

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

## Legislation Review Digest



Digest No. 24/58 – 11 February 2025

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
<b>PART ONE – BILLS .....</b>	<b>23</b>
1. Automated External Defibrillators (Public Access) Bill 2024 (No. 3)* .....	24
2. Automatic Mutual Recognition Legislation Amendment Bill 2024.....	31
3. Crimes (Administration of Sentences) Amendment Bill 2024 .....	34
4. Crimes Amendment (Animal Sexual Abuse) Bill 2024* .....	37
5. Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2024 (No. 2)* .....	39
6. Energy Amendment (Pipelines and Gas Safety) Bill 2024 .....	42
7. Health Services Amendment (Hospital Helipads) Bill 2024* .....	52
8. Health Services Amendment (Industrial Relations) Bill 2024* .....	53
9. Mental Health Legislation Amendment Bill 2024 .....	54
10. Ports and Maritime Administration Amendment (White Bay Cruise Terminal— Shore Power) Bill 2024* .....	56
11. Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024.....	58
12. Road Transport Amendment (Driving Through Floodwaters) Bill 2024 (No. 2)*...60	
13. Strata Schemes Legislation Amendment Bill 2024 .....	63
<b>PART TWO – REGULATIONS WITHOUT COMMENT .....</b>	<b>68</b>
<b>APPENDICES.....</b>	<b>76</b>
Appendix One – Functions of the Committee.....	77
Appendix Two – Unconfirmed extracts of minutes.....	79

# Membership

<b>Chair</b>	Ms Lynda Voltz MP, Member for Auburn
<b>Deputy Chair</b>	Ms Maryanne Stuart MP, Member for Heathcote
<b>Members</b>	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
<b>Contact details</b>	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
<b>Telephone</b>	0408 309 296
<b>E-mail</b>	<a href="mailto:Legislation.Review@parliament.nsw.gov.au">Legislation.Review@parliament.nsw.gov.au</a>
<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# 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. Automated External Defibrillators \(Public Access\) Bill 2024 \(No. 3\)\\*](#)

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

### [2. Automatic Mutual Recognition Legislation Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Application of laws outside NSW	No further comment

### [3. Crimes \(Administration of Sentences\) Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Wide deferral of powers to regulations	No further comment

### [4. Crimes Amendment \(Animal Sexual Abuse\) Bill 2024\\*](#)

No issues identified

### [5. Electoral Amendment \(Voter ID and Electronic Mark Off\) Bill 2024 \(No. 2\)\\*](#)

Issue identified	Conclusion of Committee
Access to voting – right to participate in public elections	Referred

### [6. Energy Amendment \(Pipelines and Gas Safety\) Bill 2024](#)

Issue identified	Conclusion of Committee
Wide official powers of inspectors - privacy and property rights, and privilege against self-incrimination	Referred
Absolute liability offences and continuing offences	No further comment
Significant matters deferred to regulations	No further comment
Penalty notices offences	No further comment
Wide power of delegation	No further comment

### [7. Health Services Amendment \(Hospital Helipads\) Bill 2024\\*](#)

No issues identified

### [8. Health Services Amendment \(Industrial Relations\) Bill 2024\\*](#)

No issues identified

**9. Mental Health Legislation Amendment Bill 2024**

No issues identified

**10. Ports and Maritime Administration Amendment (White Bay Cruise Terminal—Shore Power) Bill 2024\***

No issues identified

**11. Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024**

No issues identified

**12. Road Transport Amendment (Driving Through Floodwaters) Bill 2024 (No. 2)\***

<b>Issue identified</b>	<b>Conclusion of Committee</b>
Insufficiently defined penalty notice offence	Referred

**13. Strata Schemes Legislation Amendment Bill 2024**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
Wide regulatory powers impacting personal rights and liberties – investigation and enforcement powers	Referred
Retrospective application of laws	No further comment
Wide regulation-making power	No further comment

# Summary of Conclusions

## PART ONE – BILLS

---

### 1. Automated External Defibrillators (Public Access) Bill 2024 (No. 3)\*

---

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

---

##### *Absolute liability offences*

---

Section 7 of the Bill proposes to establish absolute liability offences for failure to comply with the requirements for the installation, maintenance and signage of automated external defibrillators. These offences carry a maximum penalty ranging from a \$2,420 fine (22 penalty units) to a \$19,800 fine (180 penalty units). The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. In this case, compliance with the regulatory regime is intended to ensure defibrillator devices are adequately installed and well maintained in order to protect public health and safety during potential medical emergencies. The Committee also notes that the offences only carry a monetary penalty and do not carry a custodial penalty. In the circumstances, the Committee makes no further comment.

##### *Significant custodial penalty*

---

Proposed section 9 of the Bill prohibits a person from intentionally, and without a reasonable excuse, damaging, destroying or removing a defibrillator. Non-compliance would be an offence carrying a maximum penalty of a \$9,900 fine (90 penalty units) and/or five years imprisonment. The Committee notes that this maximum penalty range is broad and the Bill does not appear to specify what circumstances or aggravating factors may warrant a custodial penalty for the commission of the offence. The Committee also notes that a maximum custodial penalty of five years imprisonment is a serious punishment which would render the offence a 'serious indictable offence' under the *Crimes Act 1900*. Therefore, the Bill may impose a wide range of penalties for an offence, which may include a disproportionate imprisonment sentence.

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

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

---

Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill or other provision amending the Bill, once enacted. It also provides that the regulations may take effect on a date earlier than the date that provision commenced, including a date before the publication of those regulations on the NSW legislation

website. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee also notes that this would conflict with section 39(2A) of the *Interpretation Act 1987*, which requires that statutory rules commence either on the day of publication or a later specified date. For these reasons, the Committee refers this matter to the Parliament for its consideration.

#### *Penalty offences and wide powers of delegation*

---

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

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

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

However, the Committee notes that the Bill allows the Secretary to designate a departmental employee or 'person prescribed by the regulations' as an authorised officer. The Bill does not specify which department is being referred to. The Bill may therefore provide for a wide power of delegation of the function to issue penalty notices under proposed section 14, including to an employee of an unnamed department and an unknown or unclear group or class of persons prescribed by the regulations. For these reasons, the Committee refers this matter to Parliament for consideration.

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

---

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

---

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

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

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

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

---

## 2. Automatic Mutual Recognition Legislation Amendment Bill 2024

---

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

---

#### *Application of laws outside NSW*

---

The Bill seeks to insert an extraterritorial application provision into the *Conveyancers Licensing Act 2003* (the CL Act), the *Motor Dealers and Repairers Act 2013* (the MDR Act), the *Property and Stock Agents Act 2002* (the PASA Act) and the *Tow Truck Industry Act 1998* (the TTI Act), with the effect that the Acts would 'have extraterritorial application to the extent the legislative powers of the State permit'.

The Bill further proposes to amend the CL Act, the MDR Act, the PASA Act, the TTI Act and Part 5 of the *Fair Trading Act 1987* (the FT Act) so that the Acts apply equally to NSW licensed workers and interstate conveyancers, motor dealers, real estate agents, tow truck operators and commercial agents working in NSW under the *Mutual Recognition Act 1992* (Cth).

The Bill therefore seeks to extend the legislative jurisdiction of the Acts beyond NSW. The Committee generally comments on provisions that have extraterritorial effect because this may make it difficult for individuals to understand the law that applies to them at any given time.

However, the Committee notes that the amendments provide clarification on the extraterritorial application of NSW Fair Trading compliance and enforcement powers which 'is already in place under the *Fair Trading Act 1987*'. The Committee further notes that the proposed extraterritorial application would be limited to the extent permitted under NSW law. The Committee also recognises that the changes are intended to give effect to the Federal automatic mutual recognition scheme under the *Mutual Recognition Act 1992* (Cth). For these reasons, the Committee makes no further comment.

---

## 3. Crimes (Administration of Sentences) Amendment Bill 2024

---

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

---

#### *Wide deferral of powers to regulations*

---

The Bill seeks to amend the *Crimes (Administration of Sentences) Act 1999* to defer a number of significant matters to the regulations. These include prescribing the circumstances in which the Parole Authority may extend or impose a further period of supervision for serious offences with a parole order in place. The Bill would also allow the regulations to provide for the way medical records are to be kept at a correctional centre and who has access to the records.



The Committee generally prefers substantive matters to be set out in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. However, the Committee recognises that the provisions may be intended to build more flexibility into the regulatory framework, and to allow the appropriate authority to better respond to changing circumstances and developments in criminal law proceedings. The Committee also acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comment.

---

#### **4. Crimes Amendment (Animal Sexual Abuse) Bill 2024\***

---

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

---

#### **5. Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2024 (No. 2)\***

---

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

---

###### *Access to voting – right to participate in public elections*

---

The Bill proposes to amend the *Electoral Act 2017* to introduce a requirement that a person show a current identification document to an election official when voting. It also proposes to insert subsection 127(3)(d), which would require that an election official reject a person's claim to vote if they fail or refuse to show a relevant identification document. By requiring a person to produce identification documents to vote, the Bill may infringe on a person's access to voting, thereby impacting on their right to vote and participate in public elections.

The Committee acknowledges that the amendments are intended to protect the integrity of the election process. However, the Committee notes that every person who is entitled to vote is constitutionally obliged to vote in each election and the Act establishes an offence for failing to do so. By potentially limiting access to voting, a person may therefore be at greater risk of committing an electoral offence. For these reasons, the Committee refers the matter to Parliament for its consideration.

---

#### **6. Energy Amendment (Pipelines and Gas Safety) Bill 2024**

---

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

---

###### *Wide official powers of inspectors - privacy and property rights, and privilege against self-incrimination*

---

The Bill seeks to amend the *Gas Supply Act 1996* (the Gas Supply Act) and the *Pipelines Act 1967* (the Pipelines Act) to grant inspectors broad powers of entry, search and seizure. These powers include the authority to enter premises with or without a warrant, examine and inspect the premises, records and other documents, and seize documents or items suspected of relating to an offence under the Acts or regulations. Inspectors may enter and search non-residential premises without the occupier's consent at any time using 'reasonable force'. Entry to, and searches of residential premises without the occupier's consent can be authorised by applying for a search warrant obtained from an authorised officer. These broad powers may impact a person's privacy and property rights.

The Committee notes that under the Gas Supply Act, inspectors must provide written notice to enter premises to determine whether an offence has been committed or to prevent or mitigate harm from a hazardous event related to gas supply. Further, inspectors may only enter residential premises with the consent of the occupier, for purposes such as reading a gas meter or accessing a consumer service, or with a warrant. Under the Pipelines Act, inspectors can only enter residential premises with the occupier's consent or under the authority of a warrant.

The Committee acknowledges that these investigation and enforcement powers are intended to enhance regulatory oversight and enhance the safety and operational efficiency of gas and pipeline infrastructure. However, the Committee notes that the Bill may impact a person's privilege against self-incrimination. Proposed subsection 63E(4) of the Gas Supply Act and subsection 60AE(4) of the Pipelines Act provide that records produced at the request of an inspector will not be inadmissible in criminal proceedings on the ground that it might incriminate a person. Further, proposed subsection 63E(5)(b) of the Gas Supply Act and proposed subsection 60AE(5)(b) of the Pipelines Act would prevent information obtained as a result of information or responses provided to inspectors being inadmissible on the ground that it 'had to given' or that it might incriminate a person.

The Committee acknowledges that safeguards exist under proposed subsection 63E(3) of the Gas Supply Act and subsection 60AE(3) of the Pipelines Act, which would prohibit the use of self-incriminating information in criminal proceedings if an objection was, or could have been raised, or if the person was not warned of their right to object. However, these powers can still be exercised without a warrant and on broadly defined grounds, for example, determining compliance with the Acts. For these reasons, the Committee refers the matter to Parliament for consideration.

#### *Absolute liability offences and continuing offences*

---

The Bill proposes to introduce new absolute liability offences into the *Gas Supply Act 1996* (the Gas Supply Act) and the *Pipelines Act 1967* (the Pipelines Act) for non-compliance with requirements related to gas supply and pipeline operations and infrastructure management. These offences would carry maximum penalties for an individual, ranging from \$11,000 (100 penalty units) to \$110,000 (1,000 penalty units).

The Bill also seeks to insert section 84 into the Gas Supply Act to designate certain offences under the Act or regulations as 'continuing offences'. This provision would allow penalties to accrue for each day a contravention continues until compliance is achieved. A similar provision exists under section 65 of the Pipelines Act. As a result, a series of new continuing offences would be created under the regulatory framework.

The Committee generally comments on absolute liability offences, as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory contexts to encourage compliance. It also notes that the proposed penalties are monetary only, not custodial.

The Committee further notes that the accumulation of daily financial penalties for ongoing non-compliance could lead to disproportionately high penalties for a single offence. In this way, continuing penalties may conflict with principles of proportionality and fair trial rights. However, the Committee recognises that the provisions are intended to promote compliance with the regulatory framework governing the gas network infrastructure regime to ensure public safety. In the circumstances, the Committee makes no further comment.

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

### *Significant matters deferred to regulations*

---

The Bill seeks to insert section 76B and subsection 83(2)(n)-(o) into the *Gas Supply Act 1996* (the Gas Supply Act) and subsection 22(4) into the *Pipelines Act 1967*. These amendments would allow regulations to address significant aspects of the regulatory framework for gas operations and infrastructure, including notification and reporting requirements for network operators and compulsory acquisition processes for pipeline land and easements. Proposed section 76B of the Gas Supply Act would enable regulations to require network operators to provide specified information to the Minister for Energy or the Secretary of the Department of Climate Change, Energy, the Environment and Water, such as details about accidents, gas leaks, and the operation of metering equipment. A note to proposed section 76B clarifies that section 83(6) of the Gas Supply Act allows for the creation of offences under the regulations, with penalties of up to \$550,000 for individuals that would serve as a strong deterrent against non-compliance.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. This is particularly important where the matters deferred to the regulations constitute significant aspects of the regulatory framework.

However, the Committee acknowledges that deferring these matters to the regulations may provide necessary flexibility to support gas operations and infrastructure management. The Committee also notes that regulations are required to be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*. Therefore, in the circumstances, the Committee makes no further comment.

### *Penalty notices offences*

---

The Bill proposes to amend the *Gas Supply Act 1996* (the Gas Supply Act) and the *Pipelines Act 1967* (the Pipelines Act) to allow a government inspector or an inspector to issue a penalty notice to a person 'if it appears to the inspector that the person has committed a penalty notice offence'. Government inspectors and inspectors are appointed by the Minister for Energy under section 77(1) of the Gas Supply Act and subsection 59(1) of the Pipelines Act.

The Committee notes that penalty notices allow an individual to pay a specified amount in lieu of electing to have the matter heard by a court. This may impact a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision-maker.

However, the Committee recognises that an individual would retain the right to elect to have their matter heard and decided by a court. It also acknowledges that there is a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. In the circumstances, the Committee makes no further comment.

### *Wide power of delegation*

---

The Bill proposes to amend the *Gas Supply Act 1996* to allow the Secretary of the Department of Climate Change, Energy, the Environment and Water to further subdelegate functions delegated by the Minister for Energy (other than the power of delegation) to a person employed in the Department of Climate Change, Energy, the Environment and Water, or other person authorised by regulations.

The Bill would therefore enable the broad delegation of statutory functions to a large group of people within the public service and potentially to other unspecified classes of people as authorised by regulations. This may result in private individuals being delegated functions under the Act that would typically be expected to be performed by appointed or senior public officials or authorities. The Committee generally prefers that the categories of persons eligible for delegation of statutory functions be clearly specified and appropriately limited in primary legislation to ensure clarity and oversight in the exercise of executive and public functions.

However, the Committee acknowledges that allowing regulations to prescribe who may be delegated certain functions and allowing for public service employees to be delegated functions may provide necessary flexibility in the administration of the regulatory framework. The Committee also recognises that regulations identifying a class of persons to be delegated functions are still required to be tabled in Parliament and would therefore be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

---

## **7. Health Services Amendment (Hospital Helipads) Bill 2024\***

---

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

---

## **8. Health Services Amendment (Industrial Relations) Bill 2024\***

---

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

---

## **9. Mental Health 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*.

---

## **10. Ports and Maritime Administration Amendment (White Bay Cruise Terminal—Shore Power) Bill 2024\***

---

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

---

## **11. Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024**

---

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

---

## **12. Road Transport Amendment (Driving Through Floodwaters) Bill 2024 (No. 2)\***

---

---

### **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 driving a motor vehicle on a part of a road covered by floodwaters and being reckless as to the

risk of death or injury to the person or another person that arises from that conduct. 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 provide 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 the 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, because 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', 'deliberatively' and 'reckless' are also not defined within the proposed section, which may create ambiguity when determining whether an offence has occurred.

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

---

### 13. Strata Schemes Legislation Amendment Bill 2024

---

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

---

##### *Wide regulatory powers impacting personal rights and liberties – investigation and enforcement powers*

---

The Bill proposes to grant the Fair Trading Commissioner (the Secretary) broad investigative and enforcement powers by inserting Part 10A into the *Strata Schemes Management Act 2015* and the *Community Land Management Act 2021*. These include powers to: require certain information the Secretary reasonably suspects a person has knowledge of and is reasonably required for an authorised purpose; record the information where the person is told and given a copy of the record; enter certain premises with or without a search warrant; and seize any item reasonably believed to be connected with a contravention of the duty of an owners' corporation to maintain and repair property.

By providing for broad powers to require and record certain information, and to enter and search premises and seize items, the Bill may impede upon individuals' personal rights and liberties, including the right to privacy, the right to silence and property rights.

The Committee notes that the Secretary may only enter a residential premises with the permission of the occupier or a search warrant, and if the Secretary reasonably believes there has been a contravention of the duty of an owners' corporation to maintain and repair property and an item connected with the breach is located on the premises. The Committee also acknowledges the Minister's comments that the Bill is designed to strengthen New South Wales's strata management scheme and protect owners and residents.

However, the Committee notes that the significant powers to require a person to provide information and to 'do anything' the Secretary considers 'reasonably necessary' under the Bill may

be exercised for broadly defined purposes, including administering or executing proposed Part 10A and any regulations made under it. The Committee further notes that failure to comply with the Secretary's direction attracts a \$2,200 fine (20 penalty units) as well as a \$220 fine (2 penalty units) for each additional day the direction is not complied with. For these reasons, the Committee refers this issue to Parliament for its consideration.

#### *Retrospective application of laws*

---

The Bill seeks to amend subsection 103(3)(c) of the *Strata Schemes Management Act 2015* and subsection 106(3)(c) of the *Community Land Management Act 2021* to remove the requirement that owners' corporations and strata committees can obtain legal services without approval, only where the legal services sought are for the purpose of taking legal action. The Bill also seeks to insert savings and transitional provisions into the Act that would retrospectively apply the amendments from 30 November 2016.

The Committee generally comments on provisions that are drafted to have retrospective effect because they impact the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact a person's rights or liberties. The Committee also notes that the retrospective application is intended to provide legislative clarity about when obtaining legal services requires approval from an owners' corporation at a general meeting. For these reasons, the Committee makes no further comment.

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

---

##### *Wide regulation-making power*

---

The Bill proposes to amend the *Strata Schemes Management Act 2015* to create a new offence for building managers breaching a duty prescribed by the regulations without a reasonable excuse. The associated maximum penalty for an individual building manager is an \$11,000 fine (100 penalty units). The Bill also inserts subsection 70A(3) which provides that the regulations 'may prescribe additional duties of building managers'.

The Committee acknowledges that there does not appear to be any provisions that limit or define the 'duties' that may be prescribed by the regulations. The Bill may therefore include a wide regulation-making power. The Committee generally comments on wide regulation-making powers that delegate legislative power in respect to matters that are substantive and not just administrative in nature. It generally prefers that such matters are specified in primary legislation.

However, the Committee acknowledges that these kinds of regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. The Committee also recognises that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. Further, the Committee notes that building managers are exempt from complying with duties prescribed by the regulations where they have a 'reasonable excuse'. For these reasons, the Committee makes no further comment.



# Part One – Bills

# 1. Automated External Defibrillators (Public Access) Bill 2024 (No. 3)\*

Date introduced	21 November 2024
House introduced	Legislative Assembly
Member with carriage	Mr Gareth Ward MP
	*Private Members Bill

## Purpose and description

1.1 The objects of the Bill are to:

- (a) require the installation of automated external defibrillators (**defibrillators**) in certain buildings and vehicles
- (b) require the registration and maintenance of the defibrillators
- (c) require the Minister to:
  - (i) keep a publicly accessible register of the defibrillators, including the location of the defibrillators
  - (ii) develop a strategy to inform the public about defibrillators.

## Background

1.2 In his second reading speech, Mr Gareth Ward MP referred Members to the second reading speech he gave in the Legislative Assembly for the Automated External Defibrillators (Public Access) Bill 2024 (the **AED (No. 1) Bill**).

1.3 This Bill includes the same provisions as the AED (No.1) Bill and the Automated External Defibrillators (Public Access) Bill 2024 (No. 2) (the **AED (No. 2) Bill**). The AED (No.1) Bill was introduced by Mr Ward earlier in the 58<sup>th</sup> Parliament on 21 March 2024. The Bill lapsed on 20 April 2024, in accordance with Legislative Assembly Standing Order 105. The AED (No. 2) Bill was introduced on 6 June 2024 and lapsed on 8 November 2024 in accordance with Legislative Assembly Standing Order 105.

1.4 In his 21 March 2024 second reading speech, Mr Ward said that the Bill is intended to ensure that 'life-saving devices are where they need to be and that they are adequately maintained', by mandating defibrillators in 'public buildings such as schools, libraries and sporting facilities along with all modes of public transport.' He further emphasised that it would also 'require defibrillators to be tested every 12 months and require signage highlighting the presence of a defibrillator in a building or vehicle.'

1.5 In his 21 November 2024 second reading speech, Mr Ward emphasised that:



the bill ensures that AEDs are seen as an asset and rolled out in a logical and practical manner, and that they are registered, protected and maintained.

- 1.6 The Bill seeks to create a new Act that would mandate the installation, registration and maintenance of defibrillators in certain buildings and vehicles. If enacted, it would commence two years after the date of assent. Mr Ward explained in his 21 March 2024 second reading speech that the proposed two year commencement period:

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

- 1.7 The Committee reported on the AED (No. 1) Bill in Digest No. 12/58,<sup>1</sup> and AED (No. 2) Bill in Digest No. 15/58.<sup>2</sup> As the bills were made up of identical provisions, the Committee noted in both Digests that the provisions of the AED Bills imposed significant custodial penalties, operated retrospectively, created penalty notice offences, had wide powers of delegation, and deferred significant matters to regulations. The comments in this report are consistent with the comments in those Digests as the provisions of the Automated External Defibrillators (Public Access) Bill 2024 (No. 3) are largely consistent with the previous iterations.

## Issues considered by the Committee

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

#### *Absolute liability offences*

- 1.8 Section 7 of the Bill would require a 'responsible person' of a 'relevant building' or 'vehicle' to ensure that:
- (a) defibrillators are installed, maintained and tested (subsection (1))
  - (b) a sign indicating the location of a defibrillator is installed (subsection (2)).
- 1.9 The terms 'relevant building', 'relevant vehicle' and 'responsible person' are defined under sections 4 and 5 of the Bill. Proposed subsection 4(1) sets out a number of categories that are captured by the term 'relevant building', which would include large commercial buildings, government buildings, educational establishments and correctional centres. Under proposed subsection 4(2), 'relevant vehicles' would include emergency services vehicles and public passenger vehicles.

---

<sup>1</sup> Legislation Review Committee, [Legislation Review Digest](#), No. 12/58, Parliament of New South Wales, 7 May 2024, pp 30-35.

<sup>2</sup> Legislation Review Committee, [Legislation Review Digest](#), No. 15/58, Parliament of New South Wales, 18 June 2024, pp 30-35.

- 1.10 Under proposed section 5, 'responsible person' would mean:
- (a) for a relevant building, the owner of the building
  - (b) for an emergency services vehicle, the head of the emergency services organisation
  - (c) for a public passenger vehicle, the operator of the service provided using the vehicle
  - (d) for another vehicle prescribed as a relevant vehicle, the prescribed person.
- 1.11 The Bill also proposes to establish a number of absolute liability offences regarding the requirements for the installation, maintenance and signage of defibrillators. Failure to comply with the requirements under section 7 would carry a maximum penalty ranging from a \$2,420 fine (22 penalty units) to a \$19,800 fine (180 penalty units).
- 1.12 In his 21 March 2024 second reading speech, Mr Ward stated that the Bill would ensure that 'defibrillators are working, are accessible and are there when people need them.'

**Section 7 of the Bill proposes to establish absolute liability offences for failure to comply with the requirements for the installation, maintenance and signage of automated external defibrillators. These offences carry a maximum penalty ranging from a \$2,420 fine (22 penalty units) to a \$19,800 fine (180 penalty units). The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.**

**However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance. In this case, compliance with the regulatory regime is intended to ensure defibrillator devices are adequately installed and well maintained in order to protect public health and safety during potential medical emergencies. The Committee also notes that the offences only carry a monetary penalty and do not carry a custodial penalty. In the circumstances, the Committee makes no further comment.**

*Significant custodial penalty*

- 1.13 Proposed section 9 of the Bill prohibits a person from intentionally, and without a reasonable excuse:
- (a) damaging or destroying a defibrillator, or
  - (b) removing a defibrillator from where it is installed, as required under the Bill.
- 1.14 Failure to comply with section 9 would carry a maximum penalty of a \$9,900 fine (90 penalty units) and/or five years imprisonment.

**Proposed section 9 of the Bill prohibits a person from intentionally, and without a reasonable excuse, damaging, destroying or removing a defibrillator. Non-compliance would be an offence carrying a maximum penalty of a \$9,900 fine (90 penalty units) and/or five years imprisonment. The Committee notes that this maximum penalty range is broad and the Bill does not appear to specify what circumstances or aggravating factors may warrant a custodial penalty for the commission of the offence. The Committee also notes that a maximum custodial penalty of five years imprisonment is a serious punishment which would render the offence a 'serious indictable offence' under the *Crimes Act 1900*. Therefore, the Bill may impose a wide range of penalties for an offence, which may include a disproportionate imprisonment sentence.**

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

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

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

**Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill or other provision amending the Bill, once enacted. It also provides that the regulations may take effect on a date earlier than the date that provision commenced, including a date before the publication of those regulations on the NSW legislation website. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

**The Committee also notes that this would conflict with section 39(2A) of the *Interpretation Act 1987*, which requires that statutory rules commence either on the day of publication or a later specified date. For**

**these reasons, the Committee refers this matter to the Parliament for its consideration.**

*Penalty offences and wide powers of delegation*

- 1.17 Proposed subsection 14(1) of the Bill would enable an 'authorised officer' to issue a penalty notice to a person 'if it appears to the officer that the person has committed a penalty notice offence'. Under proposed subsection 14(2), the regulations may prescribe an offence as a penalty notice offence.
- 1.18 An authorised officer is defined under proposed subsection 14(6) as any of the following persons designated by the relevant Department Secretary:
- (a) a person employed in the Department
  - (b) another person prescribed by the regulations.
- 1.19 'The Department' is defined in the Bill as 'the department in which this Act is administered'. The Bill does not set out which department or Minister is to administer the Act.
- 1.20 In his 21 March 2024 second reading speech, Mr Ward explained that the Department of Health and the Department of Emergency Services would benefit from a late commencement of the Act, in that it would allow time for those departments to:

...prioritise locations, distribute the defibrillators and roll out education and awareness programs so that the public is aware of the devices and understands how to use them.

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

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

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

**However, the Committee notes that the Bill allows the Secretary to designate a departmental employee or 'person prescribed by the**

regulations' as an authorised officer. The Bill does not specify which department is being referred to. The Bill may therefore provide for a wide power of delegation of the function to issue penalty notices under proposed section 14, including to an employee of an unnamed department and an unknown or unclear group or class of persons prescribed by the regulations. For these reasons, the Committee refers this matter to Parliament for consideration.

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

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

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

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

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

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

**However, the proposed general regulation-making power may effectively allow regulations to prescribe matters with little limit. It may also enable the Executive to create offences and broadly exempt the application of the parent Act without parliamentary scrutiny. For these**

**reasons, the Committee refers this matter to Parliament for consideration.**

## 2. Automatic Mutual Recognition Legislation Amendment Bill 2024

Date introduced	20 November 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Better Regulation and Fair Trading

### Purpose and description

- 2.1 The object of this Bill is to amend certain Acts for occupational licensing as a consequence of the introduction of the automatic mutual recognition scheme (the **AMR scheme**) in the *Mutual Recognition Act 1992* of the Commonwealth (the **MR Act**).

### Background

- 2.2 The Bill proposes amendments to the following five Acts:

- *Conveyancers Licensing Act 2003* (the **CL Act**)
- *Fair Trading Act 1987* (the **FT Act**)
- *Motor Dealers and Repairers Act 2013* (the **MDR Act**)
- *Property and Stock Agents Act 2002* (the **PASA Act**)
- *Tow Truck Industry Act 1998* (the **TTI Act**).

- 2.3 In his second reading speech, the Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, stated that the amendments would:

...remove legislative barriers hindering the uptake of AMR by interstate workers, while ensuring consumer protection measures apply equally to New South Wales licence holders and interstate licence holders working in New South Wales.

- 2.4 The Bill proposes to introduce the following key amendments under the AMR scheme:

- allowing interstate workers in conveyancing, real estate and property, and automotive industries to work in NSW without needing to obtain another occupational licence
- requiring interstate licence holders to meet mandatory compensation fund obligations
- authorising NSW Fair Trading to calculate and collect compensation fund contributions for workers under the AMR scheme

- ensuring that consumer protection measures are applied equally to NSW licence holders and interstate workers
- clarifying the extraterritorial application of NSW regulatory powers (to the extent that NSW powers permit).

## Issues considered by the Committee

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

#### *Application of laws outside NSW*

2.5 The Bill seeks to insert:

- (a) section 5A into the CL Act
- (b) section 9A into the MDR Act
- (c) section 6 into the PASA Act
- (d) section 7 into the TTI Act

to provide that the Acts apply extraterritorially to the extent that NSW's legislative powers permit.

2.6 It also proposes to insert:

- (a) section 5B into the CL Act
- (b) Section 9B into the MDR Act
- (c) section 7 into the PASA Act
- (d) section 8 into the TTI Act
- (e) section 60AA into the FT Act

to specify that, under the MR Act, the Acts apply to interstate conveyancers, motor dealers, real estate agents, tow truck operators and commercial agents authorised to work in the occupations under the MR Act the same way it applies to the licence holders under the Acts. Additionally, the above Acts would be interpreted to ensure compatibility with the MR Act along with the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

2.7 In his second reading speech, the Minister noted that NSW Fair Trading compliance and enforcement powers' extraterritorial application (so far as NSW powers permit) 'is already in place under the *Fair Trading Act 1987*' and that:

...this amendment ensures consistency and clarity across New South Wales Fair Trading legislation for occupations that have or will join the AMR scheme.



The Bill seeks to insert an extraterritorial application provision into the *Conveyancers Licensing Act 2003* (the CL Act), the *Motor Dealers and Repairers Act 2013* (the MDR Act), the *Property and Stock Agents Act 2002* (the PASA Act) and the *Tow Truck Industry Act 1998* (the TTI Act), with the effect that the Acts would 'have extraterritorial application to the extent the legislative powers of the State permit'.

The Bill further proposes to amend the CL Act, the MDR Act, the PASA Act, the TTI Act and Part 5 of the *Fair Trading Act 1987* (the FT Act) so that the Acts apply equally to NSW licensed workers and interstate conveyancers, motor dealers, real estate agents, tow truck operators and commercial agents working in NSW under the *Mutual Recognition Act 1992* (Cth).

The Bill therefore seeks to extend the legislative jurisdiction of the Acts beyond NSW. The Committee generally comments on provisions that have extraterritorial effect because this may make it difficult for individuals to understand the law that applies to them at any given time.

However, the Committee notes that the amendments provide clarification on the extraterritorial application of NSW Fair Trading compliance and enforcement powers which 'is already in place under the *Fair Trading Act 1987*'. The Committee further notes that the proposed extraterritorial application would be limited to the extent permitted under NSW law. The Committee also recognises that the changes are intended to give effect to the Federal automatic mutual recognition scheme under the *Mutual Recognition Act 1992* (Cth). For these reasons, the Committee makes no further comment.

## 3. Crimes (Administration of Sentences) Amendment Bill 2024

Date introduced	19 November 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Attorney General

### Purpose and description

- 3.1 The object of this Bill is to amend the *Crimes (Administration of Sentences) Act 1999* (the **Act**) to consolidate processes and procedures for the operation of correctional centres and to ensure the validity of regulations made under the Act.

### Background

- 3.2 The Bill proposes to amend the Act, and also make minor amendments to the *Law Enforcement Conduct Commission Act 2016*, the *Police Act 1900* and the *Terrorism (Police Powers) Act 2002*.
- 3.3 In his second reading speech, the Hon. Anoulack Chanthivong MP, Minister for Corrections, noted that the amendments aim to 'enhance transparency and integrity in the operations of Corrective Services NSW.'
- 3.4 Under section 236Q of the Act it is currently an offence for correctional employees to engage in sexual conduct or an intimate relationship with an inmate or a person who is subject to a community-based order, if that conduct or relationship causes a risk or potential risk to the safety or security, or good order and discipline, of a correctional centre, or compromises the proper administration of a sentence or community-based order.
- 3.5 The Bill proposes to remove this offence and replace it with three new offences:
- Proposed subsection 236Q(1) would make it an offence for correctional employees to engage in sexual conduct or an intimate relationship with an inmate.
  - Proposed subsection 236Q(1A) would make it an offence for a correctional employee in a pre-existing relationship with an inmate to engage in sexual conduct with the inmate or continue an intimate relationship with the inmate where the relationship:
    - causes a risk or potential risk to the safety or security of a correctional centre or correctional complex or to good order and discipline within a correctional centre or correctional complex, or
    - compromises the proper administration of a sentence.
  - Proposed subsection 236Q(1B) would make it an offence for correctional employees to engage in sexual conduct or an intimate relationship with a person subject to a community-based order where the conduct of the

relationship compromises the proper administration of a community-based order.

3.6 The current exemption under section 236Q(2) would apply to proposed subsection 236Q(1B). The Bill proposes to amend the exemption so that it only applies where the correctional employee engages in sexual conduct or an intimate relationship with a person subject to a community-based order, and does not know that the person is subject to the order.

3.7 The Minister explained that the:

proposed amendments strengthen the offence that prohibits relationships between correctional employees and inmates, in response to a recommendation made by the Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre.

3.8 The Bill also seeks to:

- amend section 3 of the Act to require community service work to be approved by the Minister by order and published in the Gazette, and published on a website administered by Corrective Services NSW.
- amend section 72 to insert new subsection (2A) to provide that if a 'warrant of commitment' does not identify the correctional centre an offender must be conveyed to, the Commissioner of Corrective Services NSW may direct the inmate to be committed and conveyed to any correctional centre.

## Issues considered by the Committee

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

#### *Wide deferral of powers to regulations*

3.9 The Bill proposes to defer a wide range of matters to the regulations, including the following substantive matters:

- the circumstances in which the Parole Authority may extend the period of supervision or impose a further period of supervision for serious offenders while a parole order is in force
- the way in which medical records are to be kept at a correctional centre and who has access to the records
- circumstances in which the Commissioner, governor or a nominated office may keep a copy of correspondence
- the persons who the Commissioner may direct an inmate not to correspond with, and which inmates require the written approval of the Commissioner to correspond.

3.10 In his second reading speech, the Minister commented that:

The proposed amendments provide greater clarity as to the matters that may be provided for by the regulation in a manner that is consistent with

the existing provisions of the Act. The changes provide more transparency as to what the regulations may and may not prescribe, improving confidence in the correctional system.

**The Bill seeks to amend the *Crimes (Administration of Sentences) Act 1999* to defer a number of significant matters to the regulations. These include prescribing the circumstances in which the Parole Authority may extend or impose a further period of supervision for serious offences with a parole order in place. The Bill would also allow the regulations to provide for the way medical records are to be kept at a correctional centre and who has access to the records.**

**The Committee generally prefers substantive matters to be set out in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. However, the Committee recognises that the provisions may be intended to build more flexibility into the regulatory framework, and to allow the appropriate authority to better respond to changing circumstances and developments in criminal law proceedings. The Committee also acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comment.**

## 4. Crimes Amendment (Animal Sexual Abuse) Bill 2024\*

Date introduced	20 November 2024
House introduced	Legislative Council
Member with carriage	The Hon. Emma Hurst MLC
	*Private Members Bill

### Purpose and description

- 4.1 The object of this Bill is to make amendments to the *Crimes Act 1900* (the **Act**) and other legislation to replace the offence of bestiality with the offence of animal sexual abuse.

### Background

- 4.2 The Bill proposes to amend the Act to replace the term 'bestiality' with 'animal sexual abuse' and insert a comprehensive definition of 'animal sexual abuse'.

- 4.3 In her second reading speech, the Hon. Emma Hurst MLC noted the 'weaknesses and gaps in the current legislation and that people charged with the offence of bestiality may be escaping conviction as a result'. She went on to say that:

The lack of legislative definition in New South Wales is deeply problematic and risks creating loopholes for perpetrators of crimes of the most serious nature. The bill seeks to correct this by providing a definition of animal sexual abuse.

- 4.4 Proposed 79AA prescribes a wide range of acts that would amount to 'animal sexual abuse' as well as activities that do not constitute animal sexual abuse. Exempt activities include acts of veterinary science, research and care, acts carried out in the best interests of an animal and other acts prescribed by regulations.

- 4.5 The Bill proposes to create new offences for committing an act of animal sexual abuse or authorising the commission of an act of animal sexual abuse. Both offences would attract maximum penalties of 14 years imprisonment.

- 4.6 The Bill would also create a number of related offences, which include:

- (a) committing an act of animal sexual abuse in the company of another person or people (maximum penalty of 20 years imprisonment)
- (b) advertising, selling or transferring animals for animal sexual abuse (maximum penalty of 5 years imprisonment and/or a \$27,500 fine (2,500 penalty units))
- (c) attempting to commit an act of animal sexual abuse (maximum penalty of 5 years imprisonment).

- 4.7 The Bill also proposes to make a number of consequential amendments to other Acts to align other regulatory frameworks with the new proposed definition of 'animal sexual abuse'.

### 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. Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2024 (No. 2)\*

Date introduced	15 November 2024
House introduced	Legislative Assembly
Member with carriage	Mr Gareth Ward MP
	*Private Members Bill

### Purpose and description

- 5.1 The object of this Bill is to amend the *Electoral Act 2017* (**the Act**) to provide that:
- (a) voters must show evidence of their identity to be eligible to vote
  - (b) election officials must use an electronic authorised roll kept on a networked computer system to record the distribution of ballot papers.

### Background

- 5.2 The Bill proposes to amend the Act to introduce requirements that a person show an identification document in order to vote, and prescribes a list of identification documents that may be accepted.
- 5.3 During his second reading speech, Mr Gareth Ward MP said that the Bill 'is necessary to safeguard our democracy to ensure that votes count and voter fraud is prevented.' Mr Ward further noted that the Electoral Commission's report following the 2019 State election 'revealed that more than 3,000 people voted more than once at that election.' Mr Ward commented that:
- When a person casts a ballot more than once, they are cancelling out the vote of someone who has legitimately cast a ballot in an election.
- 5.4 Schedule 1.2 of the Bill also proposes to introduce a process for electronic mark off requirements by requiring the roll of electors to be in both an electronic and printed form, and that election officials record that a person has received a ballot paper on the electronic authorised roll.
- 5.5 The Committee notes that the Bill's provisions are substantially identical to the provisions of the Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2024 (**Voter ID Bill 2024**) and the Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2023 (**Voter ID Bill 2023**).
- 5.6 The Voter ID Bill 2024 was introduced by Mr Ward in the Legislative Assembly on 14 March 2024 and lapsed on 7 August 2024, in accordance with Legislative Assembly Standing Order 105.

- 5.7 The Committee reported on the Voter ID Bill 2024 in Digest 11/58<sup>3</sup>, and the comments in this report are consistent with the Committee's previous comments. In that Digest, the Committee noted that the provisions of the Voter ID Bill 2024 may limit access to voting and referred it to Parliament for its consideration.
- 5.8 The Voter ID Bill 2023 was introduced by Mr Ward in the Legislative Assembly on 21 September 2023 and lapsed on 4 February 2024, in accordance with Legislative Assembly Standing Order 105.
- 5.9 The Committee reported on the Voter ID Bill 2023 in Digest 5/58<sup>4</sup>, and the comments in this report are, again, consistent with the Committee's previous comments. In that Digest, the Committee noted that the provisions of the Voter ID Bill 2023 may limit access to voting and referred it to Parliament for its consideration.

## Issues considered by the Committee

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

#### *Access to voting – right to participate in public elections*

- 5.10 The Bill proposes to insert subsection 127(2A) into the Act, which requires an election official to ask each person claiming to vote in an election to show a current identification document to establish their identity.
- 5.11 Subsection 127(3) of the Act sets out mandatory grounds for an election official to reject a person's claim to vote. The Bill would insert subsection 127(3)(d) to provide an additional ground for rejecting a claim, that being a failure to provide a current identification document to an official.
- 5.12 The Bill further proposes to impose requirements that identification documents be shown for absent and for provisional voting (subsections 135(2A) and (2B), and 137(6)).

**The Bill proposes to amend the *Electoral Act 2017* to introduce a requirement that a person show a current identification document to an election official when voting. It also proposes to insert subsection 127(3)(d), which would require that an election official reject a person's claim to vote if they fail or refuse to show a relevant identification document. By requiring a person to produce identification documents to vote, the Bill may infringe on a person's access to voting, thereby impacting on their right to vote and participate in public elections.**

**The Committee acknowledges that the amendments are intended to protect the integrity of the election process. However, the Committee notes that every person who is entitled to vote is constitutionally obliged to vote in each election and the Act establishes an offence for failing to do so. By potentially limiting access to voting, a person may therefore be**

---

<sup>3</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 11/58](#), 19 March 2024.

<sup>4</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 5/58](#), 10 October 2023.



**at greater risk of committing an electoral offence. For these reasons, the Committee refers the matter to Parliament for its consideration.**

## 6. Energy Amendment (Pipelines and Gas Safety) Bill 2024

Date introduced	21 November 2024
House introduced	Legislative Council
Member with carriage	The Hon. Penny Sharpe MP
Portfolio	Energy

### Purpose and description

6.1 The objects of this Bill are:

- (a) to amend the *Gas Supply Act 1996* (the **Gas Supply Act**), including as follows:
  - (i) to increase the maximum penalties for particular offences and provide for continuing offences
  - (ii) to expand and clarify the powers of government inspectors, in a way that is consistent with the powers of inspectors under the *Pipelines Act 1967* (the **Pipelines Act**)
  - (iii) to make it an offence for a person to damage gas works
  - (iv) to provide for requirements to give information to government inspectors and answer questions from government inspectors
  - (v) to allow the regulations to prescribe requirements for network operators to give the Minister for Energy (the **Minister**) or the Secretary of the Department of Climate Change, Energy, the Environment and Water (the **Secretary**) specified information, including information about accidents and incidents
  - (vi) to increase the maximum penalties the Local Court may impose in proceedings for offences under the Gas Supply Act
  - (vii) to enable government inspectors to issue penalty notices for certain offences under the Gas Supply Act, and
- (b) to amend the Pipelines Act, including as follows:
  - (i) to increase the maximum penalties for particular offences and provide for continuing offences
  - (ii) to expand and clarify the powers of inspectors, in a way that is consistent with the powers of government inspectors under the Gas Supply Act

- (iii) to update offences relating to the theft of substances being conveyed by a pipeline and the damage of, or interference with the operation of, a pipeline
  - (iv) to provide for requirements to give information to inspectors and answer questions from inspectors
  - (v) to increase the maximum penalties the Local Court may impose in proceedings for offences under the Pipelines Act, and
- (c) to make consequential amendments to the *Criminal Procedure Act 1986* (the **Criminal Procedure Act**).

## Background

- 6.2 In her second reading speech, the Hon. Penny Sharpe MP, Minister for Energy, stated that the proposed changes would 'enhance the governance, safety and operational efficiency of gas networks in NSW'.
- 6.3 The Statement of Public Interest tabled with the Bill noted that the amendments to the Pipelines Act are intended to build on the *Energy Legislation (Clean Energy Future) Act 2024*, which was passed by both Houses and assented to on 24 June 2024.
- 6.4 The key amendments proposed by the Bill include:
- aligning the obligations, offences, penalties and investigative powers in the Gas Supply Act and the Pipelines Act
  - expanding government inspection powers to investigate gas infrastructure incidents and improve regulatory oversight
  - refining administrative processes, including enabling the Minister and the Secretary to delegate functions and clarifying regulation-making powers for data collection
  - introducing a new regulation-making power to prescribe minimum requirements for compulsory acquisition processes for pipeline land and easements
  - allowing indictable offences to be tried summarily.

## Issues considered by the Committee

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

*Wide official powers of inspectors - privacy and property rights, and privilege against self-incrimination*

- 6.5 Under subsection 77(1)-(2) of the Gas Supply Act, the Minister may appoint government inspectors and network operators may appoint gas industry inspectors to carry out functions under the Act.

6.6 Subsection 59(1) of the Pipelines Act allows the Minister to appoint a person as an inspector.

6.7 The proposed amendments to Part 4 of the Gas Supply Act and Part 5 of the Pipelines Act set out inspectors' powers to:

- issue directions to network operators or individuals to:
  - disconnect, discontinue, reconnect, or continue gas supply to specified premises (sections 54-54A of the Gas Supply Act)
  - carry out specified activities or take other specified actions if reasonably believed to be necessary (section 63C of the Gas Supply Act and section 60AC of the Pipelines Act)
  - enter or leave a place by a certain time or for a certain period to enable investigations or protect public safety, including requiring entry to, or departure from specified places within specified timeframes (section 63D of the Gas Supply Act and section 60AD of the Pipelines Act)
- enter premises to exercise their functions under the Acts (subsection 55(2) of the Gas Supply Act and section 60 of the Pipelines Act)
- use reasonable force to gain entry to premises (excluding those used solely for residential purposes), with or without authorisation from network operators (section 57 of the Gas Supply Act)
- apply for a warrant to enter and inspect premises, including residential premises, if they consider it necessary for the purposes of the Acts (subsection 64(1A) of the Gas Supply Act and subsection 60AF(1) of the Pipelines Act)
- upon lawfully entering a premises, do the following where it is necessary to ensure compliance with the Acts or regulations (section 63A of the Gas Supply Act and section 60AA of the Pipelines Act):
  - seize items reasonably believed to be connected with an offence under the Acts or regulations
  - moving, testing or disabling seized items
  - examining, inspecting or copying records or documents, including health information, if reasonably believed to be evidence of an offence.

6.8 The Bill also amends the Gas Supply Act and the Pipelines Act to include the following provisions to safeguard against some of the inspectors' enforcement powers:

- inspectors under the Gas Supply Act may only enter premises to determine whether an offence under this Act or the regulations has been committed, or to prevent or mitigate harm from a hazardous event related to the supply of gas, and they must provide the owner or occupier of the land with written notice of their intention to enter (sections 55-56 of the Gas Supply Act)
- inspectors under the Gas Supply Act may only enter residential premises, with the consent of the occupier, for the purpose of reading a gas meter or

accessing a consumer service or under the authority of a warrant (section 63 of the Gas Supply Act)

- inspectors under the Pipelines Act may only enter premises being used solely for residential purposes with the consent of the occupier or under the authority of a warrant (subsection 60(5) of the Pipelines Act).

6.9 The Bill would also give inspectors the power to give written notice to require individuals to provide information or answer questions, including information relating to health, if it is reasonably believed to be evidence of an offence (63B of the Gas Supply Act and section 60AB of the Pipelines Act).

6.10 Under subsection 63E(2) of the Gas Supply Act and subsection 60AE(2) of the Pipelines Act, a person is not excused from a requirement to give information or answers on the ground that the information or answer might incriminate them or make them liable to a penalty. However, information or an answer given by a person is not admissible in evidence against the person in criminal proceedings, other than under Division 2 of the Gas Supply Act and Part 5 of the Pipelines Act, if the person

- objected at the time on the ground that it might incriminate them, or
- was not warned that they may object to giving the information or answer on the ground that it might incriminate them. (subsection 63E(3) of the Gas Supply Act and subsection 60AE(3) of the Pipelines Act):

6.11 Under subsection 63E(4) of the Gas Supply Act and subsection 60AE(4) of the Pipelines Act, records given under Division 2 of the Gas Supply Act and Part 5 of the Pipelines Act are not inadmissible in evidence against a person in criminal proceedings on the ground the record might incriminate them.

6.12 Under subsection 63E(5)(b) of the Gas Supply Act and subsection 60AE(5)(b) of the Pipelines Act, further information obtained as a result of information or an answer given under Division 2 of the Gas Supply Act and Part 5 of the Pipelines Act is not inadmissible on the ground that the information or answer might incriminate a person.

6.13 In her second reading speech, the Minister explained that expanding the powers of government inspectors would align with similar powers under other NSW legislation and in other jurisdictions. The Minister noted that the enhanced powers are intended to facilitate 'effective and timely investigations' of 'gas leaks and rupture incidents... thereby reducing public safety risks'.

**The Bill seeks to amend the *Gas Supply Act 1996* (the *Gas Supply Act*) and the *Pipelines Act 1967* (the *Pipelines Act*) to grant inspectors broad powers of entry, search and seizure. These powers include the authority to enter premises with or without a warrant, examine and inspect the premises, records and other documents, and seize documents or items suspected of relating to an offence under the Acts or regulations. Inspectors may enter and search non-residential premises without the occupier's consent at any time using 'reasonable force'. Entry to, and searches of residential premises without the occupier's consent can be authorised by applying for a search warrant obtained from an authorised officer. These broad powers may impact a person's privacy and property rights.**

**The Committee notes that under the Gas Supply Act, inspectors must provide written notice to enter premises to determine whether an offence has been committed or to prevent or mitigate harm from a hazardous event related to gas supply. Further, inspectors may only enter residential premises with the consent of the occupier, for purposes such as reading a gas meter or accessing a consumer service, or with a warrant. Under the Pipelines Act, inspectors can only enter residential premises with the occupier's consent or under the authority of a warrant.**

**The Committee acknowledges that these investigation and enforcement powers are intended to enhance regulatory oversight and enhance the safety and operational efficiency of gas and pipeline infrastructure. However, the Committee notes that the Bill may impact a person's privilege against self-incrimination. Proposed subsection 63E(4) of the Gas Supply Act and subsection 60AE(4) of the Pipelines Act provide that records produced at the request of an inspector will not be inadmissible in criminal proceedings on the ground that it might incriminate a person. Further, proposed subsection 63E(5)(b) of the Gas Supply Act and proposed subsection 60AE(5)(b) of the Pipelines Act would prevent information obtained as a result of information or responses provided to inspectors being inadmissible on the ground that it 'had to given' or that it might incriminate a person.**

**The Committee acknowledges that safeguards exist under proposed subsection 63E(3) of the Gas Supply Act and subsection 60AE(3) of the Pipelines Act, which would prohibit the use of self-incriminating information in criminal proceedings if an objection was, or could have been raised, or if the person was not warned of their right to object. However, these powers can still be exercised without a warrant and on broadly defined grounds, for example, determining compliance with the Acts. For these reasons, the Committee refers the matter to Parliament for consideration.**

*Absolute liability offences and continuing offences*

6.14 The Bill seeks to introduce new absolute liability offences, including for:

- non-compliance with directions to disconnect, discontinue, reconnect or continue gas supply, which carries a maximum penalty of \$110,000 (1,000 penalty units) for an individual (proposed subsection 54(3)(b) of the Gas Supply Act)
- non-compliance with directions to carry out or stop an activity to ensure safe gas supply or prevent damage to gas works or pipelines and compliance with the Gas Supply Act and the Pipelines Act and regulations, which carries a maximum penalty of \$110,000 (1,000 penalty units) for an individual (proposed subsections 63C(4)(b) of the Gas Supply Act and 60AC(4)(b) of the Pipelines Act)
- non-compliance with directions to not enter or to leave a place by, or during a certain time to enable investigations or protect public safety, which carries a maximum penalty of \$110,000 (1,000 penalty units) for an individual (proposed subsections 63D(6)(b) of the Gas Supply Act and 60AD(6)(b) of the Pipelines Act)

- failure to return an inspector's certificate of authority as soon as practicable after ceasing to be an inspector, which carries a maximum penalty of \$11,000 (100 penalty units) (proposed sections 62(3) of the Gas Supply Act and 59(3) of the Pipelines Act)
  - obstructing or impersonating inspectors, which carries a maximum penalty of \$110,000 (1,000 penalty units) for an individual (proposed section 59A of the Pipelines Act).
- 6.15 The Bill also proposes to insert section 84 into the Gas Supply Act, which would make offences under the Act or regulations 'continuing offences'. This would allow a penalty to accrue for each day a contravention continues until compliance is achieved.
- 6.16 Under proposed subsection 84(3) of the Gas Supply Act, proposed section 84 applies if the Act or regulations provide a penalty for continuing offences. A similar provision currently exists under section 65 of the Pipelines Act.
- 6.17 The proposed continuing offences include:
- unauthorised gas reticulation, with a further \$55,000 (500 penalty units) for each day the offence continues (proposed section 5(1)(b) of the Gas Supply Act)
  - unauthorised distribution of liquefied petroleum gas or other gases, with a further \$55,000 (500 penalty units) for each day the offence continues (proposed section 34(b) of the Gas Supply Act)
  - non-compliance with directions to disconnect or discontinue gas supply, with a further \$11,000 (100 penalty units) for each day the offence continues (proposed section 54(3)(b) of the Gas Supply Act)
  - failure to return an inspector's certificate of authority, with a further \$1,100 (10 penalty units) for each day the offence continues (proposed sections 62(3) of the Gas Supply Act and section 59(3) of the Pipelines Act)
  - non-compliance with directions to ensure safe gas supply or prevent damage to gas works or pipelines, with a further \$11,000 (100 penalty units) for each day the offence continues (proposed subsections 63C(4)(b) of the Gas Supply Act and 60AC(4)(b) of the Pipelines Act)
  - non-compliance with directions to enable investigations or protect public safety, with a further \$11,000 (100 penalty units) for each day the offence continues (proposed subsections 63D(6)(b) of the Gas Supply Act and 60AD(6)(b) of the Pipelines Act)
  - theft of gas or substances from pipelines or damage to pipelines, with a further \$5,500 (50 penalty units) for each day the offence continues (proposed subsection 65(b) of the Gas Supply Act and 63(1)(b) of the Pipelines Act)
  - non-compliance with cyber security directions, with a further \$4,400 (40 penalty units) for each day the offence continues (proposed section 76A(4)(b) of the Gas Supply Act)

- non-compliance with pipeline construction and operation requirements, with a further \$22,000 (200 penalty units) for each day the offence continues (proposed section 11 of the Pipelines Act).

6.18 In her second reading speech, the Minister noted that the amendments would align offences and penalties across the Gas Supply Act and the Pipelines Act to 'deter breaches of the regulatory framework'.

**The Bill proposes to introduce new absolute liability offences into the *Gas Supply Act 1996* (the Gas Supply Act) and the *Pipelines Act 1967* (the Pipelines Act) for non-compliance with requirements related to gas supply and pipeline operations and infrastructure management. These offences would carry maximum penalties for an individual, ranging from \$11,000 (100 penalty units) to \$110,000 (1,000 penalty units).**

**The Bill also seeks to insert section 84 into the Gas Supply Act to designate certain offences under the Act or regulations as 'continuing offences'. This provision would allow penalties to accrue for each day a contravention continues until compliance is achieved. A similar provision exists under section 65 of the Pipelines Act. As a result, a series of new continuing offences would be created under the regulatory framework.**

**The Committee generally comments on absolute liability offences, as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory contexts to encourage compliance. It also notes that the proposed penalties are monetary only, not custodial.**

**The Committee further notes that the accumulation of daily financial penalties for ongoing non-compliance could lead to disproportionately high penalties for a single offence. In this way, continuing penalties may conflict with principles of proportionality and fair trial rights. However, the Committee recognises that the provisions are intended to promote compliance with the regulatory framework governing the gas network infrastructure regime to ensure public safety. In the circumstances, the Committee makes no further comment.**

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

#### *Significant matters deferred to regulations*

- 6.19 Proposed section 76B of the Gas Supply Act would allow regulations to establish requirements for network operators to provide specified information to the Minister or the Secretary. This includes information about accidents and incidents involving distribution pipelines and distribution systems, the operation of basic metering equipment and reporting on gas leaks.
- 6.20 A note attached to proposed section 76B clarifies that section 83(6) of the Gas Supply Act allows regulations to create offences punishable by a penalty of up to \$550,000 (5,000 penalty units) for an individual.
- 6.21 Proposed subsections 83(2)(n)-(o) of the Gas Supply Act would grant regulation-making powers regarding:



- (a) the decommissioning or cessation of gas network operations, including requirements for decommissioning and abandonment planning for network operators, and
  - (b) the suspension of gas network operations, including suspension planning and other related requirements for network operators.
- 6.22 The Bill also proposes inserting subsection 22(4) into the Pipelines Act, which would grant regulation-making powers for the compulsory acquisition of certain lands for pipeline construction and operation.
- 6.23 In her second reading speech, the Minister stated that this regulation-making power would allow for requirements, similar to those outlined in the *Land Acquisition (Just Terms Compensation) Act 1991*, to be specified for establishing a land acquisition process that 'meets contemporary community expectations' and 'is consistent with other energy infrastructure'.
- 6.24 Further, the Bill seeks to amend Schedule 2 of the Pipelines Act to grant regulation-making powers enabling the Minister to:
- (a) direct a licensee or former licensee to dispose of property brought onto land in connection with a pipeline, and
  - (b) provide for the suspension of pipeline operations, including planning and other requirements for licensees.

**The Bill seeks to insert section 76B and subsection 83(2)(n)-(o) into the Gas Supply Act 1996 (the Gas Supply Act) and subsection 22(4) into the Pipelines Act 1967. These amendments would allow regulations to address significant aspects of the regulatory framework for gas operations and infrastructure, including notification and reporting requirements for network operators and compulsory acquisition processes for pipeline land and easements. Proposed section 76B of the Gas Supply Act would enable regulations to require network operators to provide specified information to the Minister for Energy or the Secretary of the Department of Climate Change, Energy, the Environment and Water, such as details about accidents, gas leaks, and the operation of metering equipment. A note to proposed section 76B clarifies that section 83(6) of the Gas Supply Act allows for the creation of offences under the regulations, with penalties of up to \$550,000 for individuals that would serve as a strong deterrent against non-compliance.**

**The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. This is particularly important where the matters deferred to the regulations constitute significant aspects of the regulatory framework.**

**However, the Committee acknowledges that deferring these matters to the regulations may provide necessary flexibility to support gas operations and infrastructure management. The Committee also notes that regulations are required to be tabled in Parliament and are subject**

**to disallowance under section 41 of the *Interpretation Act 1987*. Therefore, in the circumstances, the Committee makes no further comment.**

*Penalty notices offences*

- 6.25 Proposed subsection 85(1) of the Gas Supply Act would allow a government inspector to issue a penalty notice to a person 'if it appears to the government inspector that the person has committed a penalty notice offence'.
- 6.26 A similar amendment is proposed in subsection 66(1) of the Pipelines Act.

**The Bill proposes to amend the *Gas Supply Act 1996* (the Gas Supply Act) and the *Pipelines Act 1967* (the Pipelines Act) to allow a government inspector or an inspector to issue a penalty notice to a person 'if it appears to the inspector that the person has committed a penalty notice offence'. Government inspectors and inspectors are appointed by the Minister for Energy under section 77(1) of the Gas Supply Act and subsection 59(1) of the Pipelines Act.**

**The Committee notes that penalty notices allow an individual to pay a specified amount in lieu of electing to have the matter heard by a court. This may impact a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision-maker.**

**However, the Committee recognises that an individual would retain the right to elect to have their matter heard and decided by a court. It also acknowledges that there is a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. In the circumstances, the Committee makes no further comment.**

*Wide power of delegation*

- 6.27 The Bill proposes to insert section 83A into the Gas Supply Act, which would allow the Minister to delegate any of their functions (other than the power of delegation) to the Secretary. Under proposed subsection 83A(2), the Secretary may further subdelegate functions delegated by the Minister (other than the power of delegation) to a person employed in the Department of Climate Change, Energy, the Environment and Water, or a person authorised by regulations.

**The Bill proposes to amend the *Gas Supply Act 1996* to allow the Secretary of the Department of Climate Change, Energy, the Environment and Water to further subdelegate functions delegated by the Minister for Energy (other than the power of delegation) to a person employed in the Department of Climate Change, Energy, the Environment and Water, or other person authorised by regulations.**

**The Bill would therefore enable the broad delegation of statutory functions to a large group of people within the public service and potentially to other unspecified classes of people as authorised by regulations. This may result in private individuals being delegated functions under the Act that would typically be expected to be performed by appointed or senior public officials or authorities. The Committee generally prefers that the categories of persons eligible for delegation of**

**statutory functions be clearly specified and appropriately limited in primary legislation to ensure clarity and oversight in the exercise of executive and public functions.**

**However, the Committee acknowledges that allowing regulations to prescribe who may be delegated certain functions and allowing for public service employees to be delegated functions may provide necessary flexibility in the administration of the regulatory framework. The Committee also recognises that regulations identifying a class of persons to be delegated functions are still required to be tabled in Parliament and would therefore be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.**

## 7. Health Services Amendment (Hospital Helipads) Bill 2024\*

Date introduced	22 November 2024
House introduced	Legislative Assembly
Member with carriage	Mr Gareth Ward MP
	*Private Members Bill

### Purpose and description

- 7.1 The object of this Bill is to require the Minister for Health (the **Minister**) to ensure that each public hospital with an emergency department has a helipad.

### Background

- 7.2 The Bill proposes to insert section 132A into the *Health Services Act 1997* (the **Act**). The proposed provision would require the Minister to ensure that each public hospital with an emergency department has a helipad located in or near the public hospital. The helipad would be required to be constructed either when the public hospital is built or when a substantial redevelopment of the hospital is carried out.
- 7.3 In his second reading speech, Mr Gareth Ward MP said that there is currently 'no established legislation in relation to the design, construction or placement of helicopter landing sites' and that the Bill would ensure that relevant hospitals will have helipads.
- 7.4 Mr Ward went on to note that the costs associated would be a 'one-off capital cost'.

### 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. Health Services Amendment (Industrial Relations) Bill 2024\*

Date introduced	15 November 2024
House introduced	Legislative Assembly
Member with carriage	Dr Joe McGirr MP
	*Private Members Bill

### Purpose and description

- 8.1 The object of this Bill is to make amendments to the *Health Services Act 1997* (the **Act**) and the Health Services Regulation 2018 (the **Regulation**) consequent on the re-establishment of the Industrial Court.

### Background

- 8.2 The Bill seeks to provide for a judicial member of the Industrial Relations Commission (the **Commission**) to be appointed as an arbitrator. The Bill also provides that this role would involve determining the terms and conditions of work, rates of remuneration, how those rates apply, and when the conditions take effect for visiting medical officers engaged under fee-for-service contracts and/or sessional contracts.
- 8.3 In his second reading speech, Dr Joe McGirr MP explained that the proposed amendments would restore the arrangements that existed before the dissolution of the Industrial Court in 2016. Dr McGirr also noted that the amendments would align visiting officers with other health workers under the arbitration system and Industrial Court, as provided for by the *Health Services Act 1997*.
- 8.4 The key provisions proposed by the Bill are:
- requiring the Minister for Industrial Relations (the **Minister**) to appoint a judicial member of the Commission as an arbitrator for disputes about service contracts, instead of appointing someone under the Regulation
  - repealing clause 34 of the Regulation, which outlines how the Minister appoints an arbitrator.

### 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*.**

## 9. Mental Health Legislation Amendment Bill 2024

Date introduced	21 November 2024
House introduced	Legislative Council
Member with carriage	The Hon. Rose Jackson MLC
Portfolio	Health

### Purpose and description

- 9.1 The objects of the Bill are to:
- (a) amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the **Forensic Provisions Act**) to provide for the composition of the Mental Health Review Tribunal (the **Tribunal**) when making certain orders for leave in relation to forensic patients
  - (b) amend the *Mental Health Act 2007* (the **Mental Health Act**) to clarify the remuneration and other entitlements of:
    - (i) Magistrates appointed as the President of the Tribunal (the **President**) or a full-time Deputy President of the Tribunal (the **Deputy President**)
    - (ii) Judges appointed as a full-time Deputy President of the Tribunal (also a **Deputy President**).

### Background

- 9.2 In her second reading speech, the Hon. Rose Jackson MLC, Minister for Mental Health, commented that the Bill introduces 'several key reforms' to address:

...concerns regarding the oversight of forensic patients, particularly in relation to their use of social media and the decision-making processes for granting leave.

- 9.3 The Bill proposes amendments to the Forensic Provisions Act to require that the Tribunal be constituted of at least one holder or former holder of a judicial office for it to make a decision on:
- (a) orders for the release of a forensic patient, or
  - (b) orders granting a leave of absence to a forensic patient where the forensic patient is not escorted by a person employed at the mental health facility or place of detention.
- 9.4 The Statement of Public Interest tabled with the Bill noted that this amendment is 'in line with the current requirements for orders granting release of forensic patients'.

- 9.5 The Bill also amends the Forensic Provisions Act to provide that the Tribunal may impose prohibitions or restrictions on the use of social media or other forms of online communication when making an order for the release of a forensic patient.
- 9.6 Further, the Bill amends the Mental Health Act so that magistrates and judges appointed as the President or a full-time Deputy President of the Tribunal would 'retain their judicial status and entitlements and the higher of the tribunal remuneration or judicial remuneration'. Under the Mental Health Act this currently only applies to judges that are appointed as President.
- 9.7 The Minister noted that the change 'will assist in attracting magistrates and judges to the tribunal' and allow 'judges and magistrates to be appointed to the tribunal for short periods to deal with any unexpected increases in workload'.

### 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*.**

## 10. Ports and Maritime Administration Amendment (White Bay Cruise Terminal—Shore Power) Bill 2024\*

Date introduced	15 November 2024
House introduced	Legislative Assembly
Member with carriage	Ms Kobi Shetty MP
	*Private Members Bill

### Purpose and description

- 10.1 The object of this Bill is to require, from 1 January 2027, cruise ships to use shore power while berthed at White Bay Cruise Terminal (the **Terminal**).

### Background

- 10.2 The Bill proposes amendments to the *Ports and Maritime Administration Act 1995* (the **Act**) so that cruise ships must switch from diesel engine power to shore power when berthed at the Terminal.
- 10.3 In her second reading speech, Ms Kobi Shetty MP explained that, currently, when cruise ships berth at the Terminal using diesel engine power, nearby residents are impacted by 'harmful emissions and noise pollution'.
- 10.4 Ms Shetty stated that in March 2022 the former Coalition Government 'confirmed a \$60 million project would finally bring shore power to White Bay Cruise Terminal by the end of 2024'. However, Ms Shetty added that the current Premier had since indicated that completion of the project 'would be delayed until the end of 2026.'
- 10.5 The Bill proposes to amend the Act (with the amendments taking effect from 1 January 2027) to provide that:
- (a) the Port Authority of New South Wales must only allow cruise ships equipped with shore power capabilities to berth at the Terminal, and that it must require those ships to use shore power while berthed
  - (b) an offence be created for the master and owner of a cruise ship if that ship berths at the Terminal and is not equipped for shore power (maximum penalty of \$5,500 (50 penalty units) for an individual or \$110,000 (1,000 penalty units) otherwise)
  - (c) an offence be created for the master and owner of a cruise ship if that ship uses power other than shore power while berthed at the Terminal (maximum penalty of \$5,500 (50 penalty units) for an individual or \$110,000 (1,000 penalty units) otherwise).



### 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*.**

## 11. Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024

Date introduced	21 November 2024
House introduced	Legislative Council
Member with carriage	The Hon. Penny Sharpe MLC
Portfolio	Environment

### Purpose and description

11.1 The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* (the **Act**) to provide for mandates for the source-separated collection of food organics and garden organics (**FOGO**) waste from households and businesses, including by requiring:

- (a) supermarkets, various institutions and hospitality premises that meet specified bin capacity limits to ensure the separate collection and transport of food organics waste from 1 July 2026
- (b) local councils to separately collect and transport FOGO waste from households that receive a residual waste collection service from 1 July 2030
- (c) large supermarkets to report monthly on surplus food donations from 1 July 2026.

### Background

11.2 The Bill would insert section 170E into the Act which requires local councils to:

- (a) provide each household in the local government area with a bin to collect FOGO waste (proposed subsection 170E(1))
- (b) collect FOGO waste from households in the local council's area for transportation away at least once each week for food organics waste and at intervals considered appropriate for garden organics waste (proposed subsection 170E(2))
- (c) ensure FOGO waste is not mixed with non-organic waste during transportation (proposed subsection 170E(3)).

11.3 The associated maximum penalty for local councils failing to comply with section 170E is a \$500,000 fine. For each day local councils fail to comply with subsections 170E(1) or (2) a \$50,000 fine applies.

- 11.4 The Bill would also introduce section 170F to provide that businesses and institutions that meet the definition of 'relevant premises' under 170B and waste requirements under 170F(4) must:
- (a) provide a sufficient number of bins for the collection of food organics waste generated by persons using the relevant premises in all areas that food organics waste is generated (e.g. kitchens and food service counters) (proposed subsection 170F(1))
  - (b) ensure food organics collected are transported away from the relevant premises at least once a week (proposed subsection 170F(2))
  - (c) ensure food organics are not mixed with non-organic waste during transportation (proposed subsection 170F(3)).
- 11.5 The associated maximum penalties for individuals failing to comply is a \$250,000 fine and a \$500,000 fine for corporations. For each day individuals fail to comply with subsections 170F(1) or (2) a \$25,000 fine applies. For each day corporations fail to comply with subsections 170F(1) or (2) a \$50,000 fine applies.
- 11.6 The Statement of Public Interest tabled with the Bill notes that amendments are 'needed to significantly reduce the amount of recoverable residual waste ending up in landfill'.
- 11.7 The Bill further proposes to introduce a requirement for operators of large supermarkets to keep records of their food donations. Proposed subsection 170H(1) requires operators to record the weight of certain categories of food and the organisation it is donated to. Proposed subsection 170H(2) sets out the requirements for how the records are to be kept and requires operators to make records available to authorised officers appointed by the NSW Environment Protection Authority. The associated maximum penalty under section 170H is a \$125,000 fine for individuals and a \$250,000 fine for corporations.
- 11.8 In her second reading speech, the Hon. Penny Sharpe MLC, Minister for the Environment, noted that the amendments are intended to 'encourage the donation of usable food, to avoid food waste and bring greater transparency to food donations'.
- 11.9 The Bill also provides savings and transitional provisions that specify when local councils and relevant premises are required to comply with the new provisions.

### 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*.**

## 12. Road Transport Amendment (Driving Through Floodwaters) Bill 2024 (No. 2)\*

Date introduced	15 November 2024
House introduced	Legislative Assembly
Member with carriage	Mr Gareth Ward MP
	*Private Members Bill

### Purpose and description

- 12.1 The object of this Bill is to amend the *Road Transport Act 2013* (the **Act**) to:
- (a) prohibit a person deliberately and recklessly driving through floodwaters
  - (b) require penalties for breach of the prohibition to be paid into the New South Wales State Emergency Service (**SES**) Fund.

### Background

- 12.2 The Bill seeks to make it an offence to deliberately drive a motor vehicle on a part of a road covered by floodwaters while being reckless as to the risk of death or injury to the person or another person that arises from that conduct. The proposed maximum penalty for the offence is a \$550 fine (5 penalty units), with any penalties to be paid to the NSW SES.
- 12.3 In his second reading speech, Mr Gareth Ward MP explained that the Bill is intended to 'support the SES and emergency services responders who put their lives on the line' rescuing drivers from floodwaters. Mr Ward noted that the proposed penalty is intended to make people think twice so there is some consideration of moral hazard.
- 12.4 The Committee notes that the Bill's provisions are similar to the provisions of the Road Transport Amendment (Driving Through Floodwaters) Bill 2024, which was introduced by Mr Ward into the Legislative Assembly on 20 June 2024 and which lapsed on 9 November 2024, in accordance with Legislative Assembly Standing Order 105.
- 12.5 Mr Ward explained that the mental element of the offence was changed from 'deliberate or reckless' in the earlier version of the Bill to 'deliberate and reckless' in its latter iteration, to make it 'a higher bar that needs to be established'. Mr Ward further explained that the change is intended to capture individuals who drive 'into circumstances that [are] entirely avoidable' rather than 'people who are caught unwittingly in floodwaters'.

- 12.6 The Committee reported on the Road Transport Amendment (Driving Through Floodwaters) Bill 2024 in Digest 16/58<sup>5</sup>, and the comments in this report are consistent with the Committee's previous comments in relation to proposed subsection 118A(2)(b). In the previous Digest, the Committee noted that the effect of the subsection being insufficiently defined may impact on a person's right to a fair trial, specifically the automatic right to have their matter heard by an impartial decision maker. The Committee therefore referred the matter to Parliament for its consideration.

## 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*

- 12.7 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 and recklessly drive a motor vehicle on a part of a road covered by floodwaters.
- 12.8 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.
- 12.9 In his second reading speech, Mr Ward commented that the Bill 'works within the realm of established police discretion and will provide the police with the option to fine people if they see that people have behaved in a manner that is reckless or endangers others'.

**The Bill seeks to create an offence under the *Road Transport Act 2013* (the Act) for deliberately driving a motor vehicle on a part of a road covered by floodwaters and being reckless as to the risk of death or injury to the person or another person that arises from that conduct. 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 provide 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 the 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, because the Bill does not refer to the Regulation, it is unclear whether the proposed offence would be**

---

<sup>5</sup> Legislation Review Committee, [Legislation Review Digest](#), Digest 16/58, Parliament of New South Wales, 6 August 2024, pp 32-33.

**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', 'deliberatively' and 'reckless' are also not defined within the proposed section, which may create ambiguity when determining whether an offence has occurred.**

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

## 13. Strata Schemes Legislation Amendment Bill 2024

Date introduced	20 November 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Better Regulation and Fair Trading

### Purpose and description

- 13.1 The objects of the Bill are to:
- (a) amend the *Strata Schemes Management Act 2015* (the **SSMA**) to implement some of the recommendations made in the report on the statutory review of the Act tabled in Parliament on 29 November 2021
  - (b) make related amendments to the *Community Land Management Act 2021* (the **CLMA**) and the regulations made under the SSMA and the CLMA
  - (c) make consequential amendments to other Acts and regulations.

### Background

- 13.2 The Bill seeks to amend the SSMA and CLMA to implement recommendations from a 2021 statutory review of both Acts and other reforms raised by stakeholders.
- 13.3 In his second reading speech, the Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, described the Bill as being part of 'an extensive reform agenda for the strata sector that started with reforms implemented by the *Strata Legislation Amendment Act 2023*'.
- 13.4 The Minister explained that the reforms aim to:
- protect owners' corporations, improve the accountability of strata management services, ensure owners' corporations maintain their buildings and make strata living easier for residents.
- 13.5 The Bill proposes key amendments to the SSMA and CLMA, to:
- lower the voting threshold for owners' corporations to instal accessibility infrastructure, and set out specific procedures for that purpose
  - strengthen the offence regime for failing to comply with certain strata scheme administrative and reporting requirements
  - clarify and expand the duties and obligations of strata committee members, strata managing agents, building managers and owners

- give the Fair Trading Commissioner (the **Secretary**) the power to investigate, monitor and enforce compliance with the SSMA and CLMA.

13.6 The Bill also proposes consequential amendments to the Community Land Management Regulation 2021, the *Conveyancing Act 1919*, the Conveyancing (Sale of Land) Regulation 2022, the *Fair Trading Act 1987*, the *Law Enforcement (Powers and Responsibilities) Act 2002*, the Property and Stock Agents Regulation 2022, the Strata Schemes Management Regulation 2016, and the *Uncollected Goods Act 1995*.

## Issues considered by the Committee

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

#### *Wide regulatory powers impacting personal rights and liberties – investigation and enforcement powers*

13.7 The Bill seeks to provide the Secretary with new investigation and enforcement powers by inserting 'Part 10A: Investigation and enforcement powers' into the SSMA and the CLMA.

13.8 These proposed changes would allow the Secretary to:

- (a) require answers from a person about a matter if the Secretary reasonably suspects the person to have knowledge of the matter and reasonably requires information about the matter for an authorised purpose (proposed sections 188E of the SSMA and 177E of the CLMA).<sup>6</sup>
- (b) despite the provisions of another law, record a person answering questions, if they inform the person the record is being made and a copy of the record is provided to the person as soon as practicable after the record is made (proposed sections 188F of the SSMA and 177F of the CLMA).
- (c) enter premises that are not used only for residential purposes at a reasonable hour during daytime, with or without a search warrant (proposed subsections 188G(1)-(2) of the SSMA and 177G(1)-(2) of the CLMA).
- (d) enter premises that are used only for residential purposes with the occupier's permission or with a search warrant (proposed subsections 188G(3) of the SSMA and 177G(3) of the CLMA).
- (e) seize a 'thing' the Secretary reasonably believes is connected with a contravention of an owners' corporation's duty to maintain and repair property (proposed subsections 188M(1)(a) of the SSMA and 177M(1)(a) of the CLMA).

---

<sup>6</sup> Proposed sections 188B of the SSMA and 177B of the CLMA defines 'authorised purpose' to include: investigating/enforcing compliance with section 106 of the SSMA and section 109 of the CLMA (owners corporation duty to maintain and repair property), obtaining information or records connected with the administration of proposed Part 10A and administering or executing proposed Part 10A, including regulations made under this part.



- (f) do anything the Secretary considers to be 'reasonably necessary' for an authorised purpose (proposed sections 188N of the SSMA and 177N of the CLMA).

13.9 Under proposed sections 188P-Q of the SSMA and 177P-Q of the CLMA, a person who fails to comply with the Secretary's direction or prevents the Secretary from exercising their functions is liable to pay a \$2,200 fine (20 penalty units). For each day a person fails to comply with the Secretary's direction, a \$220 fine (2 penalty units) also applies.

**The Bill proposes to grant the Fair Trading Commissioner (the Secretary) broad investigative and enforcement powers by inserting Part 10A into the *Strata Schemes Management Act 2015* and the *Community Land Management Act 2021*. These include powers to: require certain information the Secretary reasonably suspects a person has knowledge of and is reasonably required for an authorised purpose; record the information where the person is told and given a copy of the record; enter certain premises with or without a search warrant; and seize any item reasonably believed to be connected with a contravention of the duty of an owners' corporation to maintain and repair property.**

**By providing for broad powers to require and record certain information, and to enter and search premises and seize items, the Bill may impede upon individuals' personal rights and liberties, including the right to privacy, the right to silence and property rights.**

**The Committee notes that the Secretary may only enter a residential premises with the permission of the occupier or a search warrant, and if the Secretary reasonably believes there has been a contravention of the duty of an owners' corporation to maintain and repair property and an item connected with the breach is located on the premises. The Committee also acknowledges the Minister's comments that the Bill is designed to strengthen New South Wales's strata management scheme and protect owners and residents.**

**However, the Committee notes that the significant powers to require a person to provide information and to 'do anything' the Secretary considers 'reasonably necessary' under the Bill may be exercised for broadly defined purposes, including administering or executing proposed Part 10A and any regulations made under it. The Committee further notes that failure to comply with the Secretary's direction attracts a \$2,200 fine (20 penalty units) as well as a \$220 fine (2 penalty units) for each additional day the direction is not complied with. For these reasons, the Committee refers this issue to Parliament for its consideration.**

*Retrospective application of laws*

- 13.10 The Bill proposes to insert a savings and transitional provision into the SSMA and CLMA in relation to the proposed amendments to subsection 103(3)(c) of the SSMA and subsection 106(3)(c) of the CLMA.
- 13.11 Currently, under subsection 103(3)(c) of the SSMA and subsection 106(3)(c) of the CLMA, an owners' corporation or strata committee can obtain paid legal services for the purpose of taking 'legal action' prescribed by regulations without an approving resolution having to be passed at a general meeting of the owners' corporation.

- 13.12 The Bill seeks to remove the requirement that the legal services obtained must be for the purpose of taking 'legal action'.
- 13.13 The explanatory note to the Bill explains that this amendment is 'to clarify that an owners corporation or strata committee may obtain non-urgent legal services without the approval of the owners corporation at a general meeting'.
- 13.14 Schedule 1 [58] and Schedule 2 [52] of the Bill provides that subsections 103(3)(c) and 106(3)(c) are 'taken to have been in force from the beginning of 30 November 2016'.

**The Bill seeks to amend subsection 103(3)(c) of the *Strata Schemes Management Act 2015* and subsection 106(3)(c) of the *Community Land Management Act 2021* to remove the requirement that owners' corporations and strata committees can obtain legal services without approval, only where the legal services sought are for the purpose of taking legal action. The Bill also seeks to insert savings and transitional provisions into the Act that would retrospectively apply the amendments from 30 November 2016.**

**The Committee generally comments on provisions that are drafted to have retrospective effect because they impact the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

**However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact a person's rights or liberties. The Committee also notes that the retrospective application is intended to provide legislative clarity about when obtaining legal services requires approval from an owners' corporation at a general meeting. For these reasons, the Committee makes no further comment.**

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

##### *Wide regulation-making power*

- 13.15 The Bill seeks to insert section 70A into the SSMA which creates offences for building managers failing to act in the best interests owners' corporations without a reasonable excuse, as well as breaching a duty prescribed by the regulations. The maximum penalty for an individual building manager breaching their duties is an \$11,000 fine (100 penalty units). Proposed subsection 70A(3) also allows for the regulations to prescribe 'additional duties of building managers'.
- 13.16 In his second reading speech, the Minister noted that the Bill 'includes a regulation-making power allowing for further obligations to be imposed...to ensure that the new obligations are fit for purpose'.

**The Bill proposes to amend the *Strata Schemes Management Act 2015* to create a new offence for building managers breaching a duty prescribed by the regulations without a reasonable excuse. The associated maximum penalty for an individual building manager is an \$11,000 fine (100 penalty units). The Bill also inserts subsection 70A(3) which**

provides that the regulations 'may prescribe additional duties of building managers'.

The Committee acknowledges that there does not appear to be any provisions that limit or define the 'duties' that may be prescribed by the regulations. The Bill may therefore include a wide regulation-making power. The Committee generally comments on wide regulation-making powers that delegate legislative power in respect to matters that are substantive and not just administrative in nature. It generally prefers that such matters are specified in primary legislation.

However, the Committee acknowledges that these kinds of regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. The Committee also recognises that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. Further, the Committee notes that building managers are exempt from complying with duties prescribed by the regulations where they have a 'reasonable excuse'. For these reasons, the Committee makes no further comment.

# Part Two – Regulations without comment

# Regulations without comment

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

## 1. [Children's Court Act 1987 – Practice Note 19 Support Plan Conference Pilot](#)

This Practice Note makes provision for the conduct of a pilot program for alternative dispute resolution in the Children's Court. The program will operate at Surry Hills Children's Court and applies to care orders filed between 2 May 2024 and 2 May 2025.

The alternative dispute resolution process, known as a 'Support Plan Conference', will be overseen by the Children's Registrar.

The Support Plan Conference aims to assist parties to reach agreement on:

- (a) what the risks and safety concerns for the child are
- (b) the actions parents or carers can take to reduce the risk and safety concerns for the child
- (c) the support that will be provided to the parent or carer to address the risk and safety concerns
- (d) the persons or agencies that will fund or provide programs or services
- (e) the level of engagement or achievement by a parent or carer that would demonstrate reduced risk
- (f) the most appropriate short-term or proposed long-term placement for the child
- (g) the contact arrangements between the child, their parents and others during court proceedings
- (h) cultural planning.

The pilot model will be guided on principles outlined in the *Children and Young Persons (Care and Protection) Act 1998*. This Practice Note also provides for procedural matters relating to the running of the program, such as what will be considered at the first mention.

This Practice Note is made under section 23A *Children's Court Act 1987* and does not appear to engage with procedural fairness or other issues set out in section 9 of the *Legislation Review Act 1987*.

## 2. [Community Land Management Amendment \(Pets\) Regulation 2024](#)

The object of this Regulation is to specify the circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or association property.

The Regulation is made under section 129A(3) of the *Community Land Management Act 2021* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

3. [Criminal Procedure Amendment \(Expansion of Traffic Offender Intervention Program\) Regulation 2024](#)

The object of this Regulation is to amend the Criminal Procedure Regulation 2017 to include not-for-profit entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth as entities that may be an approved traffic course provider under the traffic offender intervention program.

The Regulation is made under subsection 347(3)(h) of the *Criminal Procedure Act 1986*.

The Regulation makes minor changes to expand eligibility for approved traffic course providers to include not-for-profit entities registered under Commonwealth legislation, without introducing new obligations or significant changes to the existing framework. Therefore, it does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

4. [Electoral Funding Amendment \(Administration Fund\) Regulation 2024](#)

The object of this Regulation is to amend the Electoral Funding Regulation 2018 to prescribe categories of administrative expenditure under the *Electoral Funding Act 2018*, section 84(1)(a)(xi).

This Regulation is made under the *Electoral Funding Act 2018*, sections 84(1)(a)(xi) and 156, the general regulation-making power, and Schedule 2, clause 26.

The Regulation does not unreasonably restrict the expenditure of funds for electoral matters and therefore does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Environmental Planning and Assessment Amendment \(Development Consents\) Regulation 2024](#)

The object of this Regulation is to exempt the following from the operation of the Environmental Planning and Assessment Regulation 2021, section 97A:

- (a) a development consent to carry out State significant development
- (b) a complying development certificate
- (c) a development consent granted by the Minister under the Environmental Planning and Assessment Act 1979 (the Act), Part 4, Division 4.3.

The Regulation is made under the Act, including section 10.13, the general regulation-making power. It clarifies that certain noise conditions in development consents still apply to specific approvals, such as State significant development and Minister-approved projects. This minor change clearly defines the exemptions without altering the overall framework and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

6. [Environmental Planning and Assessment Amendment \(Government and Non-Government Schools\) Regulation 2024](#)

The object of this Regulation is to make amendments consequential on State Environmental Planning Policy (Transport and Infrastructure) Amendment (No 2) 2024 in relation to new health service facilities and new government schools.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 1.4(1), definition of 'public authority', paragraph (g), 5.6, 5.10 and 10.13, the general regulation-making power.

The Regulation makes minor changes to update notification rules for school and health facility developments and to classify non-government schools as public authorities for certain development purposes. These changes primarily clarify administrative processes and improve transparency. Therefore, it does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

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

The objects of this Regulation are to:

- (a) require a person applying for development consent to carry out development on land in the Hornsby Transport Oriented Development Precinct to submit an assessment of the consistency of the development with the Hornsby Precinct Design Guide with the application
- (b) provide for specific maximum percentages of development levy that may be imposed in relation to development in the precinct.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12, 4.64, 7.12, 10.13, the general regulation-making power, and 10.15.

The Regulation prescribes development compliance in the Hornsby Transport Oriented Development Precinct, with similar provisions applying to other areas. These administrative changes do not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

#### 8. [Local Court Act 2007 - Practice Note—Bail Proceedings \(Centralised Bail Courts\)](#)

This Practice Note applies to Centralised Bail Courts hearing adult bail application proceedings under the *Bail Act 2013* in the Local Court. The purpose of the Practice Note is to outline the practice and procedure to be adopted in bail application proceedings in 'Centralised Bail Courts'. Centralised Bail Courts are courts that operate during closure periods, such as weekends, public holidays, judicial conferences and the Local Court fixed vacation periods.

This Practice Note lists procedural matters such as hearing times, progression of matters, and the circumstances in which a bail determination can be made where there are orders under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

This Practice Note is made under section 27 of the *Local Court Act 2007* (NSW). It commenced on 26 October 2024 and does not raise any procedural fairness issues or other issues set out in section 9 of the *Legislation Review Act 1987*.

#### 9. [Marine Pollution Amendment Regulation 2024](#)

The object of this Regulation is to amend the Marine Pollution Regulation 2024 (the **Principal Regulation**) to clarify the intended operation of certain sections and to correct cross-references. For example, the amendments clarify that the *Marine Pollution Act 2012* (the **Act**), Part 13 applies to all special recreational vessels, as defined in the *Special Recreational Vessels Act 2019* of the Commonwealth, including those that would otherwise be excluded by the Act, section 173(a).

This Regulation clarifies existing offences under the Principal Regulation without creating new offences. Therefore, it does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

#### 10. [Music Festivals Amendment \(Delegation\) Regulation 2024](#)

The object of this Regulation is to amend the Music Festivals Regulation 2024 to provide for delegations of the Health Secretary's functions under the *Music Festivals Act 2019* (the **Act**) to members of staff of the Ministry of Health and the NSW Health Service.

Subsection 20(1)(b) of the Act allows the Health Secretary to delegate functions to a person or a class of persons authorised by the regulations. The Regulation specifies that members of staff of the Ministry of Health and the NSW Health Service are authorised persons.

The Regulation does not appear to allow a broad delegation of significant administrative powers and does not appear to engage with any of the other issues set out in section 9 of the *Legislation Review Act 1987*.

11. [NSW Admission Board Eighth Amendment Rule 2024](#)

This object of this Rule is to amend the NSW Admission Board Rules 2015 to make minor changes to the structure of Rule 98.

This Rule replaces words 'exemptions' with 'an exemption' in Rule 98(3) and deletes the word 'or request' in subrule (3)(a).

This Rule commenced on 25 October 2024 and is made under the *Legal Profession Uniform Law Application Act 2014*. This Rule makes minor amendments that do not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

12. [NSW Reconstruction Authority Amendment \(Resilience NSW\) Regulation 2024](#)

The object of this Regulation is to provide that a reference in a contract or agreement, other than an employment contract or agreement, to Resilience NSW is to be read as a reference to the NSW Reconstruction Authority where:

- (a) Resilience NSW is a party to the contract or agreement, and
- (b) the contract or agreement was in force immediately before the abolition of Resilience NSW by the Administrative Arrangements (Administrative Changes—Miscellaneous) Order (No 10) 2022, section 4.

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

13. [Referrable Debt Order](#)

The Order is made under subsection 7(2) of the *State Debt Recovery Act 2019*. The object of the Order is to set out the fees, charges and other amounts declared to be referable debts.

Column 1 lists the fees, charges and other amounts that are referable debts and column 2 specifies the public authorities the amounts are payable to. The Order does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

14. [Statutory and Other Offices Remuneration Amendment Regulation 2024](#)

The object of this Regulation is to amend the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2024 to provide that it is a declared policy that the Statutory and Other Offices Remuneration Tribunal, when making certain determinations about remuneration, must have regard to the fiscal position and outlook of the Government, and the likely effect of making the determination on the position and outlook.



The Regulation also:

- (a) renames the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2024 to account for its expanded application to certain other executive office holders and senior executives
- (b) repeals the Statutory and Other Offices Remuneration (Executive Office Holders and Senior Executives) Regulation 2023 after its only remaining operative provision expires
- (c) repeals redundant and spent provisions
- (d) continues the application of the declared policy of equal remuneration for persons, regardless of gender, for doing work of equal or comparable value.

The Regulation is made under sections 6AA(2)(a) and 6AB(2)(a) of the *Statutory and Other Offices Remuneration Act 1975*. The Regulation does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 15. [Strata Schemes Management Amendment \(Strata Bond\) Regulation 2024](#)

The object of this Regulation is to amend the Strata Schemes Management Regulation 2016 to postpone, to 1 July 2025, 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 the *Strata Schemes Management Act 2015*, including sections 207(2), 214(1)(a) and 271, the general regulation-making power.

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

#### 16. [Superannuation Administration \(Vision Super Transitional Provisions\) Regulation 2024](#)

The object of this Regulation is to facilitate a successor fund transfer of members and benefits from the local government superannuation scheme, Active Super, to Vision Super.

This Regulation is made under the *Superannuation Administration Act 1996*, including sections 127B, 128, 128A and 129, the general regulation-making power.

The Regulation transfers certain government sector employees from Active Super to Vision Super and does not affect the rights or liabilities of those persons. For this reason, the Regulation does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 17. [Supreme Court Practice Note SC EQ 4](#)

This Practice Note applies to the procedure and operation of Corporations Matters in the Equity Division of the Supreme Court of NSW. The purpose of the Practice Note is to facilitate the efficient resolution of Corporations Matters.

It substantially replicates the previous Practice Note, introducing one new amendment. The amendment allows plaintiffs to commence proceedings in the Corporations List by filing an Originating Process and an affidavit or concise statements in narrative form that identifies key issues, facts in dispute and the nature of the relief sought.

This Practice Note was issued on 10 October 2024 and commenced on 17 October 2024. The Practice Note is made under section 124 of the *Supreme Court Act 1970* and does not appear to engage with procedural fairness issues or other issues set out in section 9 of the *Legislation Review Act 1987*.

18. [Surveillance Devices Amendment \(Delegation\) Regulation 2024](#)

The object of this Regulation is to amend the Surveillance Devices Regulation 2022 to authorise the Attorney General to delegate certain functions under the *Surveillance Devices Act 2007* (the **Act**) to certain employees of the department in which that Act is administered.

The Regulation is made pursuant to the delegation powers under section 51B of the Act. The delegated functions relate to:

- (a) serving documents or notifying the Attorney General of certain information relating to the application for surveillance device and retrieval warrants
- (b) the Attorney General being able to be heard during applications for surveillance device and retrieval warrants
- (c) mandatory reporting to the Attorney General of information about the use of surveillance warrants.

The functions may be delegated to an Australian legal practitioner or certain public service employees. The Regulation does not appear to allow a broad delegation of significant administrative powers and does not appear to engage with any other issues set out in section 9 of the *Legislation Review Act 1987*.

19. [The Australian Computer Society Incorporated Professional Standards Scheme](#)

The Notification of the Australian Computer Society Incorporated Professional Standards Scheme (**Scheme**) is made under section 13 of the *Professional Standards Act 1994*.

The purpose of the Scheme is to limit the occupational liability of the Australian Computer Society (**ACS**) members. It establishes the scope and application of the Scheme and the limit of occupational liability. The Scheme sets out the requirements under which a member can benefit from limited occupational liability, provided that:

- (a) a court is satisfied:
  - (i) that the person has an insurance policy that complies with standards determined by the ACS
  - (ii) the policy covers the occupational liability which relates to the cause of action
  - (iii) the amount payable in respect of the occupational liability is more than \$2,000,000.
- (b) the person was a participating member of the ACS at the time of the act or omission in relation to the occupational liability.

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

20. [Transport Administration \(General\) Amendment \(Transport Asset Manager\) Regulation 2024](#)

The object of this Regulation is to amend the Transport Administration (General) Regulation 2018 to regulate the conversion of the Transport Asset Holding Entity (**TAHE**) to the Transport Asset Manager (**TAM**), including making provisions for the appointment of an interim Chief Executive and the transfer of staff from TAHE to TAM.

The Regulation is made under the *Transport Administration Act 1988*, including section 119, the general regulation-making power. The amendments address administrative matters related to this transition, including the transfer of staff to the Transport Service, and do not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

# Appendices

# Appendix One – Functions of the Committee

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

## **8A Functions with respect to Bills**

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

## **9 Functions with respect to regulations**

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

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

# Appendix Two – Unconfirmed extracts of minutes

## Meeting no. 25

**TIME & DATE: 3:04PM, 10 FEBRUARY 2025**

**LOCATION: ROOM 1136 AND WEBEX**

### MEMBERS PRESENT

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

### OFFICERS PRESENT

Rohan Tyler, Alice Zwar, Alex Read, Joan Douce, Mengyuan Chen, Oliver Sinclair, Nicolle Gill and Elizabeth Hawken.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 18 November 2024 be confirmed.

#### 2. ...

#### 3. Consideration of bills with comment for Legislation Review Digest 24/58

Resolved, on the motion of Mr Murphy, seconded Ms Stuart: That the committee adopts the draft reports *in globo*:

- a) Automated External Defibrillators (Public Access) Bill 2024 (No. 3)
- b) Automatic Mutual Recognition Legislation Amendment Bill 2024
- c) Crimes (Administration of Sentences) Amendment Bill 2024
- d) Electoral Amendment (Voter ID and Electronic Mark Off) Bill 2024 (No. 2)
- e) Energy Amendment (Pipelines and Gas Safety) Bill 2024
- f) Road Transport Amendment (Driving Through Floodwaters) Bill 2024 (No. 2)
- g) Strata Schemes Legislation Amendment Bill 2024

#### 4. Consideration of bills without comment for Legislation Review Digest 24/58

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

- a) Crimes Amendment (Animal Sexual Abuse) Bill 2024
- b) Health Services Amendment (Hospital Helipads) Bill 2024
- c) Health Services Amendment (Industrial Relations) Bill 2024
- d) Mental Health Legislation Amendment Bill 2024
- e) Ports and Maritime Administration Amendment (White Bay Cruise Terminal—Shore

Power) Bill 2024

f) Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024

**5. Regulations without comment for Legislation Review Digest 24/58**

Resolved, on the motion of Ms Davis: That the Committee adopts the regulations without comment as Part Two to Digest 24/58.

**6. Legislation Review Digest 24/58**

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. 24/58 and that it be signed by the Chair and presented to the House.

**7. Regulations to be reviewed**

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

**8. Next meeting**

The meeting adjourned at 3:07pm until 17 February 2025 at 3.00pm.