

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



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

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# Membership

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# Guide to the Digest

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

## Part One: Functions Regarding Bills

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

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

- (a) to consider any Bill introduced into Parliament, and
- (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
  - (i) trespasses unduly on personal rights and liberties
  - (ii) makes rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers
  - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions
  - (iv) inappropriately delegates legislative powers, or
  - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

The terms of section 8A are not defined. However, the types of issues the Committee typically addresses in its Digests include, but are not limited to:

**Trespass unduly on personal rights and liberties:**

- retrospectivity
- self-incrimination and the right to silence
- reversal of the onus of proof
- procedural fairness
- rule of law and separation of powers
- extraterritoriality
- strict liability and penalty notice offences
- search and seizure without warrant
- confidential communications and privilege
- wide regulatory powers
- access to vote
- ability to engage in public life and public elections
- equal application of laws
- freedom of expression and free speech
- freedom of religion and belief
- freedom of contract
- right to personal and real property
- privacy and protection of personal information
- right to personal physical integrity
- legislative interference in standing judicial matters

**Insufficiently defined administrative powers:**

- insufficiently defined or wide powers

**Non-reviewable decisions:**

- excludes access to review
- limits type of evidence available to a decision-maker
- provides decision-maker is not required to provide reasons for a decision
- decisions made in private

**Inappropriate delegation of legislative powers:**

- provides the executive with unilateral authority to commence an Act (i.e. commencement by proclamation)
- wide power of delegation
- wide regulation-making powers (e.g. creation of offences or setting penalties)
- Henry VIII clauses (clauses that allow amendment of Acts by regulation)
- imposition of tax or levy by regulation

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny**

- subordinate legislation not tabled in Parliament and not subject to disallowance
- insufficient disallowance period
- significant matters which should be set by Parliament (e.g. definitions)
- incorporating rules or standards of other bodies in force not subject to disallowance

In practice, the Committee highlights issues of concern and takes into consideration the potential reasons for introducing such a provision and any safeguards in place. The Committee determines if the provisions may be reasonable in the circumstances or should be referred to Parliament for further consideration.

Under section 8A(2) of the Act, Parliament may pass a Bill whether or not the Committee has reported on it. However, this does not prevent the Committee from reporting on any passed or enacted Bill.



## Part Two: Functions Regarding Regulations with Comments

The Committee's functions regarding regulations are established under section 9 of the Act:

- (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament, and
- (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
  - (i) that the regulation trespasses unduly on personal rights and liberties
  - (ii) that the regulation may have an adverse impact on the business community
  - (iii) that the regulation may not have been within the general objects of the legislation under which it was made
  - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made
  - (v) that the objective of the regulation could have been achieved by alternative and more effective means
  - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act
  - (vii) that the form or intention of the regulation calls for elucidation, or
  - (viii) that any of the requirements of sections 4, 5 and 6 of the [Subordinate Legislation Act 1989](#), or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and

- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

The Committee may write to the relevant Minister for further information or, as with Bills, refer particular matters to the Parliament for further consideration. As above, the Committee may also recommend that Parliament disallow a regulation that has been made.

### **Part Three: Regulations without Comment**

The Committee reviews all disallowable regulations which have been tabled in Parliament. However, unlike Bills, the Committee is only required by statute to report on those regulations with identified issues under section 9, rather than reporting on every regulation made.

Part Three to the Digest contains a brief summary of the regulations that do not engage with any issues under section 9 or, in the Committee's view, do not warrant further comment.

## Conclusions on Bills and Regulations

Part One of the Digest contains the Committee's reports on Bills which were introduced into Parliament. Under the section titled 'Issues considered by the Committee', the report includes commentary about whether the Bill engages with one or more of the five criteria for scrutiny set out in section 8A(1)(b) of the Act. This will include either:

- Where no issues set out in section 8A(1)(b) are identified, that 'The Committee makes no comment in respect of the issues set out in section 8A of the LRA.'
- Where issues set out in section 8A(1)(b) are identified, a distinct comment on each issue identified.

Part Two of the Digest contains the Committee's reports on regulations and other statutory instruments which are tabled in Parliament and are still subject to disallowance. As noted, the Committee only reports on regulations and other statutory instruments with identified issues under section 9 of the Act, and those instruments which don't have identified issues are listed in Appendix Two of the Digest. Like Bill reports, the Committee's regulation reports includes a distinct comment on each issue identified under the section titled 'Issues considered by the Committee'.

For every issue identified in a report, the Committee's comment will conclude either that the Committee 'refers/notes the matter to Parliament' or 'makes no further comment'.

Where the Committee concludes to **refer/notes the matter to Parliament**, the Committee considers that it requires a response or further comment by the Member with carriage of the Bill (for Bill reports) or the responsible Minister (for regulation reports).

Where the Committee concludes to **make no further comment** on an identified issue in the report, the Committee considers that the issue may technically engage with the criteria under section 8A or 9 of the Act but, given counterbalancing considerations (e.g. legislated safeguards), it is unlikely in practice to raise the issues under the relevant section. The Committee invites but does not otherwise require the Member with carriage (for Bill reports) or the responsible Minister (for regulation reports) to comment on these identified issues.

# Digest Snapshot

## PART ONE – BILLS

### [1. Abortion Law Reform Amendment \(Health Care Access\) Bill 2025\\*](#)

No issues identified

### [2. Bail Amendment \(Extension of Limitation on Bail in Certain Circumstances\) Bill 2025](#)

Issue Identified	Conclusion of Committee
Right to the presumption of innocence, liberty and freedom from arbitrary detention – requirement for granting bail	Referred

### [3. Crimes Amendment \(Inciting Racial Hatred\) Bill 2025](#)

Issue Identified	Conclusion of Committee
Freedom of speech	No further comment

### [4. Environmental Planning and Assessment Amendment Bill 2025](#)

Issue Identified	Conclusion of Committee
Retrospectivity	No further comment
Henry VIII clause	No further comment
Commencement by proclamation	No further comment

### [5. Health Services Amendment \(Splitting of the Hunter New England Health District\) Bill 2025\\*](#)

Issue Identified	Conclusion of Committee
Ministerial orders	Referred

### [6. Statute Law Amendment \(Administrative Appeals Tribunal\) Bill 2025](#)

No issues identified

### [7. Transport Administration Amendment \(Sydney Metro Governance\) Bill 2025](#)

Issue Identified	Conclusion of Committee
Commencement by proclamation	No further comment

### [8. Work Health and Safety Amendment \(Standalone Regulator\) Bill 2025](#)

No issues identified

# Summary of Conclusions

## PART ONE – BILLS

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### 1. Abortion Law Reform Amendment (Health Care Access) Bill 2025\*

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

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### 2. Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Bill 2025

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

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*Right to the presumption of innocence, liberty and freedom from arbitrary detention – requirement for granting bail*

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The Bill proposes to replace section 22C(5) of the *Bail Act 2013* (the *Bail Act*) to extend the operation of section 22C until 4 April 2028. When introduced, section 22C was to have effect for a 12 month period from 3 April 2024 until 4 April 2025. Section 22C provides that a bail authority must refuse to grant bail to a young person who is alleged to have committed a relevant offence while on bail for a separate relevant offence unless the bail authority has a high degree of confidence that the young person will not commit a serious indictable offence while on bail.

The Committee previously reported in Digest No. 11/58 on the *Bail and Crimes Amendment Bill 2024* which introduced section 22C into the *Bail Act*. Consistent with those comments, the Committee notes that by extending the operation of section 22C, the Bill extends the time in which the provisions may impact an individual's right to the presumption of innocence, which guarantees that a person is presumed innocent until proven guilty according to the standards of criminal law. It may also infringe on their right to liberty and freedom from arbitrary detention contained in Article 9 of the International Covenant on Civil and Political Rights, which provides that holding accused persons in remand should not be the general rule. The Committee also notes that the provision puts a limitation on granting bail to accused persons aged 14-17, which may impact on rights under Article 37 of the United Nations Convention on the Rights of the Child which provides that imprisonment of a child should only be used as a measure of last resort.

The Committee notes that the Bill seeks to address repeat offending in young people that may pose a risk to community safety and about which 'community concern remains high'. It also acknowledges that the limitation on bail is a temporary measure that has effect until 4 April 2028.

However, the Committee again notes its concern that the threshold of a 'high degree of confidence' is a discretionary one that lies with the bail authority. These decisions may be made on a lower standard of proof than that required in criminal proceedings given the subjective nature of 'confidence'. The Committee also notes that young people under the age of 18 years may lack the capacity to understand the consequences of refusal to be released on bail. For these reasons, the Committee refers this matter to Parliament for its consideration.

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### 3. Crimes Amendment (Inciting Racial Hatred) Bill 2025

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

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##### *Freedom of speech*

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The Bill inserts section 93ZAA into the *Crimes Act 1900*. The provision creates a new offence for committing a public act with the intention of inciting hatred towards another person or group on the ground of race, where a reasonable person who was the target of hatred would fear for their safety, or fear harassment, intimidation or violence. Under subsection 93ZAA(2), the direct quoting or referencing of a religious text for the purpose of religious teaching is not captured by the new offence. Proposed section 93ZAA(3) specifies that the offence can be made out regardless of whether the alleged offender's assumptions or beliefs about the race of another person or group were correct at the time of the alleged offence. The offence can also be made out regardless of whether another person formed a state of mind or carried out an act of hatred in response to the alleged offender's act.

A 'public act', as defined in section 93Z of the Crimes Act, includes any written or visual communication to the public, such as writing, displaying notices, playing recorded material, broadcasting or communicating via social media and other electronic methods. It also includes wearing certain clothing or distributing materials to the public.

The Committee notes that the Bill may be seen to place restrictions on the right to freedom of expression and association, as contained in Articles 19 and 22 of the International Covenant on Civil and Political Rights. However, these rights are not absolute and may be limited by laws necessary for, among other things, respect of the rights of other people and for the protection of public order. The Committee acknowledges that the intent of the Bill is to respond to incidents of hate crime based on race and ensure public safety. The Committee also acknowledges that the Bill includes safeguards including a 'reasonable person' test and an exemption for citing religious texts. For these reasons, the Committee makes no further comment.

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### 4. Environmental Planning and Assessment Amendment Bill 2025

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

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##### *Retrospectivity*

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The Bill proposes to amend subsection 7.32(3)(b) of the *Environmental Planning and Assessment Act 1979* (the Act), which would allow all environmental planning instruments, not just local environmental plans, to require affordable housing contributions as a condition of a development consent. It also seeks to insert provisions at the end of Schedule 8 of the Act to enable the proposed amendment to subsection 7.32(3)(b) to apply retrospectively from 1 March 2018. Proposed subsection (2) confirms that conditions imposed under section 7.32 on or after 1 March 2018 are valid, even if they would not have been valid before the proposed amendment.

The Committee notes that the Bill seeks to apply certain proposed amendments to development consent applications submitted before the amendments come into effect. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

However, the Committee recognises that the Bill is intended resolve uncertainties about existing provisions in the State Environmental Planning Policy (Housing) 2021 concerning the loss of low-cost rental housing. In the circumstances, the Committee makes no further comment.

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

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### *Henry VIII clause*

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The Bill seeks to amend section 1.8 of the *Environmental Planning and Assessment Act 1979* (the Act), which provides a regulation-making power to enable regulations to amend Schedule 9 of the Act. It also proposes changes to Schedule 9, which would define the local government areas or parts of local government areas that make up the designated Sydney local government areas.

The Committee previously commented on a similar regulation-making power in Digest No. 8/58 when reviewing the Greater Cities Commission Repeal Bill 2023. That Bill allowed regulations to amend Schedule 9 concerning areas that formed the 'Six Cities Region'. Consistent with those comments, the Committee notes that the proposed provision may amount to a Henry VIII clause by allowing the Executive to amend the operation of the parent Act without reference to Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

However, the Committee notes that a similar regulation-making power already exists in the Act. It also acknowledges that regulations made under this proposed provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. Additionally, the Committee recognises that these provisions are intended to provide flexibility and allow timely amendments to meet NSW's planning needs. In the circumstances, the Committee makes no further comment.

### *Commencement by proclamation*

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The Bill provides that Schedules 1[1], [3]-[25], [35], [42], [45] and [47] and 3 are to commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the bill's provisions, particularly where those provisions affect personal rights or liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

However, the Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in implementing the changes to the planning framework. For this reason, and because the Bill does not appear to impact on personal rights and liberties, the Committee makes no further comment.

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## **5. Health Services Amendment (Splitting of the Hunter New England Health District) Bill 2025\***

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

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#### *Ministerial orders*

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The Bill would insert clause 2 of the Bill at the end of Schedule 7 of the *Health Services Act 1997*. Amended Schedule 7 would enable the Minister to transfer assets, rights and liabilities from the Hunter New England Local Health District (LHD) to the proposed Hunter LHD and New England North West LHD. The Minister would exercise this power through orders published on the NSW Legislation website. Under the proposed amendments, the operation of the orders could not be used to make a claim for a breach of contract or civil wrong, and a person impacted by the transfer is excluded from any right to compensation.

As the Bill gives the Minister broad scope to transfer assets, rights and liabilities between LHDs through orders, it may provide for a wide ministerial power. The Committee generally comments when there is a wide ministerial power to make orders, as it may impact on the rights, liabilities or obligations of individuals that would be subject to those orders. The Committee notes that the orders may impact individuals' freedom of contract by exempting the orders' operation from being considered as a breach of contract or an event of default under contract and preventing persons from seeking compensation.

The Committee acknowledges that the orders may enable flexible and timely management of the establishment of the new LHDs. The Committee also acknowledges that the orders are required to be published on the NSW legislation website. However, the Committee notes that unlike regulations, orders are not required to be tabled in Parliament and are not subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee generally prefers that ministerial orders be included in regulations to ensure an appropriate level of parliamentary oversight.

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

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## **6. Statute Law Amendment (Administrative Appeals Tribunal) Bill 2025**

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

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## **7. Transport Administration Amendment (Sydney Metro Governance) Bill 2025**

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

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#### *Commencement by proclamation*

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The *Transport Administration Amendment (Sydney Metro Governance) Act 2025* (the Act) is to commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where those provisions affect personal rights or liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

However, the Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the transition to the new governance arrangements. This may be necessary, for example, for the effective dissolution of the Sydney Metro Board, the creation of the new Sydney Metro advisory board, and the modification of the Chief Executive's role. For these reasons, and because the Bill does not impact on personal rights and liberties, the Committee makes no further comment.

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## **8. Work Health and Safety Amendment (Standalone Regulator) Bill 2025**

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





# Part One – Bills

# 1. Abortion Law Reform Amendment (Health Care Access) Bill 2025\*

Date introduced	19 February 2025
House introduced	Legislative Council
Member with carriage	Dr Amanda Cohn MLC
*Private Members Bill	

## Purpose and description

- 1.1 The object of this Bill is to amend the *Abortion Law Reform Act 2019* (the **Act**) to increase access to abortion health care.

## Background

- 1.2 The Bill seeks to update the legislative framework to increase access to abortion services across NSW.
- 1.3 In her second reading speech, Dr Amanda Cohn MLC noted that 'Only three of the 220 public hospitals in NSW are routinely providing abortion and make that information publicly known'.
- 1.4 The Bill proposes to amend the Act to:
- (a) require the Minister for Health (the **Minister**) to ensure that abortion services are provided throughout NSW within a reasonable distance of residents' homes, and that information about access to the services are made publicly available
  - (b) give the Minister powers to give directions to the Secretary of the Ministry of Health or a public health organisation in relation to the above
  - (c) expand the class of practitioners who can perform a termination on a person who is not more than 22 weeks pregnant to include 'prescribed health practitioners'
  - (d) require health practitioners with a conscientious objection to abortion to advise the patient of their objections and to transfer the patient's care to a practitioner who they believe does not have a conscientious objection
  - (e) remove the requirement for practitioners to inform the Ministry of Health about terminations.
- 1.5 The Bill would also update the definitions in the *Crimes Act 1900* to exclude prescribed health practitioners from the offence of unqualified persons performing terminations.

## Issues considered by the Committee

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

## 2. Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Bill 2025

Date introduced	19 February 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

- 2.1 The object of this Bill is to extend the temporary limitation in the *Bail Act 2013 (the Act)*, section 22C on when bail authorities may grant bail in certain circumstances to young persons who are 14–17 years of age.

### Background

- 2.2 The Bail and Crimes Amendment Bill 2024 (**Bail Bill 2024**) introduced section 22C into the Act which temporarily changed the test for granting bail to young people aged 14-17 charged with certain offences. Under subsection 22C(5), the changes were to take effect for a 12-month period between 3 April 2024 and 4 April 2025.
- 2.3 In his second reading speech, the Hon. Michael Daley, Attorney General, explained that the additional temporary test requires the bail authority to have a "high degree of confidence" that the young person will not commit a serious indictable offence while on bail', otherwise bail is to be refused.
- 2.4 The Bill would amend subsection 22C(5) of the Act to allow the temporary test to continue until 4 April 2028. The Attorney General explained that 'more time is needed to fully implement and expand on the measures in Moree and other regional areas to address youth crime'.

### Issues considered by the Committee

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

*Right to the presumption of innocence, liberty and freedom from arbitrary detention – requirement for granting bail*

- 2.5 The Bail Bill 2024 introduced section 22C into the Act to create an additional temporary requirement for granting bail to young people aged 14-17 who are charged with 'relevant offences' that they allegedly committed while on bail for another 'relevant offence'. Subsection 22C(1) requires a bail authority to only grant bail to an accused young person if they have 'a high degree of confidence' that the accused young person 'will not commit a serious indictable offence while on bail subject to any proposed bail conditions'.

- 2.6 Subsection 22C(2) clarifies that, before making a decision under subsection 22C(1), the bail authority must first make an assessment under Division 2 of the Bail Act and consider any appropriate bail conditions that could remedy concerns or risks that the accused young person would commit a further serious indictable offence.
- 2.7 A 'relevant offence' is defined in subsection 22C(6) as:
- (a) a 'motor theft offence' under sections 154A, 154C and 154F of the *Crimes Act 1900* (the **Crimes Act**)
  - (b) a 'serious breaking and entering offence' under Part 4, Division 4 of the Crimes Act that is punishable by at least 14 years imprisonment
  - (c) a performance crime offence under section 154K of the Crimes Act where the underlying offence is a motor theft offence or serious breaking and entering offence.
- 2.8 A 'serious indictable offence' is an indictable offence punishable by at least 5 years imprisonment.
- 2.9 In his second reading speech on the Bail Bill 2024, the Attorney General explained that section 22C is 'a time-limited, targeted amendment' that would 'create an additional threshold for a bail decision-maker, directed at the consideration of the risk of certain young persons committing further serious indicatable offences whilst on bail'.
- 2.10 This Bill would amend subsection 22C(5) of the Act to extend the sunset period of the section. This would allow the temporary bail test, under section 22C, to continue until 4 April 2028. Currently, it is due to sunset on 4 April 2025.
- 2.11 In his second reading speech, the Attorney General noted that the proposed three year extension would '...allow more comprehensive data to be obtained and for other work relevant to the issues of youth crime to be considered'.

**The Bill proposes to replace section 22C(5) of the *Bail Act 2013* (the *Bail Act*) to extend the operation of section 22C until 4 April 2028. When introduced, section 22C was to have effect for a 12 month period from 3 April 2024 until 4 April 2025. Section 22C provides that a bail authority must refuse to grant bail to a young person who is alleged to have committed a relevant offence while on bail for a separate relevant offence unless the bail authority has a high degree of confidence that the young person will not commit a serious indictable offence while on bail.**

**The Committee previously reported in Digest No. 11/58 on the Bail and Crimes Amendment Bill 2024 which introduced section 22C into the Bail Act.<sup>1</sup> Consistent with those comments, the Committee notes that by extending the operation of section 22C, the Bill extends the time in which the provisions may impact an individual's right to the presumption of innocence, which guarantees that a person is presumed innocent until**

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<sup>1</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 11/58](#), 19 march 2024.

proven guilty according to the standards of criminal law. It may also infringe on their right to liberty and freedom from arbitrary detention contained in Article 9 of the International Covenant on Civil and Political Rights,<sup>2</sup> which provides that holding accused persons in remand should not be the general rule. The Committee also notes that the provision puts a limitation on granting bail to accused persons aged 14-17, which may impact on rights under Article 37 of the United Nations Convention on the Rights of the Child which provides that imprisonment of a child should only be used as a measure of last resort.<sup>3</sup>

The Committee notes that the Bill seeks to address repeat offending in young people that may pose a risk to community safety and about which 'community concern remains high'. It also acknowledges that the limitation on bail is a temporary measure that has effect until 4 April 2028.

However, the Committee again notes its concern that the threshold of a 'high degree of confidence' is a discretionary one that lies with the bail authority. These decisions may be made on a lower standard of proof than that required in criminal proceedings given the subjective nature of 'confidence'. The Committee also notes that young people under the age of 18 years may lack the capacity to understand the consequences of refusal to be released on bail. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

<sup>3</sup> United Nations, Office of the High Commissioner for Human Rights, [Convention on the Rights of the Child](#).

### 3. Crimes Amendment (Inciting Racial Hatred) Bill 2025

Date introduced	18 February 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

#### Purpose and description

- 3.1 The object of the Bill is to amend the *Crimes Act 1900* (the **Act**) to make it an offence to, by a public act, intentionally incite hatred towards another person or a group of persons on the ground of race.

#### Background

- 3.2 The Bill amends the Act by creating the offence of committing a public act with the intention of inciting hatred on the ground of race. The maximum penalty for the offence is an \$11,000 fine (100 penalty units) or imprisonment for 2 years, or both.
- 3.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained that the Bill 'responds to the recent instances of antisemitic behaviour... in Sydney'. The Attorney General went on to note that the Bill 'recognises the specific harm caused by hate speech based on race and its potential to escalate into violence'.
- 3.4 The Bill would also require the Minister to review the new offence after 12 months to determine whether the policy objectives and terms of the offence remain valid.
- 3.5 The Bill passed Parliament on 21 February 2025 with amendments, prior to the tabling of this Digest and therefore before the Committee could report on the Bill. Section 8A(2) of the *Legislation Review Act 1987* permits the Committee to report on a Bill which has passed or become an Act. In accordance with its usual practice, the Committee has considered the Bill as introduced.

#### Issues considered by the Committee

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

###### *Freedom of speech*

- 3.6 The Bill inserts section 93ZAA into the Act to make it an offence to commit a public act that:
- (a) intentionally incites hatred towards another person or group of people on the ground of race
  - (b) would cause a reasonable person from the targeted racial group to fear harassment, intimidation or violence, or fear for their own safety.

- 3.7 The Bill's definition of 'Public act' is the same as in section 93Z of the Act. It includes:
- (a) any form of communication to the public, including writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods
  - (b) actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia in a way that is observable by the public
  - (c) the distribution or dissemination of any matter to the public.
- 3.8 The Crimes Legislation Amendment (Racial and Religious Hatred) Bill 2025, which was passed by Parliament on 20 February 2025, also inserted 'graffiti' into the definition of 'public act'.
- 3.9 The Bill specifies that the offence can be made out regardless of whether:
- (a) the alleged offender's assumptions or beliefs about the race of another person or group were correct or incorrect at the time of the alleged offence, or
  - (b) the public act caused another person to form a state of mind or carry out an act of hatred.
- 3.10 The Bill also inserts an exception for this offence under subsection 93ZAA(2) if the public act was a direct quote or reference to a religious text for the purpose of religious teaching.
- 3.11 The Amending Act will commence by proclamation. The Attorney General explained in his second reading speech that 'This provides flexibility for the necessary time needed for police training, and community education and outreach'.

**The Bill inserts section 93ZAA into the *Crimes Act 1900*. The provision creates a new offence for committing a public act with the intention of inciting hatred towards another person or group on the ground of race, where a reasonable person who was the target of hatred would fear for their safety, or fear harassment, intimidation or violence. Under subsection 93ZAA(2), the direct quoting or referencing of a religious text for the purpose of religious teaching is not captured by the new offence. Proposed section 93ZAA(3) specifies that the offence can be made out regardless of whether the alleged offender's assumptions or beliefs about the race of another person or group were correct at the time of the alleged offence. The offence can also be made out regardless of whether another person formed a state of mind or carried out an act of hatred in response to the alleged offender's act.**

**A 'public act', as defined in section 93Z of the Crimes Act, includes any written or visual communication to the public, such as writing, displaying notices, playing recorded material, broadcasting or communicating via social media and other electronic methods. It also includes wearing certain clothing or distributing materials to the public.**

**The Committee notes that the Bill may be seen to place restrictions on the right to freedom of expression and association, as contained in Articles 19 and 22 of the International Covenant on Civil and Political Rights.<sup>4</sup> However, these rights are not absolute and may be limited by laws necessary for, among other things, respect of the rights of other people and for the protection of public order. The Committee acknowledges that the intent of the Bill is to respond to incidents of hate crime based on race and ensure public safety. The Committee also acknowledges that the Bill includes safeguards including a 'reasonable person' test and an exemption for citing religious texts. For these reasons, the Committee makes no further comment.**

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<sup>4</sup> United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966.



## 4. Environmental Planning and Assessment Amendment Bill 2025

Date introduced	19 February 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

### Purpose and description

- 4.1 The object of this Bill is to make miscellaneous amendments to the *Environmental Planning and Assessment Act 1979* (the **Act**).

### Background

- 4.2 The Bill proposes changes to the Act, the Environmental Planning and Assessment Regulation 2021 and the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.

- 4.3 It seeks to expand the power to modify development consents and continue to support faster housing approvals through the Housing Delivery Authority (the **HDA**).

- 4.4 In his second reading speech, the Hon. Paul Scully MP, Minister for Planning and Public Spaces (the **Minister**), stated that the Bill would respond to three separate court decisions from the New South Wales Court of Appeal and the Land and Environment Court. The Minister noted that the Bill would restore certainty in planning assessment decisions and would:

...further streamline the planning system, support the delivery of housing and provide certainty to the construction industry, local communities and other stakeholders.

- 4.5 The Bill's key provisions are:

- clarifying the consent authority's power to modify development consents
- granting the Minister the power to declare housing targets within specific timeframes which the Planning Secretary may include in draft regional strategic plans
- clarifying how the consent authority assesses State significant development (the **SSD**) applications and how submissions for these applications are counted and considered
- allowing development consents to be granted with conditions even if they differ from the concept development consent

- enabling the Minister to declare developments as SSDs without obtaining and publishing advice from the Independent Planning Commission (the **IPC**) where the development includes residential accommodation
- allowing the HDA to adopt less formal meeting arrangements
- reducing the public exhibition period for SSD housing projects from 28 days to 14 days
- providing when a condition requiring a financial contribution for affordable housing can be imposed on a development consent
- removing outdated references to the 'Six Cities Region' and making related amendments.

## Issues considered by the Committee

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

#### *Retrospectivity*

- 4.6 The Bill seeks to amend subsection 7.32(3)(b), which would allow all environmental planning instruments, not just local environmental plans, to require affordable housing contributions as a condition of a development consent.
- 4.7 It also seeks to insert provisions at the end of Schedule 8 of the Act which would deem the proposed amendment to subsection 7.32(3)(b) to have commenced on 1 March 2018. Proposed subsection (2) clarifies that all conditions imposed under section 7.32 on or after 1 March 2018 are legally valid, even if they would not have been valid before the proposed amendment.
- 4.8 In his second reading speech, the Minister stated that the retrospective application would resolve 'any uncertainties about existing provisions within the State Environmental Planning Policy (Housing) 2021 that address the loss of low-cost rental housing'.

**The Bill proposes to amend subsection 7.32(3)(b) of the *Environmental Planning and Assessment Act 1979* (the Act), which would allow all environmental planning instruments, not just local environmental plans, to require affordable housing contributions as a condition of a development consent. It also seeks to insert provisions at the end of Schedule 8 of the Act to enable the proposed amendment to subsection 7.32(3)(b) to apply retrospectively from 1 March 2018. Proposed subsection (2) confirms that conditions imposed under section 7.32 on or after 1 March 2018 are valid, even if they would not have been valid before the proposed amendment.**

**The Committee notes that the Bill seeks to apply certain proposed amendments to development consent applications submitted before the amendments come into effect. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

However, the Committee recognises that the Bill is intended resolve uncertainties about existing provisions in the State Environmental Planning Policy (Housing) 2021 concerning the loss of low-cost rental housing. In the circumstances, the Committee makes no further comment.

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

*Henry VIII clause*

- 4.9 The Bill proposes to remove the definitions of 'city' and 'Six Cities Region' from subsection 1.4(1) of the Act. These terms currently refer to areas of land listed in Schedule 9 of the Act. The Bill would insert the definition of 'designated Sydney local government area' which 'means a local government area, or a part of a local government area, specified in Schedule 9'.
- 4.10 Under proposed section 1.8 of the Act, the regulations could amend Schedule 9 to add or remove local government areas, or parts of local government areas.

**The Bill seeks to amend section 1.8 of the *Environmental Planning and Assessment Act 1979* (the Act), which provides a regulation-making power to enable regulations to amend Schedule 9 of the Act. It also proposes changes to Schedule 9, which would define the local government areas or parts of local government areas that make up the designated Sydney local government areas.**

The Committee previously commented on a similar regulation-making power in Digest No. 8/58 when reviewing the Greater Cities Commission Repeal Bill 2023. That Bill allowed regulations to amend Schedule 9 concerning areas that formed the 'Six Cities Region'. Consistent with those comments, the Committee notes that the proposed provision may amount to a Henry VIII clause by allowing the Executive to amend the operation of the parent Act without reference to Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

However, the Committee notes that a similar regulation-making power already exists in the Act. It also acknowledges that regulations made under this proposed provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. Additionally, the Committee recognises that these provisions are intended to provide flexibility and allow timely amendments to meet NSW's planning needs. In the circumstances, the Committee makes no further comment.

*Commencement by proclamation*

- 4.11 Clause 2 of the Bill provides that Schedules 1[1], [3]-[25], [35], [42], [45] and [47] and 3 are to commence on a day or days appointed by proclamation.

**The Bill provides that Schedules 1[1], [3]-[25], [35], [42], [45] and [47] and 3 are to commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the bill's provisions, particularly where**

**those provisions affect personal rights or liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.**

**However, the Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in implementing the changes to the planning framework. For this reason, and because the Bill does not appear to impact on personal rights and liberties, the Committee makes no further comment.**

## 5. Health Services Amendment (Splitting of the Hunter New England Health District) Bill 2025\*

Date introduced	20 February 2025
House introduced	Legislative Assembly
Member with carriage	Mr Roy Butler MP
	*Private Members Bill

### Purpose and description

- 5.1 The object of this Bill is to dissolve the Hunter New England Local Health District (**LHD**) and to constitute the Hunter LHD and the New England North West LHD.

### Background

- 5.2 The Bill seeks to amend the *Health Services Act 1997* (the **Act**) and the Health Services Regulation 2018 (the **Regulation**) to split the Hunter New England LHD into the Hunter LHD and the New England North West LHD.

- 5.3 During his second reading speech, Mr Roy Butler MP explained that the Hunter New England LHD:

...is the only health district where rural and remote services are administered from a metropolitan base. The metropolitan base is too far removed from the New England region, and it is too large an area for them to adequately look after.

- 5.4 The Bill's key amendments include:
- (a) dissolving the Hunter New England LHD and creating the Hunter LHD and New England North West LHD
  - (b) granting the Minister for Health (the **Minister**) the power to transfer assets, rights and liabilities from the Hunter New England LHD to the Hunter LHD and/or the New England North West LHD, by way of order published on the NSW legislation website
  - (c) exempting orders from payment of state tax and remedies claimed under contract law and civil law
  - (d) consequential amendments to the Act and the Regulation.

- 5.5 On 20 February 2025, the Bill was referred by the Legislative Assembly to the Legislative Assembly Committee on Community Services for inquiry and report. The

referral did not specify a timeframe for the Committee to report to the Legislative Assembly.<sup>5</sup>

## Issues considered by the Committee

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

#### *Ministerial orders*

5.6 The Bill seeks to insert clause 2 of the Bill into Schedule 7 of the Act. The amended Schedule 7 would allow the Minister to transfer assets, rights and liabilities of the former Hunter New England LHD to the proposed Hunter LHD or New England North West LHD by order published on the NSW legislation website. Under subsection (2), the Minister's orders would be exempt from being regarded as:

- (a) a breach of contract, confidence or civil wrong by the NSW Government or any other affected party
- (b) a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities
- (c) giving rise to a remedy by a party to an instrument, or to cause or permit the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability
- (d) an event of default under a contract or other instrument.

5.7 Proposed subsection (4) removes any right to compensation by a person or body impacted by a transfer of assets, rights or liabilities under these provisions.

**The Bill would insert clause 2 of the Bill at the end of Schedule 7 of the *Health Services Act 1997*. Amended Schedule 7 would enable the Minister to transfer assets, rights and liabilities from the Hunter New England Local Health District (LHD) to the proposed Hunter LHD and New England North West LHD. The Minister would exercise this power through orders published on the NSW Legislation website. Under the proposed amendments, the operation of the orders could not be used to make a claim for a breach of contract or civil wrong, and a person impacted by the transfer is excluded from any right to compensation.**

**As the Bill gives the Minister broad scope to transfer assets, rights and liabilities between LHDs through orders, it may provide for a wide ministerial power. The Committee generally comments when there is a wide ministerial power to make orders, as it may impact on the rights, liabilities or obligations of individuals that would be subject to those orders. The Committee notes that the orders may impact individuals' freedom of contract by exempting the orders' operation from being considered as a breach of contract or an event of default under contract and preventing persons from seeking compensation.**

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<sup>5</sup> NSW Parliament, [Votes and proceedings of the New South Wales Legislative Assembly](#), 20 Feb 2025, pp 1-2.

**The Committee acknowledges that the orders may enable flexible and timely management of the establishment of the new LHDs. The Committee also acknowledges that the orders are required to be published on the NSW legislation website. However, the Committee notes that unlike regulations, orders are not required to be tabled in Parliament and are not subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee generally prefers that ministerial orders be included in regulations to ensure an appropriate level of parliamentary oversight.**

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

## 6. Statute Law Amendment (Administrative Appeals Tribunal) Bill 2025

Date introduced	20 February 2025
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Special Minister of State

### Purpose and description

- 6.1 The object of this Bill is to amend certain Acts and instruments consequent on the abolition of the Administrative Appeals Tribunal (the **AAT**) by the *Administrative Review Tribunal Act 2024* of the Commonwealth (the **ART Act**).

### Background

- 6.2 The Bill amends relevant NSW legislation and legislative instruments to:
- replace references to 'the Administrative Appeals Tribunal' with 'the Administrative Review Tribunal'
  - replace references to 'the *Commonwealth Administrative Appeals Tribunal Act 1975*' with 'the *Commonwealth Administrative Review Tribunal Act 2024*'.
- 6.3 The Statement of Public Interest tabled with the Bill sets out that:
- The Commonwealth Government abolished the Administrative Appeals Tribunal on 14 October 2024, and established a new federal administrative body, named the Administrative Review Tribunal.
- 6.4 In his second reading speech, the Hon. John Graham MLC, Special Minister of State, explained that the Bill 'ensure[s] consistency with Commonwealth legislation' and supports the 'establishment of [the] new Federal administrative review body'.

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



## 7. Transport Administration Amendment (Sydney Metro Governance) Bill 2025

Date introduced	20 February 2025
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Transport

### Purpose and description

- 7.1 The object of the Bill is to amend the *Transport Administration Act 1988* (the **Act**) as follows:
- (a) to abolish the Sydney Metro Board
  - (b) to provide that the Chief Executive of Sydney Metro (the **Chief Executive**) is appointed by the Minister for Transport (the **Minister**) instead of the Sydney Metro Board
  - (c) to provide that the affairs of Sydney Metro are managed and controlled by the Chief Executive in accordance with any directions of the Minister and Transport for NSW instead of being subject to the policies and directions of the Sydney Metro Board
  - (d) to establish a Sydney Metro advisory board to advise the Minister and Sydney Metro
  - (e) to make other minor and consequential amendments.

### Background

- 7.2 The Bill seeks to establish a new governance framework for Sydney Metro.
- 7.3 The Bill would amend Part 3D, Division 4 of the Act to provide that Sydney Metro is managed and controlled by the Chief Executive. Under proposed subsection 38H(1) the Chief Executive would be appointed by the Minister.
- 7.4 The provisions would also establish the Sydney Metro advisory board, with its functions being to provide advice to the Minister and Sydney Metro on matters referred to the advisory board by the Minister and Sydney Metro.
- 7.5 The Bill proposes to insert a new Part into Schedule 7 to make provisions that are consequent on enactment of the Amending Act. This new part seeks to address procedural issues related to abolishing the Sydney Metro Board, including ceasing

the appointment of Sydney Metro Board members, maintaining existing Ministerial directions and the effective ongoing appointment of the existing Chief Executive.

- 7.6 In his second reading speech, the Hon. John Graham MLC, Minister for Transport, explained that the Bill 'builds on the independent review of Sydney Metro, completed in 2023'. The Statement of Public Interest tabled with the Bill stated that the proposed reforms:

...will give Government more direct oversight of Sydney Metro's performance, as well as emerging issues and risks, and enable the agency to respond directly to Ministerial and government directions and priorities.

### Issues considered by the Committee

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

##### *Commencement by proclamation*

- 7.7 Clause 2 of the Bill provides that the Act is to commence on a day(s) to be appointed by proclamation.

**The *Transport Administration Amendment (Sydney Metro Governance) Act 2025* (the Act) is to commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where those provisions affect personal rights or liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.**

**However, the Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the transition to the new governance arrangements. This may be necessary, for example, for the effective dissolution of the Sydney Metro Board, the creation of the new Sydney Metro advisory board, and the modification of the Chief Executive's role. For these reasons, and because the Bill does not impact on personal rights and liberties, the Committee makes no further comment.**

## 8. Work Health and Safety Amendment (Standalone Regulator) Bill 2025

Date introduced	18 February 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

### Purpose and description

- 8.1 The object of this Bill is to amend the Work Health and Safety Act 2011 (the **Act**) as follows:
- (a) to establish the SafeWork Advisory Council (the **Advisory Council**)
  - (b) to provide for the functions, membership and procedures of the Advisory Council
  - (c) to require the SafeWork Commissioner to take into account the advice of the Advisory Council when exercising certain functions
  - (d) to establish the SafeWork Commissioner as regulator under the Act.

### Background

- 8.2 The Bill proposes amendments to the Act to establish a new governance model for SafeWork NSW.
- 8.3 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Work Health and Safety (the **Minister**), explained that the Bill 'is an important step to effecting the necessary changes' following the Government's support or 'in-principle' support of all of the recommendations made in a 2023 independent review of SafeWork NSW.
- 8.4 The Bill proposes the following key amendments:
- establishing the Advisory Council and setting out its functions, including advising the SafeWork Commissioner on the strategic direction and priorities of SafeWork NSW (which the SafeWork Commissioner must take into account)
  - requiring the Minister to review the operation of Division 3 of the Act as soon as practicable after 1 July 2028
  - providing for the procedures and membership of the Advisory Council
  - establishing the SafeWork Commissioner as the regulator for the Act
  - other consequential amendments.

- 8.5 The Minister noted that the proposed amendments 'aim to foster greater trust and confidence in the regulator' and 'improve the effectiveness of work health and safety regulation in NSW'.

### **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*.**



# 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. [District Court General Practice Note 2 - Generative AI Practice Note and Judicial Guidelines](#)

The Practice Note adopts the Supreme Court Practice Note SC Gen 23 – Use of Generative Artificial Intelligence (**Gen AI**).

The Practice Note places limitations on the use of Gen AI for certain court documents, confidential material, and in court proceedings.

The Practice Note commenced on 3 February 2025. It is made under section 171 of the *District Court Act 1973* and does not appear to engage with procedural fairness or other issues set out in section 9 of the *Legislation Review Act 1987*.

## 2. [Electricity Infrastructure Investment Amendment \(Functions\) Regulation 2024](#)

The objects of the Regulation are to:

- (a) specify an additional function for the consumer trustee under the *Electricity Infrastructure Investment Act 2020* (the **Act**)
- (b) specify a number of additional functions for infrastructure planners under the Act
- (c) provide for the National Electricity (NSW) Law and the National Electricity Rules to be modified for the purposes of the Act.

Under section 27 of the Act, the Regulation can modify the application of a provision of the National Electricity (NSW) Law or the National Electricity Rules to enable the operation of an access scheme in a renewable energy zone and achieve the objects of the Act.

The additional functions set out in the Regulation are made under section 79 of the Act.

The Regulation commenced on 13 December 2024. The additional functions and modification to the National Electricity (NSW) Law and the National Electricity Rules do not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

## 3. [Electricity Infrastructure Investment Amendment Regulation 2024](#)

The objects of the Regulation are to:

- (a) make further provision relating to transfers of network infrastructure under the *Electricity Infrastructure Investment Act 2020* (the **Act**), Part 5, Division 3, including partial transfers
- (b) require regulators under the Act to share information with each other to enable the making of a contribution determination
- (c) apply the *Competition and Consumer Act 2010* of the Commonwealth, section 44AAEC to the Act and the regulations
- (d) make minor amendments consequent on the enactment of the *Energy Amendment (Long Duration Storage and Investment) Act 2024*.

The Regulation is made under section 79 of the Act and commenced on 13 December 2024. It does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 4. Environmental Planning and Assessment Amendment (Temporary Housing) Regulation 2024

The objects of the Regulation are to provide that:

- (a) an application for a complying development certificate for development for the purposes of temporary housing must be accompanied by a copy of the most recent fire safety statement for the building in certain circumstances
- (b) the *Environmental Planning and Assessment Act 1979* (the **Act**), section 7.32 applies to a development application to carry out development in the City of Sydney local government area.

The Regulation is made under Division 4.5 and sections 4.64, 7.32 and 10.13, the general regulation-making power, of the Act. It commenced on 13 December 2024.

The Regulation clarifies fire safety documentation requirements, ensures consistency in affordable housing rules, and aligns terminology across planning instruments. The amendments do not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 5. Government Sector Legislation Amendment (Miscellaneous) Regulation 2024

The object of the Regulation is to amend the Government Sector Finance Regulation 2024 and the Government Sector Audit Regulation 2021 to:

- (a) to provide for delegations and subdelegations for corporations constituted under the *Electricity Retained Interest Corporations Act 2015*, and
- (b) to remove errors and redundancies.

Section 9.11(1)(b) of the *Government Sector Finance Act 2018* allows accountable authorities for a 'GSF agency' to delegate any of their delegable functions to an entity prescribed by the regulations. Section 9.11(4)(1)(b) allows delegates of the accountable authority for a GSF agency to further delegate a delegated function to an entity prescribed by the regulations.

The Regulation prescribes a government officer of the Treasury as an entity:

- that an accountable authority of a corporation or subsidiary constituted by the *Electricity Retained Interest Corporations Act 2015* may delegate certain functions to
- to which a delegate prescribed by subsection (1) may subdelegate.

The Regulation commenced on 4 December 2024. It is made under section 64 of the *Government Sector Audit Act 1983* and section 10.4 of the *Government Sector Finance Act 2018*. The delegations and administrative amendments to remove errors do not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 6. Motor Accident Guidelines Version 9.3

The purpose of the Guidelines are to support the administration of the Compulsory Third Party insurance scheme, the objects of the *Motor Accident Injuries Act 2017* (the **Act**) and the operation

of the Motor Accident Injuries Regulation 2017. They do this through establishing clear processes and procedures, scheme objectives and compliance requirements.

The Guidelines describe and clarify expectations that apply to stakeholders in the scheme. Insurers' licences contain a condition requiring them to comply with relevant parts of the Guidelines.

The Guidelines are made under section 10.2 of the Act, which enables the State Insurance Regulatory Authority to issue Motor Accident Guidelines on any matter authorised or required by the Act.

The Guidelines commenced on 6 December 2024 and replaced the Motor Accident Guidelines version 9.2, except for claims arising from motor accidents before 1 April 2023. They largely retain the content of version 9.2, and the only substantive amendments are updates to the figures under Schedule 1E. Other minor updates correct typographical errors and adjust references to accident years. The Guidelines therefore do not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

7. [Supreme Court Practice Note SC Gen 23 – Use of Generative Artificial Intelligence \(Gen AI\) \(issued 21 November 2024\)](#)

This Practice Note was issued on 21 November 2024 and was to commence on 3 February 2025. However, the Practice Note below issued on 28 January 2025 replaced it prior to its commencement. The Practice Note places limitations on the use of generative artificial intelligence (**Gen AI**) for certain court documents, confidential material and in court proceedings.

The Practice Note is made under section 124 of the *Supreme Court Act 1970* and does not appear to engage with procedural fairness or other issues set out in section 9 of the *Legislation Review Act 1987*.

8. [Supreme Court Practice Note SC Gen 23 – Use of Generative Artificial Intelligence \(Gen AI\) \(issued 28 January 2025\)](#)

This Practice Note replaces the previous version of SC Gen 23 that was issued on 21 November 2024. It commenced on 3 February 2025.

The Practice Note places limitations on the use of generative artificial intelligence (**Gen AI**) for certain court documents, confidential material and in court proceedings.

It substantially replicates the previous version of the Practice Note, with the following key amendments:

- excluding technology or functionality that generates chronologies from original source documents from being considered Gen AI
- removing the exception to the prohibition on using Gen AI for generating affidavits, witness statements and character references for preparatory work
- clarifying that the process of verifying that all citations, authorities, case law and legislative references exist, are accurate and are relevant to proceedings within written submissions and summaries of argument is not to be carried out using a Gen AI tool or program.

The Practice Note is made under section 124 of the *Supreme Court Act 1970* and does not appear to engage with procedural fairness or other 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. 27

**TIME & DATE: 3:00PM, 17 MARCH 2025**      **LOCATION: ROOM 1136 AND WEBEX**

### MEMBERS PRESENT

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

### APOLOGIES

**Ms Stuart (Deputy Chair) and Ms Davis.**

### OFFICERS PRESENT

Rohan Tyler, Alice Zwar, Charlie King, Mengyuan Chen, Elizabeth Hawken and Nicolle Gill.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 17 February 2025 be confirmed.

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

#### 3. Consideration of bills with comment for Legislation Review Digest 26/58

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

- a) Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Bill 2025
- b) Crimes Amendment (Inciting Racial Hatred) Bill 2025
- c) Environmental Planning and Assessment Amendment Bill 2025
- d) Health Services Amendment (Splitting of the Hunter New England Health District) Bill 2025
- e) Transport Administration Amendment (Sydney Metro Governance) Bill 2025.

#### 4. Consideration of bills without comment for Legislation Review Digest 26/58

Discussion ensued.

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

- a) Abortion Law Reform Amendment (Health Care Access) Bill 2025
- b) Statute Law Amendment (Administrative Appeals Tribunal) Bill 2025
- c) Work Health and Safety Amendment (Standalone Regulator) Bill 2025.

**5. Regulations without comment for Legislation Review Digest 26/58**

Resolved, on the motion of Mr Hagarty: That the Committee adopts the regulations without comment as Part Two to Digest No. 26/58.

**6. Legislation Review Digest 26/58**

Resolved, on the motion of Ms Higginson:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 26/58, and that it be signed by the Chair and presented to the House.

**7. Regulations to be reviewed**

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

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

**9. \*\*\***

**10. Next meeting**

The meeting adjourned at 3:10pm until Monday 24 March 2025 at 3.00pm in meeting room 1136.