

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



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

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# Membership

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# Guide to the Digest

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

## Part One: Functions Regarding Bills

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

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

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

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

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

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

**Insufficiently defined administrative powers:**

- insufficiently defined or wide powers

**Non-reviewable decisions:**

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

**Inappropriate delegation of legislative powers:**

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

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

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

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

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





## Part Two: Functions Regarding Regulations with Comments

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

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

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

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

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

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

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

## Conclusions on Bills and Regulations

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

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

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

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

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

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

# Digest Snapshot

## PART ONE – BILLS

### 1. Cemeteries and Crematoria Amendment Bill 2025

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment
Wide regulation-making powers	No further comment
Incorporation of external 'Reasonable Notification Guidelines' not subject to disallowance	No further comment

### 2. Electoral Funding Amendment Bill 2025

Issue identified	Conclusion of Committee
Retrospective commencement of amendments	No further comment

### 3. Health Legislation Amendment (Miscellaneous) Bill 2025

Issue identified	Conclusion of Committee
Commencement by proclamation	No further comment

### 4. Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2025\*

Issue identified	Conclusion of Committee
Freedom of expression and political communication	No further comment
New powers mandating excessive punishment	Referred

## PART TWO – REGULATIONS WITH COMMENT

### 1. Water Management (General) Amendment (Metering) Regulation 2025

Issue identified	Conclusion of Committee
Henry VIII Clause	No further comment

# Summary of Conclusions

## PART ONE – BILLS

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### 1. Cemeteries and Crematoria Amendment Bill 2025

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

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##### *Absolute liability offences*

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The Bill seeks to introduce offences for carrying out an interment in a cemetery without a valid interment order, carrying out memorial works without approval, and not complying with a cemetery operator's directions when carrying out approved memorial works. The maximum penalties range from an \$11,000 fine (100 penalty units) to a \$27,500 fine (250 penalty units).

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

However, the Committee acknowledges that the proper management of human remains and interment sites may have public health and safety implications. The Committee also notes that the maximum penalties for the absolute liability offences are monetary, not custodial. For these reasons, the Committee makes no further comment.

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

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##### *Wide regulation-making powers*

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The Bill proposes to delegate a number of substantive matters to regulations. These include the classes of people to whom the Cemeteries Agency may delegate its functions, the application and approval process for cemetery operators seeking exemptions from limits on the number of interment sites in a cemetery, and the disclosure of information obtained under the *Cemeteries and Crematoria Act 2013*. In particular, the proposed provision allowing the Minister for Lands and Property to grant exemptions to cemetery operators may amount to a Henry VIII clause, as it would allow the Executive to amend the operation of the parent Act without reference to Parliament.

The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power and prefers that substantive matters to be set out in primary legislation rather than regulations, to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are subordinate legislation and are not required to be passed by Parliament. However, the Committee notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*.

The Committee also recognises that such regulation-making powers may allow for more flexible responses. In this case, enabling delegations, exemption processes and information sharing to be addressed through regulations may help accommodate the changing needs of the interment industry. For these reasons, the Committee makes no further comment.

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

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*Incorporation of external 'Reasonable Notification Guidelines' not subject to disallowance*

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The Bill proposes to insert section 68B into the *Cemeteries and Crematoria Act 2013*, which would allow the Cemeteries Agency to publish 'Reasonable Notification Guidelines' by order. These guidelines would set out the steps a cemetery operator must take to contact an interment right holder before taking certain actions.

The Committee generally comments on any legislative provisions that permit the incorporation of external materials, such as guidelines, and give those materials legal force. It also prefers substantive matters to be set out in legislation or to be published in the Gazette and tabled in Parliament as regulations, where they are subject to disallowance and therefore subject to appropriate parliamentary scrutiny.

However, the Committee recognises that the proposed amendments are intended to make it easier for cemetery operators to contact interment right holders. The Committee also acknowledges that prescribing the relevant information in guidelines may enable greater flexibility and responsiveness to changing regulatory practices. For these reasons, the Committee makes no further comment.

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**2. Electoral Funding Amendment Bill 2025**

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

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*Retrospective commencement of amendments*

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The Bill seeks to restrict the capacity of elected Members and parties to claim the same item of administrative expenditure more than once. The Bill proposes that these provisions would commence on 1 April 2023.

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

However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact personal rights or liberties. The Committee also notes that the retrospective application is intended to provide legislative clarity for those making and determining claims for payment from the Administration Fund. For these reasons, the Committee makes no further comment.

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**3. Health Legislation Amendment (Miscellaneous) Bill 2025**

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

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*Commencement by proclamation*

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Schedule 4[1] of the Bill would commence on a day to be appointed 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.

However, the Committee notes that this new provision is directed at improving board representation and does not impose new offences or penalties, or impact on individuals' personal rights. The Committee also acknowledges the practical reasons for allowing a flexible start date, such as providing time for relevant health districts to establish administrative procedures necessary to implement the provision. For these reasons the Committee makes no further comment.

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#### 4. Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2025\*

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

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###### *Freedom of expression and political communication*

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The Bill seeks to expand the definition of 'war memorial' under section 8 of the *Summary Offences Act 1988* to include relevant structures and any item or area in the vicinity of such a structure. It would also increase the penalties for offences of wilfully damaging or defacing a protected place, and for committing a nuisance or offensive act in connection with a war memorial. Expanding the scope of these offences to include nearby areas, along with the significantly increased penalties, may impact on a person's freedom of expression.

By making certain behaviour unlawful, the Bill may limit a person's right to freedom of expression under Article 19 of the *International Covenant on Civil and Political Rights*. The Committee recognises that the right to freedom of expression is not absolute and that it may be limited by laws necessary for, among other things, respect for the rights of other people.

The Committee notes that the Bill is intended to address specific behaviour directed towards particular places and objects. It also notes that key terms such as 'areas in the vicinity of' are broadly defined and could be interpreted widely. However, the Committee acknowledges that the Bill is intended to provide a justifiable basis for a restriction on freedom of expression. For this reason, the Committee makes no further comment.

###### *New powers mandating excessive punishment*

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The Bill seeks to amend section 8 of the *Summary Offences Act 1988* to require a court to order a person to pay a public authority or individual for costs or expenses resulting from an offence involving a protected place or war memorial. The Bill would require the court to make the order if a person is found guilty and either a public authority has incurred costs or expenses because of the offence, or a person or public authority has suffered loss or property damage as a result of the offence. The order must be made unless the court is satisfied that 'special circumstances' exist. The Bill also provides that such an order is in addition to any other penalty imposed for the offence.

The Bill may therefore result in excessive punishment by requiring both a penalty and a compensation order for the same offence. The Committee generally comments on punishments that may be excessive or disproportionate, particularly where the discretion of the court is limited, as is the case with the provisions of this Bill. The Committee acknowledges that the Bill is intended to deter offending behaviour and allow public authorities or persons impacted by offences to recover costs or losses, rather than bearing the financial burden themselves.

However, the Committee again notes that the court has very limited discretion when ordering compensation if a person is found guilty and costs have been incurred. It also notes that the term 'special circumstances' is not defined and could be interpreted inconsistently. Further, a person may be required to pay an excessive monetary amount in addition to any fines, which may amount

to excessive punishment. For these reasons, the Committee refers the issue to Parliament for consideration.

## PART TWO – REGULATIONS WITH COMMENT

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### 1. Water Management (General) Amendment (Metering) Regulation 2025

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

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#### *Henry VIII Clause*

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The Regulation inserts section 232 into the Water Management (General) Regulation 2018, creating additional exemptions from metering equipment standards and reporting requirements. It also inserts sections 232A and 238CA, which set out the circumstances in which the Minister for Water (the Minister) may grant exemptions for certain mandatory conditions relating to water-taking work.

The Regulation changes the operation of the Act by introducing new exemptions and broadening the Minister's discretion. As such, it may amount to a Henry VIII clause. The Committee generally prefers amendments to an Act to be made by an amending bill rather than through subordinate legislation. This is to provide for a greater level of parliamentary oversight, as, unlike primary legislation, subordinate legislation is not required to be passed by Parliament.

However, sections 101A(3), 115 and 115A of the Act expressly allow exemptions to be created by regulations. Further, regulations made under these provisions are still required to be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comment.





# Part One – Bills

# 1. Cemeteries and Crematoria Amendment Bill 2025

Date introduced	14 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Stephen Kamper MP
Portfolio	Lands and Property

## Purpose and description

- 1.1 The object of the Bill is to amend the *Cemeteries and Crematoria Act 2013* (the **Act**) to make provision for the following matters:
- (a) the dissolution of the Board of the Cemeteries Agency and other matters concerning the governance and functions of the Cemeteries Agency
  - (b) the establishment of a scheme to exempt cemetery operators from the Act, Part 4 in relation to increasing the number of interment sites in parts of cemeteries with existing interment sites
  - (c) the permission for cemetery operators, and approval of other persons by cemetery operators, to carry out works in relation to memorials at interment sites
  - (d) the administration of interment rights and other matters concerning interment rights jointly held
  - (e) the making of guidelines by the Cemeteries Agency in relation to notification requirements and other matters under the Act
  - (f) matters concerning the land at Rookwood Cemetery
  - (g) other consequential and miscellaneous matters.
- 1.2 Certain amendments proposed by the Bill include Henry VIII provisions in the Act. The proposed amendments permit the Minister for Lands and Property (the **Minister**) to grant an exemption to cemetery operators from provisions of the Act, Part 4 to enable the increase in the number of interment sites in parts of cemeteries with existing interment sites.

## Background

- 1.3 The Bill seeks to amend the Act to update and expand the regulatory framework for the operation of, and access to cemeteries and crematoria.
- 1.4 In his second reading speech, Mr Edmond Atalla MP, on behalf of the Hon. Stephen Kamper MP, said that the Bill would address 'years of neglect of the interment

industry' by introducing 'simple, commonsense provisions [that] are aimed at ensuring every person in New South Wales has the best possible experience and the strongest possible protections in their time of need.'

- 1.5 The Bill proposes various amendments to the Act, including to:
- (a) dissolve the Board of the Cemeteries Agency and transfer its functions to a Chief Executive Officer appointed by the Governor on the Minister's recommendation
  - (b) expand the functions of the Cemeteries Agency to include resolving complaints about cemetery operators
  - (c) establish a scheme to exempt cemetery operators from Part 4 of the Act when increasing the number of interment sites in areas already used for interment
  - (d) amend the regulatory framework for joint interment rights and perpetual interment rights, including notification requirements before revocation, record keeping, and when a joint holder may act
  - (e) clarify when a cemetery operator or authorised person may disturb or erect a memorial at an interment site
  - (f) allow the Cemeteries Agency to publish guidelines for notifying interment right holders
  - (g) provide for the acquisition and vesting of the Rookwood Cemetery as Crown land.

### Issues considered by the Committee

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

##### *Absolute liability offences*

- 1.6 The Bill proposes new penalties for individuals who:
- (a) carry out an interment in a cemetery without a valid interment order (proposed section 67(1))
  - (b) carry out memorial works without approval (proposed section 70C(2))
  - (c) fail to follow a cemetery operator's directions when carrying out approved memorial works (proposed section 70G(2)).
- 1.7 Failure to comply with these requirements can result in a maximum penalty ranging from an \$11,000 fine (100 penalty units) to a \$27,500 fine (250 penalty units).

**The Bill seeks to introduce offences for carrying out an interment in a cemetery without a valid interment order, carrying out memorial works without approval, and not complying with a cemetery operator's directions when carrying out approved memorial works. The maximum**

**penalties range from an \$11,000 fine (100 penalty units) to a \$27,500 fine (250 penalty units).**

**The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.**

**However, the Committee acknowledges that the proper management of human remains and interment sites may have public health and safety implications. The Committee also notes that the maximum penalties for the absolute liability offences are monetary, not custodial. For these reasons, the Committee makes no further comment.**

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

#### *Wide regulation-making powers*

1.8 The Bill would delegate a number of matters to regulations, including:

- (a) proposed section 11(4)(b), which would allow the Cemeteries Agency to delegate functions to an authorised person, including 'a person, or person of a class, prescribed by regulations'.
- (b) proposed section 43C, which sets out when the Minister may grant a renewal exemption to a cemetery operator, and delegates the following matters to regulations:
  - (i) the form of an application (s 43C(2))
  - (ii) the circumstances in which an application may be granted (s 43C(3))
  - (iii) the circumstances in which the Minister must not grant an exemption (s 43C(5)(b))
  - (iv) the conditions and duration of an exemption, if granted (s 43C(7)(b))
- (c) proposed section 43E, which would allow the regulations to make further provision about renewal exemptions and renewal works
- (d) proposed section 139C(1)(b), which would allow regulations to determine when a person may disclose information obtained under the Act, such as personal information about an interment right holder.

**The Bill proposes to delegate a number of substantive matters to regulations. These include the classes of people to whom the Cemeteries Agency may delegate its functions, the application and approval process for cemetery operators seeking exemptions from limits on the number of interment sites in a cemetery, and the disclosure of information obtained under the *Cemeteries and Crematoria Act 2013*. In particular, the proposed provision allowing the Minister for Lands and Property to grant exemptions to cemetery operators may amount to a Henry VIII clause, as it would allow the Executive to amend the operation of the parent Act without reference to Parliament.**

The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power and prefers that substantive matters to be set out in primary legislation rather than regulations, to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are subordinate legislation and are not required to be passed by Parliament. However, the Committee notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*.

The Committee also recognises that such regulation-making powers may allow for more flexible responses. In this case, enabling delegations, exemption processes and information sharing to be addressed through regulations may help accommodate the changing needs of the interment industry. For these reasons, the Committee makes no further comment.

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

*Incorporation of external 'Reasonable Notification Guidelines' not subject to disallowance*

- 1.9 The Bill proposes to insert section 68B into the Act, which provides that the Cemeteries Agency must, by order, publish 'Reasonable Notification Guidelines'. These guidelines would relate to 'notifications, decisions and other matters concerning interment rights under this Act or the regulations.'
- 1.10 The Bill would also insert references to the Reasonable Notification Guidelines throughout the Act, including at proposed sections 52(2), 54(3A)(a), 54(6), 55(2)(b), 55(2)(c) and (d), 60A(2)(a), 61(3)(c) and (5)(a), and 70I(b).
- 1.11 In his second reading speech, Mr Atalla explained that under the current Act:

...a cemetery operator is required to attempt to contact a right holder before taking an action. The steps in the Act are often expensive, inflexible and ineffective at reaching the intended audience... the prescriptive requirements will be replaced across the board by reasonable notification guidelines.

The Bill proposes to insert section 68B into the *Cemeteries and Crematoria Act 2013*, which would allow the Cemeteries Agency to publish 'Reasonable Notification Guidelines' by order. These guidelines would set out the steps a cemetery operator must take to contact an interment right holder before taking certain actions.

The Committee generally comments on any legislative provisions that permit the incorporation of external materials, such as guidelines, and give those materials legal force. It also prefers substantive matters to be set out in legislation or to be published in the Gazette and tabled in Parliament as regulations, where they are subject to disallowance and therefore subject to appropriate parliamentary scrutiny.

However, the Committee recognises that the proposed amendments are intended to make it easier for cemetery operators to contact interment right holders. The Committee also acknowledges that prescribing the relevant information in guidelines may enable greater flexibility and

**responsiveness to changing regulatory practices. For these reasons, the Committee makes no further comment.**

## 2. Electoral Funding Amendment Bill 2025

Date introduced	13 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Jenny Aitchison MP
Portfolio	Special Minister of State

### Purpose and description

- 2.1 The object of the Bill is to amend the *Electoral Funding Act 2018* (the **EF Act**) to deal further with the relationship between:
- (a) the EF Act, Part 5, which deals with payments to Members of Parliament and parties from the Administration Fund
  - (b) provisions of the *Parliamentary Remuneration Act 1989* (the **PR Act**) which deals with additional entitlements of Members of Parliament.

### Background

- 2.2 The Bill was introduced following a review by the NSW Electoral Commission (the **Commission**), which found that the recent changes to the EF Act made by the Electoral Funding Amendment Bill 2024 required clarification.
- 2.3 In her second reading speech, the Hon. Jenny Aitchison MP, Minister for Roads and Minister for Regional Transport, said that the aim of the Bill '...is to provide certainty and clarity for those who are making and determining claims for payment from the Administration Fund.'
- 2.4 The Bill would clarify the relationship between the entitlement of elected Independent Members and political parties to payments from the Administration Fund and Members' additional entitlements under the PR Act. It proposes to prevent elected Members and parties from claiming the same administrative expenditure from both the Administration Fund and an additional entitlement.
- 2.5 It would also require a declaration from elected Members and parties, when making a claim for a payment under the Administration Fund, confirming that they have not and will not claim an additional entitlement for the same item of administrative expenditure.
- 2.6 Further, the Bill would allow the Commission to recover a payment from a party or an elected Member for an item of administrative expenditure if the Member or member of the party later receives an additional entitlement for the same item.

- 2.7 It further provides that extensions of time may be granted where a Member is required to repay an excess amount of administrative funding they have previously received.
- 2.8 Lastly, the Bill would require the Commission to publicly consult on draft guidelines that relate to administrative expenditure. This amendment would not apply retrospectively.

### Issues considered by the Committee

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

##### *Retrospective commencement of amendments*

- 2.9 Proposed section 28 of the Bill provides that the amendments, except for the public consultation requirement, would commence on 1 April 2023, which would give them retrospective effect.
- 2.10 Under proposed subsection 28(2), the Commission could assess previously submitted, but undetermined claims under the proposed amendments. This would retrospectively apply the restriction on Members from claiming the same item under both the Administration Fund and an additional entitlement.
- 2.11 In her second reading speech, the Minister said that the transitional provision would allow Independent Members and parties to submit supplementary funding claims with the requisite declaration.

**The Bill seeks to restrict the capacity of elected Members and parties to claim the same item of administrative expenditure more than once. The Bill proposes that these provisions would commence on 1 April 2023.**

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

**However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact personal rights or liberties. The Committee also notes that the retrospective application is intended to provide legislative clarity for those making and determining claims for payment from the Administration Fund. For these reasons, the Committee makes no further comment.**



### 3. Health Legislation Amendment (Miscellaneous) Bill 2025

Date introduced	14 May 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Ryan Park MP
Portfolio	Health

#### Purpose and description

- 3.1 The object of the Bill is to make miscellaneous amendments to the following legislation:
- (a) the *Drug and Alcohol Treatment Act 2007* (the **DAT Act**)
  - (b) the *Health Practitioner Regulation (Adoption of National Law) Act 2009* (the **HPR Act**)
  - (c) the *Health Practitioner Regulation (New South Wales) Regulation 2016* (the **HPR Regulation**)
  - (d) the *Health Services Act 1997* (the **HS Act**)
  - (e) the *Human Tissue Act 1983* (the **HT Act**)
  - (f) the *Mental Health Act 2007* (the **MH Act**)
  - (g) the *Private Health Facilities Act 2007* (the **PHF Act**).

#### Background

- 3.2 The Bill proposes technical or clarifying changes to seven health-related pieces of legislation. The objects of the proposed changes are to update and improve the operation of existing health statutes.
- 3.3 Schedule 1 would amend the DAT Act to align the qualification requirements for official visitors inspecting drug and alcohol treatment facilities with those for official visitors under the MH Act.
- 3.4 Schedule 2 would amend the HPR Act and schedule 3 would make consequential amendments to the HPR Regulation. Together, these changes would replace the term 'professional services room' with 'medication storage and preparation room' to more accurately describe their function.
- 3.5 Schedule 4[1] would require each local health district board to include at least one person who identifies as Aboriginal. In his second reading speech, the Hon. Ryan Park MP, Minister for Health, stated that this amendment is in line with a

recommendation from Portfolio Committee No. 2's inquiry into health outcomes and access to health and hospital services in rural, regional and remote NSW, and is intended to ensure that 'members of the Aboriginal community have a seat at the table at the highest level within local health districts to drive improvements.'

- 3.6 Schedule 4 would also insert proposed section 67KA into the HS Act, which allows the Health Secretary to charge a fee to private health facilities that use public non-emergency patient transport services. In his second reading speech, the Minister explained that the amendment would 'encourage efficient use of the patient transport service and reduce unnecessary costs to the public health system.' He further clarified that the 'booking and cancellation fees will be set out in a scale of fees, to be published in the New South Wales Government Gazette.'
- 3.7 Schedules 5 and 6 would clarify and streamline existing processes. Schedule 5 would insert section 27DA into the HT Act to allow a senior available next of kin to delegate, in writing, their decision-making authority regarding tissue donation to another person. Schedule 6 would amend the MH Act to confirm that the Health Secretary may impose conditions on the appointment of an 'accredited person'.
- 3.8 Schedule 7 would amend the PHF Act to require a licensee to ensure that a midwife or registered nurse is on duty whenever a patient is present. Prescribed facilities would also need to have a director of midwifery or director of nursing appointed within 7 days of a vacancy or within a timeframe set by regulation.

## Issues considered by the Committee

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

#### *Commencement by proclamation*

- 3.9 Clause 2(a) of the proposed Bill provides that Schedule 4[1] would commence on a day to be appointed by proclamation.
- 3.10 Schedule 4[1] would insert section 26(4A) into the HS Act. This provision would require local health district boards to include at least one person who identifies as an Aboriginal person.

**Schedule 4[1] of the Bill would commence on a day to be appointed 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.**

**However, the Committee notes that this new provision is directed at improving board representation and does not impose new offences or penalties, or impact on individuals' personal rights. The Committee also acknowledges the practical reasons for allowing a flexible start date, such as providing time for relevant health districts to establish administrative procedures necessary to implement the provision. For these reasons the Committee makes no further comment.**

## 4. Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2025\*

Date introduced	15 May 2025
House introduced	Legislative Assembly
Member with carriage	Ms Robyn Preston MP
*Private Members Bill	

### Purpose and description

- 4.1 The object of the Bill is to amend the *Summary Offences Act 1988* (the **Act**) to:
- (a) make clear that all war memorials are included as protected places for the offence of damaging or desecrating protected places
  - (b) increase the penalty for the offence of damaging or desecrating a protected place
  - (c) provide that a court that convicts a person, or finds a person guilty, of an offence of damaging or desecrating a protected place must, unless satisfied that special circumstances exist, order the offender to pay costs and expenses incurred in connection with the harm caused by the commission of the offence or making good any resulting damage, or for the compensation for loss or damage suffered.

### Background

- 4.2 The Bill seeks to expand the definition of 'war memorial' under the Act to include war shrines, monuments, statues, or similar structures or places. It would also include a 'thing' or 'area' nearby that forms part of the war memorial site.
- 4.3 The Bill also proposes to increase penalties for damaging or defacing a protected place, and for committing a 'nuisance', or an 'offensive or indecent act' in connection with a war memorial. The penalty for damaging or defacing a protected place would increase from a \$4,400 fine (40 penalty units) to a \$22,000 fine (200 penalty units) and/or two years' imprisonment.
- 4.4 It also seeks to introduce a requirement for a court to order an offender to pay compensation for any damage caused to a protected place or war memorial. This would apply where a person is found guilty of an offence and a public authority or individual has incurred costs or suffered losses as a result of the damage.
- 4.5 The Bill then would reverse the current protection framework under which war memorials must be prescribed by regulation to be protected. Instead, all war

memorials in NSW would be subject to protection by default, unless explicitly excluded by regulation.

## Issues considered by the Committee

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

#### *Freedom of expression and political communication*

4.6 The Bill seeks to expand the definition of 'war memorial' in section 8 of the Act to include any nearby item or area that forms part of the war memorial site. It also seeks to significantly increase the penalties for two offences under section 8: damaging or desecrating a war memorial, and committing a nuisance or offensive conduct in connection with a war memorial.

4.7 In her second reading speech, Ms Robyn Preston MP acknowledged the right to freedom of expression, but stated that this right comes with duties and responsibilities. She said that 'Certain restrictions have therefore been deemed necessary by law for respect of the rights or reputation of others and the protection of public morals.'

**The Bill seeks to expand the definition of 'war memorial' under section 8 of the *Summary Offences Act 1988* to include relevant structures and any item or area in the vicinity of such a structure. It would also increase the penalties for offences of wilfully damaging or defacing a protected place, and for committing a nuisance or offensive act in connection with a war memorial. Expanding the scope of these offences to include nearby areas, along with the significantly increased penalties, may impact on a person's freedom of expression.**

**By making certain behaviour unlawful, the Bill may limit a person's right to freedom of expression under Article 19 of the *International Covenant on Civil and Political Rights*.<sup>1</sup> The Committee recognises that the right to freedom of expression is not absolute and that it may be limited by laws necessary for, among other things, respect for the rights of other people.**

**The Committee notes that the Bill is intended to address specific behaviour directed towards particular places and objects. It also notes that key terms such as 'areas in the vicinity of' are broadly defined and could be interpreted widely. However, the Committee acknowledges that the Bill is intended to provide a justifiable basis for a restriction on freedom of expression. For this reason, the Committee makes no further comment.**

#### *New powers mandating excessive punishment*

4.8 The Bill proposes to give courts a new power to order a person to pay a public authority or individual a specified amount as compensation for loss, damage or expenses resulting from an offence involving a protected place or war memorial.

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

- 4.9 Proposed subsection 8(3A) would require a court to make such an order if a person is convicted or found guilty of either desecrating or damaging a protected place, or committing a nuisance or offensive act in connection with a war memorial, and the court is satisfied that:
- (a) a public authority has incurred costs and expenses in responding to the harm or repairing the damage, or
  - (b) a person, including a public authority, has suffered loss or property damage and incurred costs and expenses in preventing or mitigating the loss.
- 4.10 Under proposed subsection 8(3B), the court must make the order unless it is satisfied that 'special circumstances' exist.
- 4.11 Proposed subsection 8(3D) clarifies that this compensation applies 'in addition to' any other penalty for the offence.

**The Bill seeks to amend section 8 of the *Summary Offences Act 1988* to require a court to order a person to pay a public authority or individual for costs or expenses resulting from an offence involving a protected place or war memorial. The Bill would require the court to make the order if a person is found guilty and either a public authority has incurred costs or expenses because of the offence, or a person or public authority has suffered loss or property damage as a result of the offence. The order must be made unless the court is satisfied that 'special circumstances' exist. The Bill also provides that such an order is in addition to any other penalty imposed for the offence.**

**The Bill may therefore result in excessive punishment by requiring both a penalty and a compensation order for the same offence. The Committee generally comments on punishments that may be excessive or disproportionate, particularly where the discretion of the court is limited, as is the case with the provisions of this Bill. The Committee acknowledges that the Bill is intended to deter offending behaviour and allow public authorities or persons impacted by offences to recover costs or losses, rather than bearing the financial burden themselves.**

**However, the Committee again notes that the court has very limited discretion when ordering compensation if a person is found guilty and costs have been incurred. It also notes that the term 'special circumstances' is not defined and could be interpreted inconsistently. Further, a person may be required to pay an excessive monetary amount in addition to any fines, which may amount to excessive punishment. For these reasons, the Committee refers the issue to Parliament for consideration.**



# Part Two – Regulations with comment

# 1. Water Management (General) Amendment (Metering) 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. Rose Jackson MLC
Portfolio	Water

## Purpose and description

- 1.1 The objects of the Regulation are as follows:
- (a) to make amendments about reporting requirements for the taking of water in addition to any metering requirements
  - (b) to require additional information to be recorded on the register of approvals
  - (c) to clarify and further specify the metering requirements for works during floodplain harvesting
  - (d) to clarify and make further provision for the circumstances in which works are exempt from metering and reporting requirements in relation to the taking of water, including:
    - (i) to exempt approval holders and licence holders from metering requirements in relation to small works in groundwater sources formerly specified in the Water Management (General) Regulation 2018 (the **Principal Regulation**), Schedule 9 before its substitution by this regulation
    - (ii) to require approval holders and licence holders in relation to large works in groundwater sources to install and maintain telemetry equipment
  - (e) to make further provision for persons prescribed as duly qualified persons in relation to the installation, maintenance, repair and validation of metering equipment and other kinds of work.
- 1.2 The Regulation is made under the *Water Management Act 2000* (the **Act**). It amends the Principal Regulation.

## 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*

- 1.3 Section 101A of the Act makes it a mandatory condition of a water supply work approval that metering equipment must be installed, used, and properly maintained in connection with the work.
- 1.4 Sections 101A(3), 115 and 115A of the Act allow regulations to create exemptions to this condition. It also gives the Minister for Water (the **Minister**) the power to prescribe the circumstances in which the exemptions may be granted.
- 1.5 The Regulation inserts section 232 into the Principal Regulation, which creates additional exemptions from metering equipment standards and reporting.
- 1.6 The Regulation also inserts section 232A, which allows the Minister to exempt the holder of an authority, or a class of holders, from the mandatory metering equipment condition. Section 238CA of the Regulation also allows the Minister to grant exemptions from the mandatory floodplain harvesting metering condition.

**The Regulation inserts section 232 into the Water Management (General) Regulation 2018, creating additional exemptions from metering equipment standards and reporting requirements. It also inserts sections 232A and 238CA, which set out the circumstances in which the Minister for Water (the Minister) may grant exemptions for certain mandatory conditions relating to water-taking work.**

**The Regulation changes the operation of the Act by introducing new exemptions and broadening the Minister's discretion. As such, it may amount to a Henry VIII clause. The Committee generally prefers amendments to an Act to be made by an amending bill rather than through subordinate legislation. This is to provide for a greater level of parliamentary oversight, as, unlike primary legislation, subordinate legislation is not required to be passed by Parliament.**

**However, sections 101A(3), 115 and 115A of the Act expressly allow exemptions to be created by regulations. Further, regulations made under these provisions are still required to be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comment.**





# Part Three – Regulations without comment

# Regulations without comment

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

## 1. [Electricity Infrastructure Investment Amendment \(Miscellaneous\) Regulation 2025](#)

The object of the Regulation is to prescribe additional functions to be exercised by the infrastructure planner in relation to an access scheme.

The Regulation is made under the *Electricity Infrastructure Investment Act 2020*, section 63(4)(d).

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

## 2. [Notice of Reservation of a Nature Reserve \(NSWGG-2025-63-1\)](#)

The Notice reserves an area of land as part of the Munghorn Gap Nature Reserve.

The Notice is made under section 30A(1)(f) of the *National Parks and Wildlife Act 1974*.

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

## 3. [Notice of Reservation of a Nature Reserve \(NSWGG-2025-63-2\)](#)

The Notice reserves an area of land as part of the Nadgee Nature Reserve.

The Notice is made under section 30A(1)(f) of the *National Parks and Wildlife Act 1974*.

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

## 4. [Sheriff Amendment \(Sheriff's Alternate\) Regulation 2025](#)

The object of the Regulation is to declare certain persons to be the Sheriff's alternate for the purposes of the *Sheriff Act 2005* (the **Act**).

The Regulation amends the Sheriff Regulation 2021 and is made under the Act.

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

## 5. [Supreme Court Practice Note SC Eq3 - Supreme Court Equity Division - Commercial List and Technology and Construction List](#)

The Practice Note applies to new and existing proceedings in the Commercial List or the Technology and Construction List in the Equity Division of the Supreme Court. The purpose of the Practice Note is to set out the case management procedures for the above lists.

This Practice Note was issued on 26 February 2025 and commenced on 3 March 2025. It replaces the previous version, which was issued on 22 March 2023. The Practice Note largely remakes the previous version with minor changes regarding communication with the Court and procedures concerning the filing of motions. The Practice Note does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.



# Appendices

# Appendix One – Functions of the Committee

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

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

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

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

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

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

# Appendix Two – Unconfirmed extracts of minutes

## Minutes of Meeting no. 31

TIME & DATE: 3:02PM, 26 MAY 2025

LOCATION: ROOM 1136 AND VIA VIDEOCONFERENCE

### MEMBERS PRESENT

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

### OFFICERS PRESENT

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

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Ms Higginson: That the minutes of the meeting of 12 May 2025 be confirmed.

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

#### 3. Consideration of bills with comment for Legislation Review Digest 30/58

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

- a) Cemeteries and Crematoria Amendment Bill 2025
- b) Electoral Funding Amendment Bill 2025
- c) Health Legislation Amendment (Miscellaneous) Bill 2025
- d) Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2025.

#### 4. Consideration of regulations with comment for Legislation Review Digest 30/58

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

- a) Water Management (General) Amendment (Metering) Regulation 2025.

#### 5. Regulations without comment for Legislation Review Digest 30/58

Resolved, on the motion of Mr Layzell: That the Committee adopts the regulations without comment as Part Three to Digest No. 30/58.

#### 6. Legislation Review Digest 30/58

Resolved, on the motion of Ms Davis:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 30/58 and that it be signed by the Chair and presented to the House.

**7. Regulations to be reviewed**

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

**8. Next Meeting**

The meeting adjourned at 3:05pm until 2 June 2025 at 3:00pm in meeting room 1136.