

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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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. Bail Amendment (Ban on Private Electronic Monitoring) Bill 2025

Issue identified	Conclusion of Committee
Right to liberty and freedom from arbitrary detention	Referred

2. Electoral Funding Amendment (Major Political Donors) Bill 2025*

No issues identified

3. Help to Buy (Commonwealth Powers) Bill 2025

Issue identified	Conclusion of Committee
Retrospective termination of laws by proclamation in the Gazette	Referred
Wide regulation-making powers with retrospective effect	Referred
Commencement by proclamation	No further comment

4. Identity Protection and Recovery Bill 2025

Issue identified	Conclusion of Committee
Right to privacy and protection of personal information – compromised ID register	Referred
Extraterritorial application of laws	Referred
Broad exemptions from privacy laws impact procedural fairness and access to justice	Referred
Wide regulation-making powers including retrospective enactment	Referred

5. Northern Beaches Hospital (Voluntary Contract Termination) Bill 2025*

Issue identified	Conclusion of Committee
Wide regulation making powers with retrospective effect	Referred
Exclusion of compensation entitlements	Referred

6. Statute Law (Miscellaneous Provisions) Bill 2025

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

7. Victims Legislation Amendment (Victims Registers) Bill 2025

Issue identified	Conclusion of Committee
Commencement by proclamation	No further comment

PART TWO – REGULATIONS WITH COMMENT**1. Road Transport Amendment (Miscellaneous) Regulation 2025**

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment

2. Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025

Issue identified	Conclusion of Committee
Henry VIII clause and retrospectivity	Referred

Summary of Conclusions

PART ONE – BILLS

1. Bail Amendment (Ban on Private Electronic Monitoring) Bill 2025

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

Right to liberty and freedom from arbitrary detention

The Bill proposes to amend sections 28B and 30A of the *Bail Act 2013* (the Act). This would require that, where bail is granted for serious domestic violence offences, the accused person must remain in custody until they have been fitted with an electronic monitoring device by the Commissioner of Corrective Services (the Commissioner). This may affect the granting of bail or result in longer periods of remand while the accused person awaits monitoring by the Commissioner.

The Bill also imposes a positive obligation on accused persons subject to private electronic monitoring at the time of the commencement of the Bill. During the three-month transition period, they must apply to vary their bail conditions. Failure to vary their bail conditions to remove private electronic monitoring within this period would constitute a breach of bail. The Committee notes that under subclause 3(b), a breach by an accused person could result in an arrest or return to court under section 77 of the Act.

The Committee acknowledges that the courts retain discretion under section 28B(2) to determine whether 'sufficient reasons exist' to impose an electronic monitoring condition on a person accused of serious domestic violence offences. The court may also impose other conditions to address bail concerns. The Committee further recognises that the proposed amendments are intended to address concerns about private monitoring and promote public safety.

However, the Committee notes that the amendments may infringe on a person's 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. For these reasons, the Committee refers the matter to Parliament for consideration.

2. Electoral Funding Amendment (Major Political Donors) Bill 2025*

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

3. Help to Buy (Commonwealth Powers) Bill 2025

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

Retrospective termination of laws by proclamation in the Gazette

The Bill would allow the Governor, by proclamation published in the Gazette, to set a date for the termination of any or all parts of the primary version, residual version or amendment reference. Subclause 7(2) would permit the Governor to revoke such a proclamation, with the effect that it is taken never to have been made or published. This effectively creates a retrospective legal effect,

as the initial termination is treated as if it never occurred. This can undermine legal certainty and does not provide for adequate parliamentary oversight.

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. In this case, it is important that a person affected by the Help to Buy scheme has legal certainty and can understand the relevant law that applies to them at any one time.

While the Committee acknowledges that the retrospective application of a proclamation may offer administrative flexibility, it may also affect a person's ability to determine whether the relevant part of the scheme is applicable to them at a certain point in time. Further, as the proclamation can be revoked without reference to Parliament, there is limited opportunity for public or parliamentary scrutiny. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Wide regulation-making powers with retrospective effect

The Bill proposes a general regulation-making power under subclause 11(1). This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Subclause 11(2) of the Bill would allow regulations to make savings or transitional provisions that are consequent on the commencement of the Bill, or another provision amending the Bill, once enacted. It also provides that the regulations may take effect before the provision commences, including prior to their publication on the NSW legislation website. The Committee acknowledges the inclusion of subclauses 11(6)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.

As there appears to be no provision which defines or limits the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee recognises that these types of regulation-making powers are not uncommon, as they may allow for more flexible administrative responses. The Committee also notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act).

However, the Committee considers that the broad nature of the proposed general regulation making power could allow significant matters to be prescribed with minimal constraints. The Committee also 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. The Committee notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website. The provision further specifies that where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date). For these reasons, the Committee refers the regulation making power to Parliament for consideration.

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

Commencement by proclamation

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

The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, to align with the Commonwealth in determining operational parts of the Help to Buy scheme. Because of this, and because the Bill does not create new powers or impact personal rights and liberties, the Committee makes no further comment.

4. Identity Protection and Recovery Bill 2025

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

Right to privacy and protection of personal information – compromised ID register

The Bill proposes to establish a new Act, the *Identity Protection and Recovery Act 2025* (the Act). Sections 18 and 19 of the Bill would require the Secretary of the Department of Customer Service (the Secretary) to maintain a register of personal identity documents that have been, or may have been compromised through unauthorised or unintentional disclosure. However, it is unclear as to what level of detail of those documents would be collected in the register.

The register would operate on an 'opt-out' basis. This means that once the Secretary determines a document may have been compromised, it is added to the register without first consulting the affected person. The individual would be notified only after their documents have been added, at which point they may request their removal. Under section 25, a person may apply to become a 'fraud check user' and, if approved, may access information on the register for the purpose of preventing fraud within their own agency or organisation.

The Bill may therefore impact individuals' privacy rights by requiring the collection and use of an unspecified level of personal information in a central register, and by allowing that information to be disclosed to fraud check users, who are a group that is not clearly defined and may be further prescribed by regulation at a later time. The Committee acknowledges that these provisions are intended to reduce the risk of fraud by enabling public and private agencies to check whether an identity document has been compromised.

However, several concerns remain. The Bill would defer key details about the operation of the register to future regulations. This may create uncertainty for affected individuals and reduce legislative scrutiny. In addition, the Bill uses broad and non-specific language when describing some of the Secretary's powers, which may expose individual rights and liberties to administrative decisions that are not clearly defined in the legislation. The Committee also notes that the Bill does not set out specific requirements about the storage and cyber security of the register. This may increase the risk of unauthorised or unintentional disclosure of personal information and further impact individuals' privacy.

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

Extraterritorial application of laws

Section 15 of the Bill would allow the Secretary to carry out identity protection functions for individuals residing in another State or Territory, and for departments or agencies of the Commonwealth or other jurisdictions.

Extraterritorial application would extend the legislative jurisdiction of the Act beyond the State of NSW. The Committee generally comments on provisions that are intended to have extraterritorial application because it may make it difficult for individuals to understand the law that applies to them at any given time. For this reason, the Committee refers this matter to Parliament for consideration.

Broad exemptions from privacy laws impact procedural fairness and access to justice

The Bill proposes to exempt the Secretary of the Department of Customer Service (the Secretary), public sector agencies, law enforcement agencies, and other persons from civil, criminal, and disciplinary liability when they collect, hold, use, or disclose personal information in accordance with the Bill. These exemptions would not apply to 'unlawful conduct', which is not defined in the Bill, or to conduct that breaches another provision of the Act or a contract with the Secretary.

This may limit an individual's ability to rely on privacy or other legal protections in court, depending on whether their personal information is recorded on the compromised ID register. The Bill may therefore unduly trespass on an individual's right to procedural fairness and access to legal remedies for the misuse of their personal information.

The Committee acknowledges that the proposed exemptions would not apply to 'unlawful conduct' and are intended to support timely responses to data breaches. However, the Committee remains concerned that key terms such as 'unlawful conduct' are not clearly defined, and that the scope of conduct protected by the exemption is uncertain due to the Bill's broad regulation-making powers and the use of non-specific language. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Wide regulation-making powers including retrospective enactment

Section 38 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. Although the provision is limited in effect, it would still allow for those provisions to take effect on a date earlier than the date of publication of those regulations on the NSW legislation website. The Committee notes that this would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under the proposed Act and the laws that apply to them. This is contrary to the rule of law principle that a person is entitled to know the law that applies to them at any given time. For these reasons, the Committee refers the matter to Parliament for consideration.

5. Northern Beaches Hospital (Voluntary Contract Termination) Bill 2025*

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

Wide regulation making powers with retrospective effect

The Bill proposes a general regulation-making power under proposed section 5. This would allow regulations to be made on any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Section 5 of the Bill would allow regulations to make savings or transitional provisions that are consequent on the commencement of the Bill, or another provision amending the Bill, once enacted. It also allows regulations to take effect on a date earlier than the commencement of the provision, including before publication on the NSW legislation website. The Committee acknowledges the inclusion of subclauses (6)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely impact on a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.

However, as there appears to be no provisions that define or limit the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament, and over which the Parliament has no control when they commence. The Committee recognises that such regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. The Committee also notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). Even so, the broad nature of the proposed general regulation-making power could allow significant matters to be prescribed with minimal constraints.

The Committee generally comments on provisions that are drafted to have retrospective effect, as they impact the rule of law principle that a person is entitled to know the law that applies to them at any given time. The Committee further notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website (or a later specified date), and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

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

Exclusion of compensation entitlements

The Bill would establish a new Act, the *Northern Beaches Hospital (Voluntary Contract Termination) Act 2025*. It would give the NSW Government broad power to terminate the Northern Beaches Hospital contract and remove a key legal barrier to doing so. Section 4 of the Bill proposes that the NSW Government is not required to pay compensation if it voluntarily terminates the contract or any part of it. This would apply despite any other Act, law, or instrument, including those regarding the NSW Government and Healthscope.

The Committee acknowledges that the provisions may be intended to offer administrative flexibility and support the return of the hospital to public ownership. However, by excluding compensation, regardless of the circumstance, the Bill may affect a person's right to property and legal certainty. Those impacted by the termination may have no right to compensation or legal

redress, even if the contract was entered into in good faith. Since there is no clear review process, it could also affect their sense of legal certainty or right to property. For these reasons, the Committee refers the matter to Parliament for consideration.

6. Statute Law (Miscellaneous Provisions) Bill 2025

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

Statutory rule expressed to commence before publication on NSW legislation website

Schedule 6, clause 5 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. Although the provision is limited in effect, it would still allow for those provisions to take effect on a date earlier than the date of publication of the regulations on the NSW legislation website. The Committee notes that this would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

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

7. Victims Legislation Amendment (Victims Registers) Bill 2025

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

Commencement by proclamation

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

The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, to set up the arrangements for administering the new notification process within the relevant agencies. For this reason, and because the Bill does not appear to impact on personal rights and liberties, the Committee makes no further comment.

PART TWO – REGULATIONS WITH COMMENT

1. Road Transport Amendment (Miscellaneous) Regulation 2025

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

Absolute liability offences

The Regulation inserts new absolute liability offences into the Road Transport (General) Regulation 2021, including clauses 19(2)(b) and 19(3)(b). These changes require certain safety systems and padding in buses to be in good working order. Failure to comply with these requirements can result in a maximum penalty of a \$2,200 fine (20 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 notes that absolute liability offences are not uncommon in regulatory settings to encourage compliance. In this case, the additional requirements introduced may be intended to promote road safety. The Committee also notes that the maximum penalty for these offences is monetary and not custodial. In the circumstances, the Committee makes no further comment.

2. Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025

Objective could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII clause and retrospectivity

The Regulation commenced on 21 February 2025 and amends the Road Transport (Driver Licensing) Regulation 2017 to retrospectively extend the demerit points reduction trial period by 12 months. It sets the new trial period from 17 January 2025 to 31 January 2026. The trial was introduced by section 32A of the *Road Transport Act 2013* (the Act). It allows a driver to have one demerit point removed from their record if they do not commit a relevant offence during the trial period. Under subsection 32A(2) of the Act, the original trial period ran from 17 January 2023 to 16 January 2024. It was later extended for 12 months, until 16 January 2025, by the Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2024.

Section 32A(3) of the Act includes a sunset clause, which originally set the section to expire on 31 January 2025 or a later date prescribed by regulation. The current Regulation extends the expiry date to 31 January 2027. This is the second time that the trial period and expiry date of section 32A of the Act has been extended by regulation.

The Regulation changes the operation of the Act, and may therefore amount to a Henry VIII clause. The Committee notes that regulations must be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*. It also recognises that using regulations to amend defined trial periods may be more administratively efficient.

However, the Committee previously reported on the Road Transport Amendment (Demerit Point Reduction Trial) Bill 2023 in Digest 2/58, commenting on section 32A of the Act. Consistent with those comments, the Committee generally considers that primary legislation should not be amended by subordinate legislation because it reduces parliamentary scrutiny of those changes.

Unlike primary legislation, subordinate legislation is not required to be passed by Parliament and the Parliament does not control when it commences.

Further, the Regulation was published on 21 February 2025 but retrospectively extends the trial period starting from 16 January 2025. 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.

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



Part One – Bills

1. Bail Amendment (Ban on Private Electronic Monitoring) Bill 2025

Date introduced	7 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 1.1 The objects of the Bill are to:
- (a) provide that if the grant of bail for an accused person is subject to electronic monitoring as a bail condition, the electronic monitoring must be conducted by the Commissioner of Corrective Services (the **Commissioner**)
 - (b) restrict the grant of bail subject to electronic monitoring to serious domestic violence offences only.

Background

- 1.2 The Bill seeks to amend the *Bail Act 2023* (the **Act**) to clarify that electronic monitoring conditions may only be imposed for certain domestic violence 'show-cause' offences. It would also prohibit the use of private electronic monitoring services as a bail condition.
- 1.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained that 'there are legitimate concerns about the effectiveness of private electronic monitoring and the services that some providers deliver.' He stated that the Bill would 'address the continuing concerns about the quality and reliability of private electronic monitoring services'.
- 1.4 The Bill includes a transition period of three-months after the commencement of the Bill, in which affected individuals can apply to revoke or vary existing bail conditions involving private electronic monitoring.

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

Right to liberty and freedom from arbitrary detention

- 1.5 Section 28B of the Act requires that electronic monitoring be imposed as a bail condition for serious domestic violence offences.
- 1.6 The Bill proposes to amend subsection 28B(2A) to clarify that, if granted bail, an accused person must remain in custody until they have been fitted with an electronic monitoring device by the Commissioner.

- 1.7 The Bill also proposes to amend section 30A to clarify that electronic monitoring as a bail condition may only be imposed for certain domestic violence show-cause offences under section 28B.
- 1.8 The Bill also provides for a three-month transition period for accused persons who are already subject to private electronic monitoring as a bail condition at the time the Bill commences. During this period, they must apply to vary their bail conditions.
- 1.9 Subclause (3) states that if they fail to do so within the transition period, they would be in breach of their bail order and may be arrested or brought before a court by a police officer under section 77 of the Act.

The Bill proposes to amend sections 28B and 30A of the *Bail Act 2013* (the Act). This would require that, where bail is granted for serious domestic violence offences, the accused person must remain in custody until they have been fitted with an electronic monitoring device by the Commissioner of Corrective Services (the Commissioner). This may affect the granting of bail or result in longer periods of remand while the accused person awaits monitoring by the Commissioner.

The Bill also imposes a positive obligation on accused persons subject to private electronic monitoring at the time of the commencement of the Bill. During the three-month transition period, they must apply to vary their bail conditions. Failure to vary their bail conditions to remove private electronic monitoring within this period would constitute a breach of bail. The Committee notes that under subclause 3(b), a breach by an accused person could result in an arrest or return to court under section 77 of the Act.

The Committee acknowledges that the courts retain discretion under section 28B(2) to determine whether 'sufficient reasons exist' to impose an electronic monitoring condition on a person accused of serious domestic violence offences. The court may also impose other conditions to address bail concerns. The Committee further recognises that the proposed amendments are intended to address concerns about private monitoring and promote public safety.

However, the Committee notes that the amendments may infringe on a person's 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.¹ For these reasons, the Committee refers the matter to Parliament for consideration.

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

2. Electoral Funding Amendment (Major Political Donors) Bill 2025*

Date introduced	7 May 2025
House introduced	Legislative Council
Member with carriage	The Hon. Tania Mihailuk MLC
*Private Members Bill	

Purpose and description

- 2.1 The object of the Bill is to amend the *Electoral Funding Act 2018* (the **Act**) for the following purposes:
- (a) to require an applicant for government funding or an appointment to certain government positions to disclose if the applicant is or has been a major political donor in the previous 5 financial years
 - (b) to make clear that being or having been a major political donor raises a conflict of interest in all cases for applications of those kinds.

Background

- 2.2 The Bill seeks to amend the Act to improve integrity and transparency in the assessment of applicants for government funding or appointment to government boards, where those applicants are major political donors.
- 2.3 The Bill proposes to insert clause 159 into the Act to outline the obligations of major political donors and redefine key terms.
- 2.4 In her second reading speech, the Hon. Tania Mihailuk MLC stated that:

Public integrity and public trust in a grants process can only be achieved if the process is transparent and fair and the decision-makers can be held accountable for their actions. Disclosures of conflicts of interest are paramount to this, particularly when an applicant for government funding or an applicant who is seeking an appointment to a government board is also a major political donor.

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*.

3. Help to Buy (Commonwealth Powers) Bill 2025

Date introduced	7 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

Purpose and description

- 3.1 The objects of the Bill are as follows:
- (a) for the purposes of the Constitution of the Commonwealth, section 51(xxxvii):
 - (i) to adopt certain provisions of the *Help to Buy Act 2024* of the Commonwealth (the **Commonwealth Help to Buy Act**)
 - (ii) to refer matters relating to amendments to that Act to the Parliament of the Commonwealth
 - (b) to make consequential amendments to other Acts.

Background

- 3.2 The Bill proposes to adopt the Commonwealth's Help to Buy shared equity scheme under the provisions of the Commonwealth Help to Buy Act by referring the legislative power of the State of NSW under the *Commonwealth of Australia Constitution Act* (the **Commonwealth Constitution**). It also proposes to make minor amendments to several related Acts to implement the shared equity scheme in NSW.
- 3.3 Under the Help to Buy scheme, the Commonwealth contributes to the purchase price of a property for first home buyers in return for an equity interest in that property.
- 3.4 The Hon. Paul Scully MP, Minister for Planning and Public Spaces, said that the Bill 'provides for the adoption of specific provisions of the Commonwealth's *Help to Buy Act 2024* via a targeted referral of legislative powers so that the Commonwealth's shared equity scheme, Help to Buy, can operate in NSW.' He explained that to 'provide a robust constitutional basis for Help to Buy implementation in NSW, this bill refers legislative powers to the Commonwealth under the Commonwealth Constitution.'
- 3.5 Part 2 of the Bill proposes to set out the mechanism for adopting the Commonwealth Help to Buy Act into NSW law. Proposed section 4 adopts the primary and residual versions of the Commonwealth Help to Buy Act under section 51(xxxvii) of the Commonwealth Constitution. It allows the NSW Parliament to refer legislative powers to the Commonwealth within defined limits.

- 3.6 Part 2 also outlines how NSW would refer these legislative powers to the Commonwealth.
- 3.7 Proposed section 6 provides for an amendment reference. It would refer future amendments to the Commonwealth Parliament, but it would also set limits on the scope of those referrals.
- 3.8 Proposed section 7 provides for the termination of the adoption and amendment reference in the Bill. It allows the Governor to proclaim a date when the adoption of the primary, residual, and amendment reference will cease.
- 3.9 Proposed section 8 outlines the effect of ending an amendment reference before the primary version or residual version is adopted. It clarifies that such termination does not affect laws already made under that reference or the continued operation in NSW of the Commonwealth Help to Buy Act.
- 3.10 Part 3 of the Bill deals with other matters. Section 9 would declare certain matters to be excluded, while section 10 would allow the Minister on behalf of NSW to object to certain matters under the Commonwealth Help to Buy Act. It details a process under which the Minister can object, including notification requirements. Section 11 includes provisions for regulation-making powers.
- 3.11 Finally, Schedule 1 proposes to amend other legislation to support the operation of the Help to Buy scheme in NSW.

Issues considered by the Committee

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

Retrospective termination of laws by proclamation in the Gazette

- 3.12 Proposed subclause 7(1) of the Bill would allow the Governor, at any time by proclamation published in the Gazette, to fix a day on which any of the following will end:
- (a) the adoption of any or all of the primary version
 - (b) the adoption of any or all of the residual version
 - (c) the amendment reference.
- 3.13 Under proposed subclause 7(2), the Governor can, by proclamation, revoke a proclamation made under subclause 7(1).

The Bill would allow the Governor, by proclamation published in the Gazette, to set a date for the termination of any or all parts of the primary version, residual version or amendment reference. Subclause 7(2) would permit the Governor to revoke such a proclamation, with the effect that it is taken never to have been made or published. This effectively creates a retrospective legal effect, as the initial termination is treated as if it never occurred. This can undermine legal certainty and does not provide for adequate parliamentary oversight.

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. In this case, it is important that a person affected by the Help to Buy scheme has legal certainty and can understand the relevant law that applies to them at any one time.

While the Committee acknowledges that the retrospective application of a proclamation may offer administrative flexibility, it may also affect a person's ability to determine whether the relevant part of the scheme is applicable to them at a certain point in time. Further, as the proclamation can be revoked without reference to Parliament, there is limited opportunity for public or parliamentary scrutiny. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Wide regulation-making powers with retrospective effect

- 3.14 The Bill proposes a general regulation-making power under clause 11. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill, if enacted.
- 3.15 Subclause 11(2) would allow regulations to make savings, transitional, and other provisions. Subclause 11(5) would permit a savings or transitional provision that is made because 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.
- 3.16 Proposed subclause 11(6) clarifies that a savings or transitional provision taking effect before publication would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.
- 3.17 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires statutory rules, including regulations, to be published on the NSW legislation website. They take effect on the date of publication or a later specified date. Subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before the publication date. In such cases, it is taken to commence on the date of publication rather than the earlier stated date.

The Bill proposes a general regulation-making power under subclause 11(1). This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Subclause 11(2) of the Bill would allow regulations to make savings or transitional provisions that are consequent on the commencement of the Bill, or another provision amending the Bill, once enacted. It also provides that the regulations may take effect before the provision commences, including prior to their publication on the NSW legislation website. The Committee acknowledges the inclusion of subclauses 11(6)(a) and (b), which state that a savings or transitional provision taking

effect before its publication on the NSW legislation website would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.

As there appears to be no provision which defines or limits the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee recognises that these types of regulation-making powers are not uncommon, as they may allow for more flexible administrative responses. The Committee also notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act).

However, the Committee considers that the broad nature of the proposed general regulation making power could allow significant matters to be prescribed with minimal constraints. The Committee also 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. The Committee notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website. The provision further specifies that where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date). For these reasons, the Committee refers the regulation making power to Parliament for consideration.

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

Commencement by proclamation

- 3.18 Clause 2 of the Bill provides that it would commence on a day or days to be appointed by proclamation.

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

The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, to align with the Commonwealth in determining operational parts of the Help to Buy scheme. Because of this, and because the Bill does not create new powers or impact personal rights and liberties, the Committee makes no further comment.

4. Identity Protection and Recovery Bill 2025

Date introduced	6 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Jihad Dib MP
Portfolio	Customer Service and Digital Government

Purpose and description

- 4.1 The objects of the Bill are:
- (a) to enable the Secretary to exercise functions to support individuals and organisations in protecting, recovering and remediating personal information in relation to a compromise of personal information
 - (b) to provide exemptions to privacy and other laws required for the exercise of the functions.

Background

- 4.2 The Bill seeks to establish the *Identity Protection and Recovery Act 2025* (**the Act**), which would create a core government provider of identity protection, recovery, and certain fraud control services in NSW.
- 4.3 The Bill would also give the Secretary of the Department of Customer Service (the **Secretary**) additional powers to protect, recover, and respond to incidents whereby personal information has been unlawfully or unintentionally accessed. It would also grant statutory exemptions from certain NSW laws that restrict the disclosure of information.
- 4.4 In his second reading speech, the Hon. Jihad Dib MP, Minister for Customer Service and Digital Government, said that the Secretary's powers under the proposed Act would be delegated to the Department's ID Support unit. The unit's role would focus on 'protecting individuals from the risks of identity compromise, as well as providing new fraud prevention functions.'
- 4.5 The Minister stated that the Bill is 'a key part of delivering on the NSW Digital Strategy' and aims to '[improve] trust, resilience and skills for the people of New South Wales.'

Issues considered by the Committee

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

Right to privacy and protection of personal information – compromised ID register

- 4.6 Sections 18 and 19 of the Bill would require the Secretary to maintain a 'compromised ID register', which records identity documents that have been, or may have been, compromised.
- 4.7 Under section 20, a person may request that their records be removed from the register for specific purposes set out in the regulations.
- 4.8 Under Part 3 of the Bill, the Secretary may disclose information from the register to impacted individuals (section 22), the issuers of identity documents (section 23), and approved fraud check users. Anyone can apply to become a fraud check user under the Bill, however, the Secretary must be satisfied that the applicant meets the criteria prescribed by regulations before granting approval (section 25).
- 4.9 In his second reading speech, the Minister explained that the compromised ID register would form part of ID Support's new identity fraud control functions under the proposed Act:
- The functions also include facilitating checks of the Compromised ID Register and/or a person's life status for fraud check users... a fraud check user can then request information about an identity document including whether that identity document has been registered on the Compromised ID Register, and the identity document holder's life status, which means whether that person is known to have died.
- 4.10 Under subsection 26(4)(a), the Secretary may disclose information from the register to a fraud check user if they are satisfied that the individual whose identity document is involved has consented to the disclosure. The Bill does not specify how consent must be obtained.
- 4.11 The Minister stated that 'Fraud check users may include New South Wales government agencies, housing providers, education providers, telecommunication companies, insurers, banks and credit card companies.'
- 4.12 The Minister also clarified that 'The Compromised ID register does not block identity documents from being used to verify a person's identity. It is up to the fraud check user as to how to proceed with a transaction, in line with their own policies, procedures and legal requirements.'
- 4.13 Several of the Bill's proposed provisions delegate important details about the operation of the Compromised ID Register to regulations, including subsections 6(c)(ii), 10(d), 11(e), 12(f), 13(4), 14(2), 18, 20(1)(b) and (2)(b), 25(6), s 26(4)(b)(ii), 26(5)(b) and 28(4)(b).
- 4.14 Some of the Bill's provisions use broad and non-specific language to describe the Secretary's powers in relation to the Compromised ID register. For example, under section 19, the Secretary may record an identity document in the register 'if, in the Secretary's opinion, the identity document has or may have been compromised.' The

following sections may fall into this category: 5, 6, 7, 19, 22(1) - (2), 23(3)(a), 25, 26, 28, and 31(1) - (3).

The Bill proposes to establish a new Act, the *Identity Protection and Recovery Act 2025* (the Act). Sections 18 and 19 of the Bill would require the Secretary of the Department of Customer Service (the Secretary) to maintain a register of personal identity documents that have been, or may have been compromised through unauthorised or unintentional disclosure. However, it is unclear as to what level of detail of those documents would be collected in the register.

The register would operate on an 'opt-out' basis. This means that once the Secretary determines a document may have been compromised, it is added to the register without first consulting the affected person. The individual would be notified only after their documents have been added, at which point they may request their removal. Under section 25, a person may apply to become a 'fraud check user' and, if approved, may access information on the register for the purpose of preventing fraud within their own agency or organisation.

The Bill may therefore impact individuals' privacy rights by requiring the collection and use of an unspecified level of personal information in a central register, and by allowing that information to be disclosed to fraud check users, who are a group that is not clearly defined and may be further prescribed by regulation at a later time. The Committee acknowledges that these provisions are intended to reduce the risk of fraud by enabling public and private agencies to check whether an identity document has been compromised.

However, several concerns remain. The Bill would defer key details about the operation of the register to future regulations. This may create uncertainty for affected individuals and reduce legislative scrutiny. In addition, the Bill uses broad and non-specific language when describing some of the Secretary's powers, which may expose individual rights and liberties to administrative decisions that are not clearly defined in the legislation. The Committee also notes that the Bill does not set out specific requirements about the storage and cyber security of the register. This may increase the risk of unauthorised or unintentional disclosure of personal information and further impact individuals' privacy.

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

Extraterritorial application of laws

- 4.15 Section 15 of the Bill would allow the Secretary to carry out identity protection functions for individuals residing in another State or Territory, and for departments or agencies of the Commonwealth or another State or Territory.

Section 15 of the Bill would allow the Secretary to carry out identity protection functions for individuals residing in another State or Territory, and for departments or agencies of the Commonwealth or other jurisdictions.

Extraterritorial application would extend the legislative jurisdiction of the Act beyond the State of NSW. The Committee generally comments on provisions that are intended to have extraterritorial application because it may make it difficult for individuals to understand the law that applies to them at any given time. For this reason, the Committee refers this matter to Parliament for consideration.

Broad exemptions from privacy laws impact procedural fairness and access to justice

- 4.16 Part 4, Division 2 of the Bill would allow the Secretary, partner authorities and public sector agencies to collect, hold, use, and disclose personal information under the Bill despite any other law in NSW (section 31). This exemption would not apply to 'unlawful conduct', which is not defined by the Bill (section 32).
- 4.17 Section 33 would exempt a person from liability for disclosing information to, or from the Secretary, a public sector agency, a law enforcement agency or any other person. A person who discloses personal information under this section would not be subject to civil, criminal, or disciplinary liability. However, the exemption would not apply if the disclosure breaches another provision of the Act, or a contract between the Secretary and another party.
- 4.18 In his second reading speech, the Minister stated:

The PPIP Act and the *Health Records and Information Privacy Act 2002* provide important privacy protections which restrict the handling of personal and health information. However, they can limit the assistance that ID Support can provide following a data compromise when it needs to be able to assist its customers to assess compromised personal information and notify impacted individuals.

The Bill proposes to exempt the Secretary of the Department of Customer Service (the Secretary), public sector agencies, law enforcement agencies, and other persons from civil, criminal, and disciplinary liability when they collect, hold, use, or disclose personal information in accordance with the Bill. These exemptions would not apply to 'unlawful conduct', which is not defined in the Bill, or to conduct that breaches another provision of the Act or a contract with the Secretary.

This may limit an individual's ability to rely on privacy or other legal protections in court, depending on whether their personal information is recorded on the compromised ID register. The Bill may therefore unduly trespass on an individual's right to procedural fairness and access to legal remedies for the misuse of their personal information.

The Committee acknowledges that the proposed exemptions would not apply to 'unlawful conduct' and are intended to support timely responses to data breaches. However, the Committee remains concerned that key terms such as 'unlawful conduct' are not clearly defined, and that the scope of conduct protected by the exemption is uncertain due to the Bill's broad regulation-making powers and the use of non-specific language. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Wide regulation-making powers including retrospective enactment

- 4.19 Section 38 would allow the Governor to make regulations with provisions of a savings or transitional nature consequent on the enactment of the proposed Act.
- 4.20 Schedule 2, clause 1 states that, if the regulations provide, their provisions may take effect from the date of assent of the Bill as an Act, or a later date.
- 4.21 Subclause 1(4) would limit the effect of such provisions to the extent they take effect from a date before the regulation is published on the NSW legislation website. Specifically, it would prevent those provisions from operating in a way that would prejudicially affect any pre-existing rights of a person or impose liabilities on a person in respect of actions or omissions made before publication.

Section 38 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. Although the provision is limited in effect, it would still allow for those provisions to take effect on a date earlier than the date of publication of those regulations on the NSW legislation website. The Committee notes that this would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under the proposed Act and the laws that apply to them. This is contrary to the rule of law principle that a person is entitled to know the law that applies to them at any given time. For these reasons, the Committee refers the matter to Parliament for consideration.

5.

Northern Beaches Hospital
(Voluntary Contract Termination)
Bill 2025*

Date introduced	8 May 2025
House introduced	Legislative Assembly
Member with carriage	Mr Michael Regan MP
*Private Members Bill	

Purpose and description

- 5.1
- The object of the Bill is to provide that no compensation is payable by or on behalf of the State by reason, or on the occurrence, of the voluntary termination by the State of the contract for the Northern Beaches Hospital.

Background

- 5.2
- The Bill seeks to remove a key barrier to terminating the Northern Beaches Hospital contract by the NSW Government. It proposes that if the Government voluntarily ends its contract with Healthscope, it would not be required to pay compensation.
- 5.3
- The Bill was introduced in response to the Auditor-General's April 2025 report on the performance of the Northern Beaches Hospital.
- 5.4
- In his second reading speech, Mr Michael Regan MP stated that the Bill is intended to support the return of the hospital to public ownership. He also stated that:

...the Northern Beaches Hospital's PPP arrangement is not in the public interest, it is crucial that the Parliament acts to remove barriers to fixing this mess. That is what this bill does.

Issues considered by the Committee

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

Wide regulation making powers with retrospective effect

- 5.5
- The Bill proposes a general regulation-making power under section 5. This section would allow the Governor to make regulations to address a matter that is 'required or permitted by this Act to be prescribed' or that is 'necessary or convenient to be prescribed' for the purposes of carrying out the Act.
- 5.6
- Section 5 of the Bill would allow regulations to make savings and transitional provisions. Subclauses 5(5) and 5(6) would allow a savings or transitional provision that is made as a result of the commencement of a provision, to take effect prior to

the commencement of that provision, including before the regulation is published on the NSW legislation website.

- 5.7 Proposed subclause 5(6) specifies that if a savings or transitional provision takes effect before it is published on the NSW legislation website, it would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.
- 5.8 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires that a statutory rule (including regulations) must be published on the NSW legislation website. They take effect on the date of publication or a later specified date. Subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before publication and is instead taken to commence on the date of publication rather than the earlier stated date.

The Bill proposes a general regulation-making power under proposed section 5. This would allow regulations to be made on any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Section 5 of the Bill would allow regulations to make savings or transitional provisions that are consequent on the commencement of the Bill, or another provision amending the Bill, once enacted. It also allows regulations to take effect on a date earlier than the commencement of the provision, including before publication on the NSW legislation website. The Committee acknowledges the inclusion of subclauses (6)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely impact on a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.

However, as there appears to be no provisions that define or limit the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament, and over which the Parliament has no control when they commence. The Committee recognises that such regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. The Committee also notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). Even so, the broad nature of the proposed general regulation-making power could allow significant matters to be prescribed with minimal constraints.

The Committee generally comments on provisions that are drafted to have retrospective effect, as they impact the rule of law principle that a person is entitled to know the law that applies to them at any given time. The Committee further notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website (or a later specified date), and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

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

Exclusion of compensation entitlements

- 5.9 Section 4 of the Bill proposes that the State is not required to pay compensation if it voluntarily terminates the Northern Beaches Hospital contract, or any part of it.
- 5.10 Under proposed subsection 4(2), the proposal would apply despite any other Act, law, or instrument, including agreements between the NSW Government and Healthscope.
- 5.11 Section 3 of the Bill defines 'compensation' to include:
- (a) damages
 - (b) another form of monetary compensation
 - (c) another amount, whether or not described as compensation, payable under an instrument, including agreements between the NSW Government and Healthscope
 - (d) a liability to make payments under an instrument, including agreements between the NSW Government and Healthscope on the occurrence of events specified in the instrument.

The Bill would establish a new Act, the *Northern Beaches Hospital (Voluntary Contract Termination) Act 2025*. It would give the NSW Government broad power to terminate the Northern Beaches Hospital contract and remove a key legal barrier to doing so. Section 4 of the Bill proposes that the NSW Government is not required to pay compensation if it voluntarily terminates the contract or any part of it. This would apply despite any other Act, law, or instrument, including those regarding the NSW Government and Healthscope.

The Committee acknowledges that the provisions may be intended to offer administrative flexibility and support the return of the hospital to public ownership. However, by excluding compensation, regardless of the circumstance, the Bill may affect a person's right to property and legal certainty. Those impacted by the termination may have no right to compensation or legal redress, even if the contract was entered into in good faith. Since there is no clear review process, it could also affect their sense of legal certainty or right to property. For these reasons, the Committee refers the matter to Parliament for consideration.

6. Statute Law (Miscellaneous Provisions) Bill 2025

Date introduced	8 May 2025
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Special Minister of State

Purpose and description

6.1 The objects of the Bill are to:

- (a) make minor amendments to various Acts and instruments - Schedule 1
- (b) make minor amendments to certain Acts and instruments for the purpose of effecting statute law revision - Schedule 2
- (c) make amendments to certain Acts and instruments to remove definitions of 'business day', as the term is defined in the *Interpretation Act 1987* (the **Interpretation Act**) - Schedule 3
- (d) make amendments to certain Acts and instruments to shorten references to the Judicial Commission for consistency with the *Judicial Officers Act 1986*, section 51 - Schedule 4
- (e) make other provisions of a consequential or ancillary nature - Schedule 5.

Background

6.2 In his second reading speech, the Hon. John Graham MLC, Special Minister of State, said that the statute law revision program 'has been in place for more than 40 years.' He said that statute law revision bills:

...are an effective method for making minor policy changes and serve as an important mechanism to maintain the quality of the New South Wales statute book by removing typographical errors, updating cross-references and repealing redundant provisions.

6.3 The Statement of Public Interest tabled with the Bill stated that the Statute Law Revision program bills are 'comprised of legislative amendments that would not otherwise be significant enough to warrant separate amending legislation.' It also stated that the Bill ensures the 'statute book remains current and accurate.'

6.4 The Bill seeks to amend a number of unrelated Acts and regulations that are grouped into schedules according to the nature of the specific amendments. The Minister outlined the content of each schedule as follows:

- (a) Schedule 1 proposes minor amendments to 11 Acts and one related regulation that relate to policy changes of a 'minor and non-consequential nature'.
- (b) Schedule 2 contains amendments to 21 Acts and instruments to 'fix typographical errors, correct provision numbering and omit redundant provisions'.
- (c) Schedule 3 proposes to remove references to 'business day' or 'working day' from 16 Acts and instruments as the term 'business day' is now defined in the Interpretation Act.
- (d) Schedule 4 amends references to the Judicial Commission in 12 Acts and instruments to ensure that references are consistent with the *Judicial Officers Act 1986*.
- (e) Schedule 5 contains general savings, transitional and other provisions that are standard to statute law revision bills.

Issues considered by the Committee

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

Statutory rule expressed to commence before publication on NSW legislation website

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

Schedule 6, clause 5 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. Although the provision is limited in effect, it would still allow for those provisions to take effect on a date earlier than the date of publication of the regulations on the NSW legislation website. The Committee notes that this would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date).

The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under this Bill and the laws that apply to them. This is contrary to the rule of law principle that a person is entitled to know the law that applies to them at any given time. For these

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

7. Victims Legislation Amendment (Victims Registers) Bill 2025

Date introduced	6 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Youth Justice, Corrections and Attorney General

Purpose and description

7.1 The objects of this Bill are as follows:

- (a) to amend the *Children (Detention Centres) Act 1987* (the **CDC Act**) to require the agency responsible for keeping the Victims Register under the CDC Act to notify victims of serious young offenders, or particular family members of those victims, of the register and the victim's or family member's eligibility to be recorded in the register
- (b) to amend the *Crimes (Administration of Sentences) Act 1999* (the **CAS Act**) to require the agency responsible for keeping the Victims Register under the CAS Act to notify victims of particular serious offenders, or particular family members of those victims, about the register and the victim's or family member's eligibility to be recorded in the register
- (c) to amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the **MHCIFP Act**) to require the Commissioner of Victims Rights to notify victims of forensic patients, or particular family members of those victims, about the Victims Register kept under the MHCIFP Act and the victim's or family member's eligibility to be included in the register
- (d) to amend the *Victims Rights and Support Act 2013* (the **VRS Act**) to:
 - (i) allow a victim's contact details to be shared between particular government agencies for the purpose of informing the victim about available services, support or assistance, including about the victim's eligibility to be recorded or included in a victims register
 - (ii) allow particular government agencies responsible for administering matters relating to victims and victims support to disclose personal information to an agency responsible for keeping a victims register that is reasonably necessary to enable the responsible agency to comply with an obligation under an Act to notify a victim of crime or a family victim about the register.

Background

7.2 The Bill seeks to impose a positive obligation on relevant agencies that administer the victims registers to proactively notify eligible victims of certain serious offenders, or

particular family members of those victims, about their rights to be listed on the register and access its benefits. The aims of this are to improve the justice system and provide better support to victims of crime.

- 7.3 In his second reading speech, the Hon. Anoulack Chanthivong MP, Minister for Corrections, said that the bill would:

...legislate a new requirement for agencies who administer the victims registers to proactively notify victims of certain serious offenders of their right to be on the register and access the benefits it has to offer. It will ensure that in the future victims who would like to be kept informed, will be. The model for this new notification process was developed in consultation with key stakeholders, including victims and victims' advocacy and support services.

- 7.4 Schedule 1 would insert section 100AA into the CDC Act to require agencies to notify victims about the Youth Justice Victims Register. This duty would only apply to victims of certain serious offenders sentenced to a control order or imprisonment for an offence committed while under the age of 18.

- 7.5 Schedule 2 would insert section 282A into the CAS Act to require agencies to notify victims about the Corrective Services NSW Victims Register. This would only apply to victims of certain serious offenders as defined in proposed subsection 282A(6).

- 7.6 Schedule 3 would insert section 156A into the MHCIFP Act to allow eligible victims of forensic patients to be notified of the Specialist Victims Register.

- 7.7 Under Schedules 1, 2 and 3, agencies may not contact a victim if:

- (i) there is insufficient information
- (ii) the victim has indicated they do not wish to be recorded or contacted
- (iii) the victim is already recorded, or
- (iv) the victim has already been notified.

- 7.8 The Bill also makes consequential amendments to the VRS Act to support these changes. It would allow agencies to share relevant information to facilitate notifications by creating exemptions to the Charter of Victims Rights, and certain provisions in the *Health Records and Information Privacy Act 2002*.

Issues considered by the Committee

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

Commencement by proclamation

- 7.9 Clause 2 of the Bill provides that it would commence on a day or days to be appointed by proclamation.

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

The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, to set up the arrangements for administering the new notification process within the relevant agencies. For this reason, and because the Bill does not appear to impact on personal rights and liberties, the Committee makes no further comment.



Part Two – Regulations with comment

1. Road Transport Amendment (Miscellaneous) Regulation 2025

Date tabled	LA: 6 May 2025 LC: 6 May 2025
Disallowance date	LA: 27 June 2025 LC: 9 September 2025
Minister responsible	The Hon. Jenny Aitchison MP
Portfolio	Transport

Purpose and description

- 1.1 The object of the Regulation is to amend the Road Rules 2014, the Road Transport (Driver Licensing) Regulation 2017, the Road Transport (General) Regulation 2021 (the **RTG Regulation**) and the Road Transport (Vehicle Registration) Regulation 2017 for the following purposes:
- (a) to increase the maximum penalty, the amount payable under a penalty notice and the number of demerit points incurred for an offence committed at Galston Gorge against the Road Rules 2014, rules 104(2) and 106(2), relating to no truck signs and no bus signs
 - (b) to provide for Transport for NSW, in making a determination relating to the suspension or cancellation of a licence:
 - (i) to require a licence holder to complete a competency based assessment
 - (ii) to suspend or cancel a licence if the licence holder fails or refuses to submit to an assessment or fails the assessment
 - (c) to enable Transport for NSW to require assessors of competency based assessments to be licensed under the *Driving Instructors Act 1992*
 - (d) to provide that certain conditions of an interlock driving licence apply to starting, in addition to driving, a vehicle fitted with an interlock device
 - (e) to provide for Transport for NSW issuing a replacement driver licence in circumstances where there may have been unauthorised access to, or disclosure of, a licence holder's personal information or licence details
 - (f) to increase the amount payable under a penalty notice and the number of demerit points incurred for an offence involving the holder of a learner licence carrying a passenger while driving a motor bike or motor trike

- (g) to remove, as a basis on which Transport for NSW may make certain determinations relating to licensing and registration, a ground relating to whether a person is fit and proper to be licensed or registered
- (h) to provide, if an offence under the Heavy Vehicle National Law (NSW), section 129 is committed:
 - (i) for the driver of the vehicle's licence to be varied, suspended or cancelled
 - (ii) for the heavy vehicle's registration to be suspended
- (i) to extend the requirement for buses first registered after 1 August 1997 to be fitted with certain safety features by requiring those features to be in good working order
- (j) to provide that persons employed by Revenue NSW in the Department of Customer Service may issue certificate evidence under the *Road Transport Act 2013* (the **Act**), section 257
- (k) in relation to penalty notices:
 - (i) to provide that the Commissioner of Fines Administration may issue penalty notices as a Class 1 authorised officer
 - (ii) to expand the offences that persons employed in the Transport Service and appointed as enforcement officers may issue penalty notices for
- (l) to make other minor amendments.

1.2 The Regulation is made under the Act.

Issues considered by the Committee

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

Absolute liability offences

- 1.3 The Regulation introduces new absolute liability offences under the RTG Regulation, which require certain safety systems and padding in buses to be in good working order. In particular, the Regulation requires that:
- (a) a bus owner must not permit a person to drive the bus on a road unless the systems and padding described in s19(2)(a) are in good working order (clause 19(2)(b))
 - (b) a person must not drive a bus on a road unless the systems and padding described in s19(3)(a) are in good working order (clause 19(3)(b)).
- 1.4 Failure to comply with these requirements can result in a maximum penalty of a \$2,200 fine (20 penalty units).

The Regulation inserts new absolute liability offences into the Road Transport (General) Regulation 2021, including clauses 19(2)(b) and 19(3)(b). These changes require certain safety systems and padding in buses to be in good working order. Failure to comply with these requirements can result in a maximum penalty of a \$2,200 fine (20 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 notes that absolute liability offences are not uncommon in regulatory settings to encourage compliance. In this case, the additional requirements introduced may be intended to promote road safety. The Committee also notes that the maximum penalty for these offences is monetary and not custodial. In the circumstances, the Committee makes no further comment.

2. Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025

Date tabled	LA: 18 March 2025 LC: 18 March 2025
Disallowance date	LA: 29 May 2025 LC: 24 June 2025
Minister responsible	The Hon. John Graham MLC
Portfolio	Transport

Purpose and description

- 2.1 The object of the Regulation is to amend the Road Transport (Driver Licensing) Regulation 2017 to:
- (a) prescribe a further trial period for the demerit points reduction trial
 - (b) change the date on which the *Road Transport Act 2013* (the **Act**), sections 31(5)(b) and 32A expire.
- 2.2 The Regulation is made under the Act, section 32A, the regulation-making power.

Issues considered by the Committee

Objective could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII clause and retrospectivity

- 2.3 The Regulation commenced on 21 February 2025 and amends the Road Transport (Driver Licensing) Regulation 2017 to retrospectively extend the demerit points reduction trial period by 12 months. It prescribes the new trial period as 17 January 2025 to 31 January 2026.
- 2.4 The demerit points reduction trial, established under section 32A of the Act, allows a driver to have one demerit point removed from their record if they do not commit a relevant offence during the trial period.
- 2.5 Under subsection 32A(2) of the Act, the original trial period ran from 17 January 2023 to 16 January 2024. It was extended for 12 months, until 16 January 2025, by the Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2024.

- 2.6 Section 32A(3) of the Act includes a sunset clause, which originally set the section to expire on 31 January 2025, or a later date prescribed by regulation. The current Regulation extends the expiry date to 31 January 2027.
- 2.7 This is the second time that the trial period and the expiry date of section 32A of the Act has been extended by regulation.

The Regulation commenced on 21 February 2025 and amends the Road Transport (Driver Licensing) Regulation 2017 to retrospectively extend the demerit points reduction trial period by 12 months. It sets the new trial period from 17 January 2025 to 31 January 2026. The trial was introduced by section 32A of the *Road Transport Act 2013* (the Act). It allows a driver to have one demerit point removed from their record if they do not commit a relevant offence during the trial period. Under subsection 32A(2) of the Act, the original trial period ran from 17 January 2023 to 16 January 2024. It was later extended for 12 months, until 16 January 2025, by the Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2024.

Section 32A(3) of the Act includes a sunset clause, which originally set the section to expire on 31 January 2025 or a later date prescribed by regulation. The current Regulation extends the expiry date to 31 January 2027. This is the second time that the trial period and expiry date of section 32A of the Act has been extended by regulation.


The Regulation changes the operation of the Act, and may therefore amount to a Henry VIII clause. The Committee notes that regulations must be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*. It also recognises that using regulations to amend defined trial periods may be more administratively efficient.

However, the Committee previously reported on the Road Transport Amendment (Demerit Point Reduction Trial) Bill 2023 in Digest 2/58, commenting on section 32A of the Act.² Consistent with those comments, the Committee generally considers that primary legislation should not be amended by subordinate legislation because it reduces parliamentary scrutiny of those changes. Unlike primary legislation, subordinate legislation is not required to be passed by Parliament and the Parliament does not control when it commences.

Further, the Regulation was published on 21 February 2025 but retrospectively extends the trial period starting from 16 January 2025. 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.

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

² Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 2/58](#), 22 August 2023.



Part Three – Regulations without comment

Regulations without comment

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

1. Casino Control Amendment (Manager Appointment Extension) Regulation 2025

The object of the Regulation is to extend the term of appointment of the manager of the casino operated by The Star Pty Limited at Pymont from 31 March 2025 to 30 September 2025.

The Regulation is made under the *Casino Control Act 1992*.

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

2. District Court Criminal Practice Note 26 Walama List Sentencing Procedure

The Practice Note establishes an alternative procedure for managing cases involving eligible Aboriginal and Torres Strait Islander persons charged with criminal offences before the District Court of New South Wales, to be known as the 'Walama List'.

It was issued on 19 February 2025 and commenced on 3 March 2025.

It largely replicates the previous Practice Note that commenced on 31 January 2022, but includes changes to the definition of the 'Court' and introduces stage 4 of an 'Introductory Conversation'.

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

3. District Court Criminal Practice Note 26 Walama List Sentencing Procedure

The Practice Note sets out an alternative procedure for managing cases involving eligible Aboriginal and Torres Strait Islander persons charged with criminal offences before the District Court of New South Wales, to be known as the 'Walama List'.

It was issued on 5 March 2025 and commenced on 10 March 2025.

Apart from minor changes to the preamble and commencement date, it is identical to the previous Practice Note that commenced on 3 March 2025.

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

4. Fisheries Management (General) Amendment (Advisory Councils) Regulation 2025

The object of the Regulation is to:

- (a) establish the Recreational Fishing Trusts Advisory Council (the **Council**)

- (b) provide for the membership of the Council.

The Regulation amends the Fisheries Management (General) Regulation 2019 and is made under the *Fisheries Management Act 1994*, Part 8, Division 2.

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

5. Photo Card Amendment (Photo Card Fees) Regulation 2025

The object of the Regulation is to provide for the following in relation to the issue of a Photo Card:

- (a) the waiver or refund of fees payable
(b) the exemption of certain persons from the requirement to pay a fee.

The Regulation amends the Photo Card Regulation 2024 and is made under the *Photo Card Act 2005*.

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

6. Supreme Court Practice Note SC EQ 13

The Practice Note applies to adoption proceedings under the *Adoption Act 2000* (NSW) and the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth). The purpose of the Practice Note is to outline the relevant processes for adoption proceedings.

It largely replicates the previous Practice Note that was issued on 16 March 2023, but introduces changes to support the voice of the child when determining adoption proceedings. The amendments require the Court to consider the child's views and outline the factors that the Court must consider when deciding whether to appoint a legal practitioner. In some situations, appointing a legal practitioner is mandatory.

The Practice Note was issued on 7 February 2025 and commenced on 10 February 2025. The Practice Note does not appear to engage with procedural fairness issues 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

Minutes of meeting no. 30

TIME & DATE: 3:00PM, 12 MAY 2025

LOCATION: ROOM 1136 AND VIA WEBEX

MEMBERS PRESENT

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

OFFICERS PRESENT

Rohan Tyler, Mengyuan Chen, Alex Read, Charlie King, Joan Douce, Natasha Moir, Elizabeth Hawken and Nicolle Gill.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 5 May 2025 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 29/58

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

- a) Bail Amendment (Ban on Private Electronic Monitoring) Bill 2025
- b) Help to Buy (Commonwealth Powers) Bill 2025
- c) Identity Protection and Recovery Bill 2025
- d) Northern Beaches Hospital (Voluntary Contract Termination) Bill 2025
- e) Statute Law (Miscellaneous Provisions) Bill 2025
- f) Victims Legislation Amendment (Victims Registers) Bill 2025.

4. Consideration of bills without comment for Legislation Review Digest 29/58

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

- a) Electoral Funding Amendment (Major Political Donors) Bill 2025.

5. Consideration of regulations with comment for Legislation Review Digest 29/58

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

- a) Road Transport Amendment (Miscellaneous) Regulation 2025
- b) Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025.

6. Regulations without comment for Legislation Review Digest 29/58

Resolved, on the motion of Ms Higginson: That the Committee adopts the regulations without comment as Part Three to Digest No. 29/58.

7. Legislation Review Digest 29/58

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. 29/58 and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

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

9. Next meeting

The meeting adjourned at 3:04pm until Monday 26 May 2025 at 3.00pm in meeting room 1136.