Fund, including interest that the Fund earns, interest and repayments from loan products provided under the Fund, money directed to the Fund, voluntary contributions and other money required by the regulations.

- 5.4 The proposed amendments would also require the Minister for Regional New South Wales (the **Minister**) to:

- establish a Regional Development Advisory Council (the **Council**) that advises the Minister on regional investment and development;

- make a governance framework to guide the effective and transparent administration of the Act;
- make an investment strategy to guide grants of financial assistance from the Fund and other payments out of the Fund (to be reviewed every two years); and
- prepare an annual report by 30 November after the end of each financial year on: details of payments from the Fund and membership of the Council during the financial year.

Issues considered by the Committee

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

6. Retail Trading Amendment (Anzac Day Trading Hours) Bill 2024

Date introduced	6 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations

Purpose and description

- 6.1 The object of this Bill is to amend the *Retail Trading Act 2008* (the **Act**) to restrict trading hours on Anzac Day.

Background

- 6.2 The Act currently defines Anzac Day as a restricted trading day, 'but only before 1pm', which allows shops to open and trade from that time. The Bill seeks to extend the existing retail trading restrictions on Anzac Day by requiring all non-exempt shops to remain closed for the whole day.
- 6.3 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, noted that the Bill seeks to address the 'creeping commercialisation' of Anzac Day since the Act commenced in 2008. The Minister said that reinstating Anzac Day as an 'all-day restricted trading day' would ensure that it 'remains a solemn day, reserved for observance and reflection'.
- 6.4 Although the Bill would require non-exempt shops and banks to remain closed for the whole day, the Minister noted that the Act would retain its existing exemptions to ensure that communities can still access 'essential services' on the day.

Issues considered by the Committee

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

7. Universities Legislation Amendment Bill 2024

Date introduced	7 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Steve Whan MP
Portfolio	Skills, TAFE and Tertiary Education

Purpose and description

7.1 The object of this Bill is to amend the following Acts (**University Acts**) in relation to the university's governing authority's power regarding land and property and, in some cases, the sub-delegation of functions delegated to vice-chancellors:

- (a) *Charles Sturt University Act 1989*
- (b) *Macquarie University Act 1989*
- (c) *Southern Cross University Act 1993*
- (d) *University of New England Act 1993*
- (e) *University of New South Wales Act 1989*
- (f) *University of Newcastle Act 1989*
- (g) *University of Sydney Act 1989*
- (h) *University of Technology Sydney Act 1989*
- (i) *University of Wollongong Act 1989*
- (j) *Western Sydney University Act 1997.*

Background

7.2 The Bill seeks to amend the University Acts to make administrative changes to the way the universities deal with land and allow Vice-Chancellors to sub-delegate functions to certain persons.

7.3 During his second reading speech, the Hon. Steve Whan MP, Minister for Skills, TAFE and Tertiary Education, said that the amendments 'aim to modernise and streamline the lands requirements in the Acts, including removing the need to gain approval for certain land transactions.' He explained that the amendments will remove the requirement for Ministerial approval for some routine university land dealings.

- 7.4 The Bill seeks to amend the powers of the Council in each of the University Acts to modify their powers in relation to University Property, so that the Council may deal with land and property vested in the University (such as granting easements and covenants), and the Council cannot sell, mortgage, charge or lease land without the Minister's approval. It also clarifies that Ministerial approval will not be required in specific circumstances such as:
- (a) where a proposed lease is less than 21 years and is consistent with the object and functions of the University
 - (b) leasing land for up to 99 years where the lease is for utility infrastructure purposes
 - (c) entering into a planning agreement if the agreement does not require the University to dedicate land free of cost.
- 7.5 The Minister said that the 'amendments also include the addition of a sub-delegation function ... whereby the Vice-Chancellors can sub-delegate functions delegated by University governing bodies where this delegation includes the authority to delegate.' The Minister explained that examples of sub-delegated powers could include approving certain financial transactions and human resource functions. The proposed amendments clarify that a person who is delegated a function must not sub-delegate that function.
- 7.6 The Bill proposes to amend five of the University Acts to mirror the delegation powers that currently exist in the other 5 University Acts to enable the delegation of Council functions to:
- (a) a member or committee of the Council
 - (b) an authority or officer of the University
 - (c) a person or body prescribed by the by-laws.

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*.

8. Water Management Amendment (Water Access Licence Register Reform) Bill 2024*

Date introduced	8 August 2024
House introduced	Legislative Assembly
Member with carriage	Mrs Helen Dalton MP
	*Private Members Bill

Purpose and description

8.1 The object of this Bill is to amend the *Water Management Act 2000* (the **Act**) as follows:

- (a) to make amendments relating to the Water Access Licence Register
- (b) to provide for a code of conduct for brokers
- (c) to require annual reporting of the foreign beneficiaries of trusts that have an interest in a water access licence
- (d) to enable regulations to be made for the establishment or adoption of a system of unique identifiers for dealings in and holders of access licences
- (e) to make it a condition of an operating licence that an irrigation corporation must be a member of the Energy and Water Ombudsman NSW or another dispute resolution organisation prescribed by the regulations
- (f) to provide that a consolidated register of information recorded in registers under the Act be kept and made publicly available
- (g) to make other minor or consequential amendments.

Background

8.2 The Bill proposes to amend the Act to introduce new accountability and governance mechanisms relating to water access licences.

8.3 In her second reading speech, Mrs Helen Dalton MP stated that the Bill had three distinct objects. Firstly, the Bill will create a public register of water licences 'of every person who owns and controls water in NSW'. Secondly, the Bill 'will establish a code of conduct for water brokers which is designed to ensure water ownership is transparent.' Finally, the bill 'will also require annual reporting of foreign beneficiaries of trusts that have an interest in a water access licence.'

- 8.4 The Bill proposes to amend the Act to allow the regulations to prescribe a code of conduct for brokers. This includes the power for regulations to create an offence for failing to comply with the code of conduct and powers granted to the Secretary of the Department of Climate Change, Environment, Energy and Water to issue a public statement identifying a broker who is found guilty of an offence along with identifying the details of that offence.
- 8.5 The Bill also seeks to amend the Act to require a person who holds an access licence in their capacity as the trustee of a trust, to notify the Minister for Water (the **Minister**) if a foreign person is a beneficiary of the trust.
- 8.6 The last major amendment proposed by the Bill is to create a public water register. The proposed amendment requires the Minister to keep a register of information in the Access Register and make that register publicly available. The new provision prescribes the information that must be included in the register, including information the Minister determines is appropriate to include and information prescribed by the register.

Issues considered by the Committee

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

Commencement by proclamation

- 8.7 The Bill commences on a date to be determined 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 those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

The Bill introduces new powers for regulations to prescribe offences based on breaches of a code of conduct that is proposed to be developed. It specifically allows offences to be prescribed by regulations that carry a penalty of 100 penalty units, or \$11,000, a higher penalty than is currently authorised under the Act. This creates additional obligations on a person to comply with the provisions of the code of conduct. For this reason it is important that a person is able to determine the law that applies to them at any given time.

While the Committee acknowledges that commencement by proclamation allows flexibility to determine any necessary administrative arrangements, because the Bill creates additional significant personal obligations it may impact a person's ability to understand their legal duties. For this reason, the Committee refers this issue to Parliament for further consideration.

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

Wide power of Secretary to publish details of offences

- 8.8 The Bill proposes to create a code of conduct, prescribed by the regulations, for water licence brokers by inserting section 71ZB into the Act. The Bill states that the

'regulations may prescribe a code of conduct for brokers' but does not provide any detail on how the code will be developed or where it will be published.

8.9 The Bill also provides that the regulations may create offences related to breaches of the code of conduct. Related to this, it proposes to enable the Secretary of the Department of Climate Change, Environment, Energy and Water (the **Secretary**) to issue a statement, in a way that is determined by the Secretary, that:

- (a) identifies a broker found guilty of an offence, and
- (b) provides details of the offence.

The Bill amends the *Water Management Act 2000* to delegate a power to the regulations to prescribe a code of conduct for brokers of water licences. Proposed section 71ZB provides that the regulations may prescribe the code of conduct and that they may create offences for breaches of the code. Section 71ZB(3) would allow the Secretary of the Department of Climate Change, Environment, Energy and Water (the Secretary) to issue a statement, in a way they determine, to identify the broker found guilty of an offence against the code of conduct along with the details of that offence. Section 71ZB(3)(b) creates a broad executive discretion to determine what details of the offence are published.

The Committee notes that this may create broad powers of discretion to publish personal details of a person found guilty of an offence. The Secretary has the broad discretion to determine how they issue the public statement and the details of that public statement, which could impact the personal rights of person found guilty of an offence.

The Committee notes that there are no provisions limiting the kind of information that can be included in the Secretary's statement or the way in which the statement is issued. The Committee generally prefers administrative powers that impact personal rights to be clearly prescribed in legislation to ensure appropriate parliamentary oversight. For this reason, the Committee refers this issue to Parliament for further consideration.

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

Broad delegation of power – regulations to prescribe broad offences

8.10 The Bill proposes to allow the regulations to create offences for failing to comply with a code of conduct, or provisions of a code of conduct, by inserting section 400(3A) into the Act. The offence carries a penalty of 100 penalty units, or \$11,000, and applies despite existing clause 400(3) of the Act which limits penalties for offences in regulations to 10 penalty units, or \$1,100.

8.11 The proposed offence applies to a code of conduct that is not yet prescribed under proposed section 71ZB.

The Bill inserts section 400(3A) into the *Water Management Act 2000* to allow the regulations to create offences related to breaches of a code of conduct, or provisions of a code of conduct. The offence can carry of penalty of 100 penalty units, or \$11, 000, despite section 400(3) of the Act

limiting offences prescribed by regulations to a penalty of 10 penalty units, or \$1,100. The relevant code of conduct does not yet exist and it is not clear how the code of conduct will be prescribed in the regulations.

The Committee notes that this may be a broad delegation of regulatory power as the offences are not set out in the Bill and it is unclear how a person may determine the offences that apply to them. This may impact on personal rights or liberties as it would be difficult for a person to determine their liabilities. The Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, as the power allows for significantly increased penalties along with a lack of clarity around what the specific offences would be, the Committee refers this issue to Parliament for further consideration.

Part Two – Regulations with comment

1. Liquor Amendment (Vibrancy Reforms) Regulation 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. David Harris MP
Portfolio	Gaming and Racing

Purpose and description

- 1.1 The Regulation is made under the *Liquor Act 2007* (the **Act**) and amends the Liquor Regulation 2018 (the **Principal Regulation**).
- 1.2 The object of the Regulation is to:
- (a) clarify notification requirements for certain applications made under the Act,
 - (b) make it an offence for a licensee to do the following:
 - (i) permit business to be conducted at a licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood,
 - (ii) fail to display a notice in certain areas of a licensed premises informing a person entering the area that persons under the age of 18 years must be in the company of a responsible adult, and
 - (c) exempt a licensed premises located in a special entertainment precinct from certain licence conditions that limit noise levels from the premises if the condition is inconsistent with a special entertainment precinct plan prepared under the *Local Government Act 1993*, section 202 that applies to the premises.

Issues considered by the Committee

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

Absolute liability offences and commencement by proclamation

- 1.3 Clause 2 of the Regulation provides for a commencement date immediately after the commencement of the relevant parts of the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*. These parts are Schedule 3[9]-[15], [17] and [21], which will commence 'on a day or days to be appointed by proclamation'.

- 1.4 The Regulation amends the Principal Regulation by inserting clause 44C, which requires licensees to maintain the 'quiet and good order of their neighbourhood'. Failure to comply results in an absolute liability offence with a maximum penalty of \$5,500 (50 penalty units).
- 1.5 The Regulation also amends the Principal Regulation by inserting clause 55A, which requires licensees to display a notice stating that minors must be accompanied by a responsible adult in areas where packaged liquor is sold and in dedicated liquor sales areas. Failure to comply results in an absolute liability offence with a maximum penalty of \$ 2,200 (20 penalty units).

The Regulation amends the Liquor Regulation 2018 to enhance community safety and wellbeing by requiring licensees to 'preserve the quiet and good order of their neighbourhood' and to restrict minors from accessing liquor sales areas without a responsible adult. Failure to comply with these requirements results in an absolute liability offence with a maximum penalty of \$5,500 (50 penalty units). The commencement date of the Regulation, under clause 2, is tied to the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*, which will also commence 'on a day or days to be appointed by proclamation'.

The Committee generally comments on absolute liability offences as they depart from the common law principle that mental element of 'fault' should be proven to establish criminal liability. The Committee further notes that the Regulation will commence consequently with another piece of legislation that will commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks as a means of encouraging compliance, and that the offences only carry a monetary penalty, not a custodial one. In this case, compliance with the regulatory regime may be intended to manage noise levels associated with licensed premises and to protect minors by requiring adult accompaniment in these areas. The Committee also notes that commencement by proclamation may enable greater flexibility to facilitate Vibrancy Reforms to NSW's night economy. In the 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. [Building, Development and Strata Legislation Amendment Regulation 2024](#)

The objects of this Regulation are to:

- (a) amend the Building and Development Certifiers Regulation 2020 to extend the application of a provision allowing a professional indemnity policy to exclude certain claims relating to cladding to policies commencing on or before 30 June 2025, and
- (b) amend the Strata Schemes Management Regulation 2016 to postpone, to 2 November 2024, the date from which the prescribed percentage of the contract price for building work payable by developers of strata schemes as a building bond will increase from 2% to 3%.

The Regulation is made under sections 26(2)(a), 27(e) and 120 of the *Building and Development Certifiers Act 2018* and sections 207(2), 214(1)(a) and 271 of the *Strata Schemes Management Act 2015*.

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

2. [Coal Mine Subsidence Compensation Amendment \(Contributions\) Regulation 2024](#)

This Regulation amends the Coal Mine Subsidence Compensation Regulation 2017 to specify the contributions to the Coal Mine Subsidence Compensation Fund that the Chief Executive of Subsidence Advisory NSW may levy on certain coal mines.

This Regulation is made under the *Coal Mine Subsidence Compensation Act 2017*, including sections 33 and 51, the general regulation-making power.

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

3. [Biosecurity \(National Livestock Identification System\) Amendment \(Electronic Devices\) Regulation 2024](#)

The object of the Regulation is to amend the Biosecurity (National Livestock Identification System) Regulation 2017 to:

- (a) require the following stock to be permanently identified using an electronic device:
 - (i) all sheep and goats born on or after 1 January 2025,
 - (ii) on and from 1 January 2027 - all other sheep and goats,
- (b) make related changes to the number and type of permanent identifiers that may be attached to certain sheep and goats,

- (c) extend the application of certain provisions of the Regulation to certain harvested rangeland goats, and
- (d) make other minor or consequential changes.

The Regulation is made under the *Biosecurity Act 2015*, including sections 24 and 404, the general regulation-making power, and Schedule 5.

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

4. [Work Health and Safety Amendment \(Notification of Silicosis Cases and Deaths\) Regulation 2024](#)

The object of the Regulation is to remove the requirement for the Secretary of the Ministry of Health to report information about silicosis cases and deaths to SafeWork NSW.

The Regulation is made under the *Work Health and Safety Act 2011*, section 271B(3)(b).

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

5. [Poisons and Therapeutic Goods Amendment \(Prescription Database\) Regulation 2024](#)

The object of the Regulation is to amend the Poisons and Therapeutic Goods Regulation 2008 to allow the Secretary of the Ministry of Health to enter into an agreement with a person to engage another person to operate and maintain a database to record and monitor data about monitored medicines and substances. The Regulation previously only allowed the Secretary to enter into an agreement directly with a database operator.

The Regulation is made under the *Poisons and Therapeutic Goods Act 1966*, section 45C, the general regulation-making power.

The Regulation 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. 18

TIME & DATE: 3:02PM, 12 AUGUST 2024 LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

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

APOLOGIES

Mr Hagarty, Mr Layzell and Ms Munro.

OFFICERS PRESENT

Rohan Tyler, Carly McKenna, Kate McCorquodale, Alex Read, Alice Zwar, 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 5 August 2024 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 17/58

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

- a) Industrial Relations Amendment (Administrator) Bill 2024
- b) Local Government Amendment (Rural and Remote Councils) Bill 2024
- c) Water Management Amendment (Water Access Licence Register Reform) Bill 2024

4. Consideration of bills without comment for Legislation Review Digest 17/58

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

- a) Government Sector Finance Amendment (Integrity Agencies) Bill 2024
- b) NSW Self Insurance Corporation Amendment (Special Liability Insurance) Bill 2024
- c) Regional Development Amendment Bill 2024
- d) Retail Trading Amendment (Anzac Day Trading Hours) Bill 2024
- e) Universities Legislation Amendment Bill 2024

5. Regulations with comment for Legislation Review Digest 17/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the following draft regulation report:

- a) Liquor Amendment (Vibrancy Reforms) Regulation 2024

6. Regulations without comment for Legislation Review Digest 17/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Part Three to Digest 17/58.

7. Legislation Review Digest 17/58

Resolved, on the motion of Mr Murphy:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 17/58 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 16 September 2024 at 3.00pm