

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. Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025

Issue identified	Conclusion of Committee
Wide powers of delegation – Housing Development Authority and Development Coordination Authority	Referred
Significant matters deferred to regulations	Referred
Commencement by proclamation	No further comment

2. Justice Legislation Amendment (Miscellaneous) Bill (No 2) 2025

Issue identified	Conclusion of Committee
Regulations to determine third-party access to change of sex records	Referred
Retrospective effect of provision allowing third-party access to record of change of sex	Referred
Regulations to determine when and how detainee phone calls can be recorded	Referred
Regulations to determine when a juvenile justice officer may use force against visitors to the centre	Referred
Regulations to determine access to complaint process	Referred
Expanded power of police officers to delegate search powers	Referred

3. Liquor Amendment (Airports) Bill 2025

Issue identified	Conclusion of Committee
Absolute liability offence	No further comment
Commencement by proclamation	No further comment

4. Local Court and Bail Legislation Amendment Bill 2025

No issues identified

PART TWO – REGULATIONS WITH COMMENT

1. National Parks and Wildlife Amendment Regulation 2025

Issue identified	Conclusion of Committee
Strict liability offences	No further comment

2. Protection of the Environment Operations (General) Amendment (Regulation of PFAS) Regulation 2025

Issue identified	Conclusion of Committee
Henry VIII clause	No further comment

3. Surrogacy Amendment (Qualified Counsellors) Regulation 2025

Issue identified	Conclusion of Committee
Application of repealed clauses 6 and 7 of the Principal Regulation	Referred
Lack of definition for 'surrogacy agreement entered into outside Australia'	Referred

Summary of Conclusions

PART ONE – BILLS

1. Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025

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

Wide powers of delegation – Housing Development Authority and Development Coordination Authority

The Bill seeks to amend the *Environmental Planning and Assessment Act 1979* to grant broad powers of delegation to a number of bodies. Proposed sections 2.11D(2) and 2.11G(2) would grant the Housing Delivery Authority and the Development Coordination Authority (defined as the Planning Secretary) the power to delegate their functions to a person or body referred to in section 2.4(1) of the Act. This would include a person or class of persons authorised by the regulations.

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

The Committee acknowledges that allowing regulations to prescribe who may be delegated functions may allow for more flexibility in the administration of development applications. The Committee also recognises that the regulations are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation to provide clarity and oversight of the exercise of those functions. For these reasons, the Committee refers this matter to Parliament for its consideration.

Significant matters deferred to regulations

The Bill proposes to insert sections 4.15(1A)-(1D) into the Act to allow the regulations to declare the factors relevant to assessing a development application. This is a substantial regulation-making power as it allows the regulations to determine the substantive basis of decision-making by consent authorities.

The Committee generally prefers substantive matters to be dealt with in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. The Committee acknowledges that the deferral of relevant factors may be intended to build flexibility into the consent authority's decision-making process and its ability to perform its functions. However, in this case, these factors are substantive matters that may significantly impact on the decision-making process, as well as the substantive outcome of development applications. For these reasons, the Committee refers the matter to Parliament for its consideration.

Commencement by proclamation

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

However, the Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as providing time for relevant agencies to establish administrative procedures necessary to implement the Bill's provisions. In the circumstances, the Committee makes no further comment.

2. Justice Legislation Amendment (Miscellaneous) Bill (No 2) 2025

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

Regulations to determine third-party access to change of sex records

The Bill would insert section 51A into the *Births, Deaths and Marriages Registration Act 1995*, which would allow the Registrar to disclose a person's sex, before their record of sex was changed, to a person prescribed by the regulations. Before disclosing this information to a person prescribed by the regulations, the Registrar must be satisfied that the person has an adequate reason for wanting the information.

The Committee notes that there do not appear to be provisions limiting the groups of people that could be prescribed by the regulations. Therefore, these amendments may constitute a wide regulation-making power. The Committee generally comments on wide regulation-making powers, particularly where they impact individual rights and liberties. Unlike primary legislation, regulations are not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the Committee also notes that these amendments may substantially impact on an individual's right to privacy and personal information. There are also significant risks associated with disclosing a trans or gender diverse person's previously registered sex, and these risks may be amplified because regulations generally commence on the day that they are published. This means that an impacted individual may not have notice of a regulation allowing third-parties to access their change of sex records. For these reasons, the Committee refers this matter to Parliament.

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

Retrospective effect of provision allowing third-party access to record of change of sex

The Bill seeks to amend the *Births, Deaths and Marriages Registration Act 1995* by inserting an exception to the Act's current prohibition on the disclosure of information indicating that a person has changed their sex on the Register. Proposed section 51A of the Bill would allow the Registrar to disclose a person's sex before the record was altered to that person, or to a person prescribed by regulations. The proposed amendments would apply to all records of sex change under Part 5A, even where the person changed their record of sex on the Register at a time when that information was protected. This means that the provisions would apply retrospectively in practice.

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. The Committee acknowledges that the amendments may be intended to address unforeseen administrative issues. However, the impact of the amendments on a person's right to privacy and personal information may be significant, particularly if a person changed their record of sex on the basis that this information would not be disclosed. For this reason, the Committee refers this issue to Parliament for its consideration.

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

Regulations to determine when and how detainee phone calls can be recorded

The Bill seeks to amend the *Children (Detention Centres) Act 1987* by allowing regulations to determine when and how telephone calls to or from detainees may be recorded. The Committee generally prefers 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 not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also notes that a similar regulation-making power for the inspection of detainee letters and parcels is already in place in the Act. However, the Committee considers the recording of a detainee's phone calls to be a significant imposition on their right to privacy and personal information. This is exacerbated by their vulnerable status as children and young people under the age of 18. For these reasons, the Committee refers this matter to Parliament.

Regulations to determine when a juvenile justice officer may use force against visitors to the centre

The Bill seeks to amend the *Children (Detention Centres) Act 1987* by allowing the regulations to determine the circumstances where a juvenile justice officer may use force against a visitor to a detention centre.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, by allowing the regulations to authorise the use of force against a broader group of people, the provision may significantly impact a person's right to personal liberty and security of person, as contained in Article 9 of the International Covenant on Civil and Political Rights. For these reasons, the Committee refers this matter to Parliament for consideration.

Regulations to determine access to complaint process

The Bill seeks to amend the *Children (Detention Centres) Act 1987* at section 32A(n), which currently allows regulations to be made about procedures for detainee complaints. The proposed amendment would instead allow the regulations to determine 'who may make complaints', among other matters. The amendment may therefore facilitate regulations that prevent certain detainees or groups of detainees from accessing the complaints process.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also notes that the proposed amendment may aim to broaden the group of people eligible to make a complaint under the regulations. However, in practice, the regulation-making power may be used to limit the ability of detainees to make a complaint. In this way, it may impact a detainee's right to procedural fairness and access to justice. The Committee is particularly concerned about potential limits to this right for children and young people under the age of 18. For these reasons, the Committee refers this matter to Parliament.

Insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Expanded power of police officers to delegate search powers

The Bill seeks to amend section 32(7A) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, which deals with personal searches conducted by police officers. Under section 32(7) of the Act, a personal search must be conducted by a police officer of the same sex as the person being searched. Where a same-sex police officer is not available, the officer may delegate the search to a person of a class prescribed by regulation for this purpose.

The Bill would insert subsection 32(7A)(b)(ii) to extend this power of delegation to a person or class of persons that, in the opinion of the Commissioner, has appropriate training, qualifications or experience in conducting personal searches. In doing so, the Bill would provide for the wide delegation of statutory functions to a class of unknown persons.

The Committee generally prefers that the classes of persons who may be delegated statutory functions are appropriately defined and are subject to parliamentary oversight. In this case, it is not clear how the Commissioner's opinion would be documented or communicated, or if such a determination would be subject to any level of parliamentary scrutiny. This may enable private individuals to be delegated functions under the Act that would ordinarily be performed by public officials or authorities. It may also lead to confusion for people enforcing or subject to this law. For these reasons, the Committee refers this matter to Parliament for its consideration.

3. Liquor Amendment (Airports) Bill 2025

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

Absolute liability offence

The Bill seeks to insert section 130B(4) into the *Liquor Act 2007*. The section would require a licensee who sells liquor for consumption in a food court or seating area in an airport passenger terminal to ensure that a notice is clearly displayed on the premises to specify where liquor may be consumed. Failure to comply with this section would carry 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 recognises that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. Further, the offence is intended to ensure the appropriate trading of alcohol in airport passenger terminals, in line with community and industry expectations. The Committee also acknowledges that the maximum penalty carried by the proposed offence would be monetary and not custodial. For these reasons, the Committee makes no further comment.

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

Commencement by proclamation

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

However, the Committee acknowledges that a flexible start date may be appropriate where time is needed for the Commonwealth Government to make the changes that this Bill is intended to complement. In the circumstances, the Committee makes no further comment.

4. Local Court and Bail Legislation Amendment Bill 2025

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

PART TWO – REGULATIONS WITH COMMENT

1. National Parks and Wildlife Amendment Regulation 2025

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

Strict liability offences

The Regulation creates a number of new strict liability offences under the National Parks and Wildlife Regulation 2019. Clause 26A prohibits a person from installing a recording device in a park. The offence carries a maximum penalty of a \$5,500 fine (50 penalty units). Clause 78K also prohibits the disclosure of information relating to sensitive declared land if, in disclosing the information, the location will be revealed or may risk the protection of the environmental and cultural values of the land. The offence carries a maximum penalty of a \$5,500 fine (50 penalty units).

The Committee generally comments on these 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 recognises that strict liability offences are not uncommon in regulatory settings to encourage compliance. The Committee also notes that defences are available for both of these offences. Further, the Committee notes that these offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

2. Protection of the Environment Operations (General) Amendment (Regulation of PFAS) Regulation 2025

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

Henry VIII clause

The Regulation inserts Part 1A into Chapter 6 of the Environment Operations (General) Regulation 2022 to exempt PFAS firefighting foam from the offence under section 296C of the *Protection of the Environment Operations Act 1997*.

The Regulation changes the operation of the Act by creating this exemption and may therefore 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, the Committee notes that the Act expressly allows exemptions to be created by regulations under section 286. Regulations made under this provision 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.

3. Surrogacy Amendment (Qualified Counsellors) Regulation 2025

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

Application of repealed clauses 6 and 7 of the Principal Regulation

The Amending Regulation consolidates multiple definitions of 'qualified counsellor' for the purposes of the *Surrogacy Act 2010*. The Amending Regulation repeals clauses 6 and 7 of the Principal Regulation and inserts consolidated, general definitions of qualified counsellor. The Amending Regulation also inserts savings and transitional provisions under clause 7(1), which states that clauses 6 and 7, as in force before the Amending Regulation commenced, continue to apply to a person engaged before the commencement day.

The Committee acknowledges that the intent of clause 7 is to allow the continuation of counselling arrangements made with a person who met the experience and qualification requirements before the Amending Regulation commenced. However, the Amending Regulation seeks to accomplish this by simultaneously repealing and enforcing omitted clauses 6 and 7. The Committee also notes that clause 7(1) relies on parties to a surrogacy agreement having the technical legal knowledge to access a historic version of the Principal Regulation that includes the repealed clauses 6 and 7. This may create confusion for people implementing the regulation and for the people whose rights may be affected. For this reason, the Committee refers this matter to Parliament for consideration.

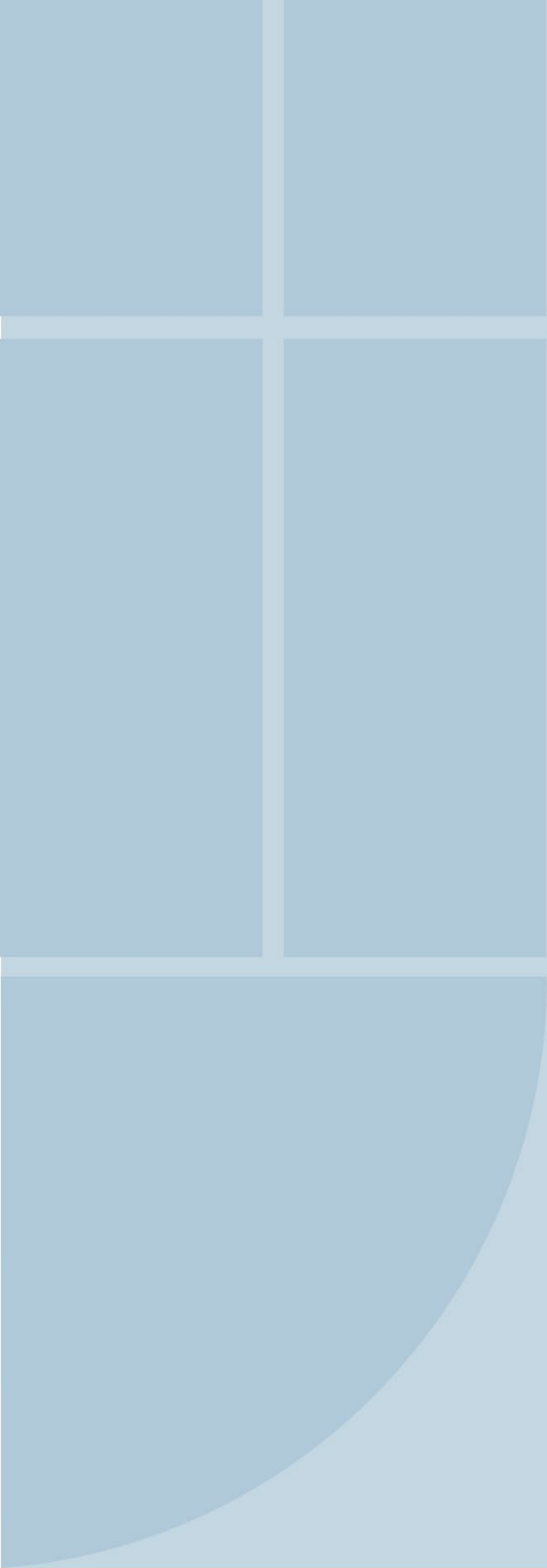
Form or intention of the regulation calls for elucidation: LRA 9(1)(b)(vii)

Lack of definition for 'surrogacy agreement entered into outside Australia'

The previous definition of 'qualified counsellor' under the Surrogacy Regulation 2016 (the Principal Regulation) did not include overseas practitioners. The Amending Regulation inserts

clause 6A, which allows parties with surrogacy agreements entered into overseas to engage certain overseas practitioners. The Committee notes that 'surrogacy agreements entered into overseas' is not defined in the Amending Regulation, the Principal Regulation or the Act. It is unclear whether an overseas surrogacy agreement is an agreement that is physically signed outside of Australia, or if it is an agreement where one or more of the parties are domiciled outside of Australia.

The form of clause 6A may not give effect to the intention of the regulation if that intention is to allow parties affected by a surrogacy agreement to access counselling in the jurisdiction most convenient for each individual. This may create confusion for people implementing the Regulation and for people whose rights may be affected. For these reasons, the Committee refers the matter to Parliament for consideration.



Part One – Bills

1. Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025

Date introduced	17 September 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Scully MP

Purpose and description

1.1 The objects of the Bill are as follows:

- (a) to amend the *Environmental Planning and Assessment Act 1979* (the **Act**) to:
 - (i) amend the objects of the Act, and
 - (ii) establish the Housing Delivery Authority, and
 - (iii) establish the Development Coordination Authority to centralise agency referrals and advice provided for the development assessment process, and
 - (iv) consolidate and clarify the roles and functions of the Independent Planning Commission, the Minister, regional planning panels, public authorities and councils (consent authorities) by removing the regionally significant development pathway, abolishing Sydney district and regional planning panels and clarifying roles and functions for development applications, and
 - (v) establish a single community participation plan that applies to all planning authorities and functions, and
 - (vi) expand complying development to allow variations to complying development standards and enable a deemed approval process for variations, and
 - (vii) create a process for certain development to bypass a full assessment, and
 - (viii) simplify development and approval pathways, and
 - (ix) implement standard conditions and make changes to certain review and appeal processes,
- (b) to make consequential amendments to other Acts and regulations.

Background

1.2 The Bill proposes a range of significant changes to the Act to reform the NSW planning system. It also seeks to make consequential amendments to another 13 pieces of legislation.

1.3 In his second reading speech, the Hon. Paul Scully MP, Minister for Planning and Public Spaces, explained that the Bill responds to criticisms that 'the planning system is too slow, too complex and far too uncertain.' He stated:

In short, the bill is about re-establishing a planning system that will assess land use to produce outcomes, not give priority to process – a modern system to deliver faster and fairer results.

1.4 The Minister further explained:

The bill modernises the objects of the Act to reflect contemporary planning priorities. The new objects focus on promoting land use that supports housing supply, climate resilience, economic productivity, the environment, heritage and conservation, and good design and construction.

1.5 The Bill's key amendments include:

- the constitution of the Housing Delivery Authority as a corporation and a statutory body,
- defining the Development Coordination Authority as the Secretary of the Department of Planning, Housing and Infrastructure,
- the constitution, membership and functions of regional and local planning panels, and
- changes to the process of determining development applications by consent authorities.

Issues considered by the Committee

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

Wide powers of delegation – Housing Development Authority and Development Coordination Authority

1.6 The Bill proposes the following delegation of functions:

- Proposed section 2.11D(2) would grant the Housing Delivery Authority the power to delegate a function granted under the Act or another Act, to a person or body referred to in section 2.4(1)
- Proposed section 2.11G(2) would grant the Development Coordination Authority (defined as the **Planning Secretary**) the power to delegate a function granted under the Act or another Act, to a person or body referred to in section 2.4(1).

1.7 Section 2.4(1) of the Act lists the persons or bodies to which the Planning Secretary or the proposed Housing Delivery Authority may delegate their functions. These persons and bodies include:

- a person employed in the Department of Planning and Environment
- the Independent Planning Commission
- a Sydney district planning panel
- a regional planning panel
- a public authority or member of staff of a public authority
- a council or member of staff of a council
- a person, or person of a class, authorised for the purposes of this section by the regulations.

The Bill seeks to amend the *Environmental Planning and Assessment Act 1979* to grant broad powers of delegation to a number of bodies. Proposed sections 2.11D(2) and 2.11G(2) would grant the Housing Delivery Authority and the Development Coordination Authority (defined as the Planning Secretary) the power to delegate their functions to a person or body referred to in section 2.4(1) of the Act. This would include a person or class of persons authorised by the regulations.

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

The Committee acknowledges that allowing regulations to prescribe who may be delegated functions may allow for more flexibility in the administration of development applications. The Committee also recognises that the regulations are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation to provide clarity and oversight of the exercise of those functions. For these reasons, the Committee refers this matter to Parliament for its consideration.

Significant matters deferred to regulations

1.8 The Bill proposes to insert sections 4.15(1A)-(1D) into the Act. These sections would allow for the regulations to declare the factors that are of relevance to the assessment of a development application.

1.9 In his second reading speech, the Minister explained that the intention of this regulation-making power is to ensure that 'minor impacts are not given disproportionate attention'.

1.10 The Minister further provides that the proposed changes:

...will provide the government of the day with flexibility to address interpretation issues with this part of the Act. This will enable the planning system to be more responsive and to address issues without delay.

The Bill proposes to insert sections 4.15(1A)-(1D) into the Act to allow the regulations to declare the factors relevant to assessing a development application. This is a substantial regulation-making power as it allows the regulations to determine the substantive basis of decision-making by consent authorities.

The Committee generally prefers substantive matters to be dealt with in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. The Committee acknowledges that the deferral of relevant factors may be intended to build flexibility into the consent authority's decision-making process and its ability to perform its functions. However, in this case, these factors are substantive matters that may significantly impact on the decision-making process, as well as the substantive outcome of development applications. For these reasons, the Committee refers the matter to Parliament for its consideration.

Commencement by proclamation

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

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

However, the Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as providing time for relevant agencies to establish administrative procedures necessary to implement the Bill's provisions. In the circumstances, the Committee makes no further comment.

2. Justice Legislation Amendment (Miscellaneous) Bill (No 2) 2025

Date introduced	16 September 2025
House introduced	Legislative Council
Member with carriage	The Hon. Daniel Mookhey MLC

Purpose and description

2.1 The object of the Bill is to make various amendments to the following Acts relating to courts, crimes and other Communities and Justice portfolio matters:

- (a) the *Advocate for Children and Young People Act 2014*,
- (b) the *Bail Act 2013*,
- (c) the *Births, Deaths and Marriages Registration Act 1995*,
- (d) the *Children (Community Service Orders) Act 1987*,
- (e) the *Children (Criminal Proceedings) Act 1987*,
- (f) the *Children (Detention Centres) Act 1987*,
- (g) the *Crimes (Administration of Sentences) Act 1999*,
- (h) the *Crimes (Sentencing Procedure) Act 1999*,
- (i) the *Firearms Act 1996*,
- (j) the *Inspector of Custodial Services Act 2012*,
- (k) the *Law Enforcement (Powers and Responsibilities) Act 2002*,
- (l) the *Medicines, Poisons and Therapeutic Goods Act 2022*.

The Bill also repeals the *Crimes Amendment (Prosecution of Certain Offences) Act 2023*.

Background

2.2 In her second reading speech, the Hon. Emily Suvaal MLC, who introduced the Bill on behalf of the Hon. Daniel Mookhey MLC, explained:

The bill introduces several miscellaneous amendments to update and clarify laws relating to criminal justice processes with respect to children and young people; improve laws relating to arrest, bail and sentencing;

update and clarify law enforcement processes, criminal offences and penalties; update and clarify the operation and powers of government agencies and other institutions to allow for their effective functioning; and clarify the regulation-making power of existing legislation. Regularly reviewing and updating legislation is an important mechanism to ensure that laws remain fit for purpose and keep pace with developments in the community and the legal system. Miscellaneous bills are a sensible and practical way to introduce amendments to multiple Acts in order to achieve this.

2.3 The proposed amendments to the following Acts raised various issues under section 8A of the *Legislation Review Act 1987*, as discussed below:

- the *Births, Deaths and Marriages Registration Act 1995*
- the *Children (Detention Centres) Act 1987*
- the *Law Enforcement (Powers and Responsibilities) Act 2002*.

The proposed amendments to the remaining nine Acts did not raise any issues.

2.4 The Bill also seeks to repeal the *Crimes Amendment (Prosecution of Certain Offences) Act 2023*. The effect of this repeal would be that both police officers and the Department of Public Prosecutions could continue to prosecute offences under section 93Z of the *Crimes Act 1900* (publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status). Without the proposed repeal, the current sunset provision in the *Crimes Amendment Act* will prevent police officers from commencing prosecutions after 2 January 2026.

Issues considered by the Committee: Proposed amendments to the *Births Deaths and Marriages Registration Act 1995*

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

Regulations to determine third-party access to change of sex records

2.5 The Bill seeks to amend the *Births, Deaths and Marriages Registration Act 1995* (the **BDM Act**) by allowing the disclosure of a person's record of sex change on the Births, Deaths and Marriages Register (the **Register**).

2.6 Part 5A of the BDM Act, as amended by the *Equality Legislation (LGBTIQIA+) Amendment Act 2024*, allows a person to apply to change their record of sex on the Register. Sections 32E(5) and 32F(5) currently prohibit the disclosure of information that indicates a person has changed their sex or name under Part 5A.

2.7 The Bill would omit sections 32E(5) and 32F(5) of the BDM Act and insert new protections under section 49(6). Where a person's record of sex has been changed under Part 5A, proposed section 49(6) would prohibit the disclosure of information that indicates a person's record of sex has been altered, but allow the disclosure of information that indicates a person's name has changed.

- 2.8 The Bill would also insert proposed section 51A, which would allow the disclosure of a person's sex before the record was altered. This information may be disclosed to the person whose record of sex was altered, or to a person prescribed by the regulations, upon application.
- 2.9 Section 51A(1)(b) would require the Registrar to be satisfied that a person prescribed by the regulations had an adequate reason for requesting the information. The Registrar would be required to consider a number of factors, set out at section 51A(2), in determining whether there was an adequate reason.
- 2.10 In her second reading speech for the Bill, Ms Suvaal explained the rationale for the proposed amendment:

A person's representatives or family may also require access to this information for administrative purposes after a person dies or loses capacity. Law enforcement agencies may also require access to previous identity documents as part of a criminal investigation... Consistent with other access provisions under the Act, item [6] requires that anyone other than the person who altered their record of sex must have an "adequate reason" for accessing the old birth certificate. This safeguards against the risks of disclosing a trans or gender diverse person's previously registered sex to a prescribed person who does not have a legitimate purpose for seeking the old birth certificate.

The Bill would insert section 51A into the *Births, Deaths and Marriages Registration Act 1995*, which would allow the Registrar to disclose a person's sex, before their record of sex was changed, to a person prescribed by the regulations. Before disclosing this information to a person prescribed by the regulations, the Registrar must be satisfied that the person has an adequate reason for wanting the information.

The Committee notes that there do not appear to be provisions limiting the groups of people that could be prescribed by the regulations. Therefore, these amendments may constitute a wide regulation-making power. The Committee generally comments on wide regulation-making powers, particularly where they impact individual rights and liberties. Unlike primary legislation, regulations are not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the Committee also notes that these amendments may substantially impact on an individual's right to privacy and personal information. There are also significant risks associated with disclosing a trans or gender diverse person's previously registered sex, and these risks may be amplified because regulations generally commence on the day that they are published. This means that an impacted individual may not have notice of a regulation allowing third-parties to access their change of sex records. For these reasons, the Committee refers this matter to Parliament.

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

Retrospective effect of provision allowing third-party access to record of change of sex

- 2.11 As discussed above, sections 32E(5) and 32F(5) of the BDM Act currently prohibit the disclosure of information that may indicate a person has changed their sex or name under Part 5A. The Bill would omit these sections but insert new protections under proposed section 49(6), which would prohibit the disclosure of information that indicates a person's record of sex has been altered.
- 2.12 The Bill seeks to insert section 51A, which would allow the disclosure of a person's sex before the record was altered to that person, or to a person prescribed by the regulations.

The Bill seeks to amend the *Births, Deaths and Marriages Registration Act 1995* by inserting an exception to the Act's current prohibition on the disclosure of information indicating that a person has changed their sex on the Register. Proposed section 51A of the Bill would allow the Registrar to disclose a person's sex before the record was altered to that person, or to a person prescribed by regulations. The proposed amendments would apply to all records of sex change under Part 5A, even where the person changed their record of sex on the Register at a time when that information was protected. This means that the provisions would apply retrospectively in practice.

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. The Committee acknowledges that the amendments may be intended to address unforeseen administrative issues. However, the impact of the amendments on a person's right to privacy and personal information may be significant, particularly if a person changed their record of sex on the basis that this information would not be disclosed. For this reason, the Committee refers this issue to Parliament for its consideration.

Issues considered by the Committee: Proposed amendments to the *Children (Detention Centres) Act 1987*

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

Regulations to determine when and how detainee phone calls can be recorded

- 2.13 The Bill seeks to amend the *Children (Detention Centres) Act 1987* by modifying the regulation-making power at section 32A(k), which allows regulations to be made about the making and receiving of phone calls by detainees. The Bill proposes to expand this regulation-making provision to also include 'the way and circumstances in which telephone calls may be recorded'.
- 2.14 In her second reading speech for the Bill, Ms Suvaal stated that this amendment:
- ...is similar to the provisions that allow the regulations to make provisions for the sending and receiving of letters and parcels by detainees, including when these letters and parcels may be inspected.'

The Bill seeks to amend the *Children (Detention Centres) Act 1987* by allowing regulations to determine when and how telephone calls to or from detainees may be recorded. The Committee generally prefers 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 not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also notes that a similar regulation-making power for the inspection of detainee letters and parcels is already in place in the Act. However, the Committee considers the recording of a detainee's phone calls to be a significant imposition on their right to privacy and personal information. This is exacerbated by their vulnerable status as children and young people under the age of 18. For these reasons, the Committee refers this matter to Parliament.

Regulations to determine when a juvenile justice officer may use force against visitors to the centre

- 2.15 The Bill seeks to amend the *Children (Detention Centres) Act 1987* by modifying the regulation-making power under section 32A(s), which allows the regulations to determine the circumstances where a juvenile justice officer may use force against a detainee.
- 2.16 The proposed amendment would expand that regulation-making power to include the circumstances where a juvenile justice officer may also use force against a 'visitor' to a detention centre.
- 2.17 In her second reading speech, Ms Suvaal stated that the amendment:

...clarifies the existing regulation-making power in section 32A(s) that relates to juvenile justice officers using force against persons who are not detainees. This covers circumstances such as where people are trying to break into the centre to provide contraband, where reasonable use of force may be required to maintain the safety of staff and detainees.

The Bill seeks to amend the *Children (Detention Centres) Act 1987* by allowing the regulations to determine the circumstances where a juvenile justice officer may use force against a visitor to a detention centre.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, by allowing the regulations to authorise the use of force against a broader group of people, the provision may significantly impact a person's right to personal liberty and security of person, as contained in Article 9 of the International

Covenant on Civil and Political Rights. For these reasons, the Committee refers this matter to Parliament for consideration.

Regulations to determine access to complaint process

- 2.18 The Bill seeks to amend the *Children (Detention Centres) Act 1987* by modifying section 32A(n), which currently allows regulations to be made about 'the procedures to be followed by a detainee, and the facilities to be provided to a detainee, for the purpose of enabling the detainee to make a complaint to the centre manager of the detention centre or to any person or body'.
- 2.19 The proposed amendment would instead allow regulations to be made in relation to 'who may make complaints', 'the procedures to be followed by a person dealing with complaints', and 'limiting or modifying complaints guidelines' issued by the Secretary.
- 2.20 In her second reading speech, Ms Suvaal stated that:

...the bill amends section 32A of the Act to allow regulations to make provisions in relation to complaints made by anyone, not just detainees.

The Bill seeks to amend the *Children (Detention Centres) Act 1987* at section 32A(n), which currently allows regulations to be made about procedures for detainee complaints. The proposed amendment would instead allow the regulations to determine 'who may make complaints', among other matters. The amendment may therefore facilitate regulations that prevent certain detainees or groups of detainees from accessing the complaints process.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. Unlike primary legislation, regulations are not required to be passed by Parliament and the Parliament does not control when regulations commence.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also notes that the proposed amendment may aim to broaden the group of people eligible to make a complaint under the regulations. However, in practice, the regulation-making power may be used to limit the ability of detainees to make a complaint. In this way, it may impact a detainee's right to procedural fairness and access to justice. The Committee is particularly concerned about potential limits to this right for children and young people under the age of 18. For these reasons, the Committee refers this matter to Parliament.

Issues considered by the Committee: Proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*

Insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Expanded power of police officers to delegate search powers

- 2.21 Sections 32(7) and (7A) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (**LEPRA**) currently require a personal search to be conducted by a police officer

of the same sex as the person searched. If a same sex officer is not available, a police officer may delegate the search power to a person of a class prescribed by the regulations for this purpose.

- 2.22 The Bill seeks to insert section 32(7A)(b)(ii), which would allow a police officer to also delegate this search power to a person or class of people that, in the opinion of the Commissioner, has appropriate training, qualifications or experience in conducting personal searches.

The Bill seeks to amend section 32(7A) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, which deals with personal searches conducted by police officers. Under section 32(7) of the Act, a personal search must be conducted by a police officer of the same sex as the person being searched. Where a same-sex police officer is not available, the officer may delegate the search to a person of a class prescribed by regulation for this purpose.

The Bill would insert subsection 32(7A)(b)(ii) to extend this power of delegation to a person or class of persons that, in the opinion of the Commissioner, has appropriate training, qualifications or experience in conducting personal searches. In doing so, the Bill would provide for the wide delegation of statutory functions to a class of unknown persons.

The Committee generally prefers that the classes of persons who may be delegated statutory functions are appropriately defined and are subject to parliamentary oversight. In this case, it is not clear how the Commissioner's opinion would be documented or communicated, or if such a determination would be subject to any level of parliamentary scrutiny. This may enable private individuals to be delegated functions under the Act that would ordinarily be performed by public officials or authorities. It may also lead to confusion for people enforcing or subject to this law. For these reasons, the Committee refers this matter to Parliament for its consideration.

3. Liquor Amendment (Airports) Bill 2025

Date introduced	16 September 2025
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC

Purpose and description

- 3.1 The object of the Bill is to amend the *Liquor Act 2007* (the **Act**) to make provision for the regulation of liquor at airports in New South Wales and certain related places.

Background

- 3.2 The Bill seeks to amend the Act, and make consequential amendments, to support the Commonwealth Government's transition of the responsibility for liquor licensing and regulation at federally leased airports in NSW to the NSW Government.

- 3.3 In his second reading speech, the Hon. Mark Buttigieg MLC, on behalf of the Hon. John Graham MLC, described the objects of the Bill as being:

...mechanical in nature, and with the intention to simply maintain the status quo, ensuring that passenger terminals at federally leased airports can continue operating as usual without disruption.

- 3.4 The Bill proposes to:

- clarify the definitions of 'airport' and 'passenger terminal' under the Act
- provide flexibility in liquor trading hours inside passenger terminals and within the new Western Sydney Aerotropolis
- grant powers to the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport regarding trading hours and restrictions on liquor licenses
- ensure that licensed venues display clear signage regarding where liquor can and cannot be consumed
- clarify the law regarding where unaccompanied minors may travel within airport passenger terminals
- expand the area in which liquor can be consumed outside of the licensed premises.

Issues considered by the Committee

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

Absolute liability offence

- 3.5 The Bill proposes to insert section 130B(4) into the Act. This section would require a licensee who sells liquor for consumption in a food court or seating area in an airport passenger terminal to ensure that a notice is clearly displayed on the premises that specifies where the liquor may be consumed. Contravention of this section would carry a maximum penalty of a \$2,200 fine (20 penalty units).

The Bill seeks to insert section 130B(4) into the *Liquor Act 2007*. The section would require a licensee who sells liquor for consumption in a food court or seating area in an airport passenger terminal to ensure that a notice is clearly displayed on the premises to specify where liquor may be consumed. Failure to comply with this section would carry 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 recognises that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. Further, the offence is intended to ensure the appropriate trading of alcohol in airport passenger terminals, in line with community and industry expectations. The Committee also acknowledges that the maximum penalty carried by the proposed offence would be monetary and not custodial. For these reasons, the Committee makes no further comment.

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

Commencement by proclamation

- 3.6 Section 1 of the Bill provides that it would commence on a day or days to be appointed by proclamation.
- 3.7 As noted in the second reading speech, the intention of the Bill is 'to complement future changes that will soon be made by the Commonwealth Government to the Airports (Control of On-Airport Activities) Regulation 1997 to implement the transition.'

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

However, the Committee acknowledges that a flexible start date may be appropriate where time is needed for the Commonwealth Government to make the changes that this Bill is intended to complement. In the circumstances, the Committee makes no further comment.

4. Local Court and Bail Legislation Amendment Bill 2025

Date introduced	17 September 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP

Purpose and description

4.1 The objects of the Bill are:

- (a) to abolish the office of Magistrate and related judicial offices and establish the new office of Judge of the Local Court and other related judicial offices
- (b) to make it clear that only certain judicial officers may make bail decisions.

Background

4.2 The Bill seeks to amend certain legislation to change the title of judicial officers presiding in the Local Court of New South Wales from 'Magistrate' to 'Judge'.

4.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained that this change will improve public understanding of the role of Magistrates:

The existing differences in terminology across judicial systems contribute to varying perceptions of the role of a magistrate. This can lead to confusion and a lack of understanding about what a magistrate is or the significance of Local Court proceedings.

4.4 The Attorney General also explained that the Bill seeks to make minor technical amendments to 14 Acts to 'ensure consistency and clarity across the statute book in relation to bail decision-making.'

4.5 The Attorney General further explained that the provisions in Schedules 1 and 2 are to commence via proclamation, to ensure that:

...there is adequate time to complete essential implementation tasks prior to commencement. Those tasks include updating court systems, forms, documents and websites to reflect the new titles. Complementary changes to Commonwealth laws are also required. This means the commencement date for the change of title reform will be aligned to the commencement of those relevant Commonwealth amendments. The provisions contained in schedule 3 will commence on assent.

Issues considered by the Committee

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



Part Two – Regulations with comment

1. National Parks and Wildlife Amendment Regulation 2025

Date tabled	LA: 5 August 2025 LC: 5 August 2025
Disallowance date	LA: 23 October 2025 LC: 11 November 2025
Minister responsible	The Hon. Penny Sharpe MLC
Portfolio	Environment

Purpose and description

1.1 The objects of the Regulation are as follows:

- (a) to enable a park authority to close a park, or part of a park, by publishing a notice on the National Parks and Wildlife Service website
- (b) to provide that directions under the National Parks and Wildlife Regulation 2019 (the **Principal Regulation**) may:
 - (i) be given to a person who is about to contravene the *National Parks and Wildlife Act 1974* (the **Act**) or the Principal Regulation, and
 - (ii) apply for a period not exceeding 28 days, and
 - (iii) exclude the person to whom the direction is given from entering one or more nearby parks in certain circumstances
- (c) to enable the Secretary to revoke or replace a direction under the Principal Regulation, clause 8
- (d) to make provision in relation to the driving and parking of motor vehicles in parks
- (e) to prohibit a person:
 - (i) installing or leaving unattended a device for recording video, images or audio in a park, or
 - (ii) disclosing certain information in relation to certain land declared under the Act, Part 12A
- (f) to increase the penalties for certain offences under the Principal Regulation
- (g) to make certain other minor and consequential amendments.

Issues considered by the Committee

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

Strict liability offences

- 1.2 The Regulation inserts Clause 26A into the Principal Regulation, which prohibits a person from installing a recording device in a park, leaving a recording device unattended in a park, or arranging for another person to do so. The offence carries a maximum penalty of a \$5,500 fine (50 penalty units).
- 1.3 A defence is available under subclause 26A(2) if a person is acting in accordance with the consent of a park authority.
- 1.4 Clause 78K also prohibits the disclosure of information relating to sensitive declared land, if in disclosing the information the location will be revealed or may risk the protection of the environmental and cultural values of the land. The offence carries a maximum penalty of a \$5,500 fine (50 penalty units).
- 1.5 A defence is available under subclause 78K(3) if the disclosure is made with the consent of the Secretary or to another person in connection with the administration of the Act, Part 12A.

The Regulation creates a number of new strict liability offences under the National Parks and Wildlife Regulation 2019. Clause 26A prohibits a person from installing a recording device in a park. The offence carries a maximum penalty of a \$5,500 fine (50 penalty units). Clause 78K also prohibits the disclosure of information relating to sensitive declared land if, in disclosing the information, the location will be revealed or may risk the protection of the environmental and cultural values of the land. The offence carries a maximum penalty of a \$5,500 fine (50 penalty units).

The Committee generally comments on these 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 recognises that strict liability offences are not uncommon in regulatory settings to encourage compliance. The Committee also notes that defences are available for both of these offences. Further, the Committee notes that these offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

2. Protection of the Environment Operations (General) Amendment (Regulation of PFAS) Regulation 2025

Date tabled	LA: 5 August 2025 LC: 5 August 2025
Disallowance date	LA: 23 October 2025 LC: 11 November 2025
Minister responsible	The Hon. Penny Sharpe MLC
Portfolio	Environment

Purpose and description

- 2.1 The object of the Regulation is to amend the Protection of the Environment Operations (General) Regulation 2022 (the **Principal Regulation**) to:
- (a) declare the EPA as the appropriate regulatory authority for matters arising from the use of PFAS firefighting foam in accordance with certain exemptions, and
 - (b) exempt the use of PFAS firefighting foam from the offence under the *Protection of the Environment Operations Act 1997* (the **Act**), section 296C in certain circumstances, and
 - (c) repeal the offences and exemptions relating to PFAS firefighting foam, consequent on the listing of certain PFAS chemicals in the register under the *Industrial Chemicals Environmental Management (Register) Act 2021* of the Commonwealth on 1 July 2025.

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

- 2.2 Section 296C of the Act prohibits a person from using an industrial chemical listed in the NSW Industrial Chemicals Environmental Management Standard (**IChEMS**) Register.
- 2.3 Section 286 of the Act allows regulations to exempt any persons, premises, areas, activities, or any other matter or thing, from any of the provisions in the Act or the regulations.

- 2.4 The Regulation inserts Part 1A into Chapter 6 of the Principal Regulation. Part 1A creates an exemption for the use of PFAS firefighting foam from the offence under section 296C of the Act.

The Regulation inserts Part 1A into Chapter 6 of the Environment Operations (General) Regulation 2022 to exempt PFAS firefighting foam from the offence under section 296C of the *Protection of the Environment Operations Act 1997*.

The Regulation changes the operation of the Act by creating this exemption and may therefore 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, the Committee notes that the Act expressly allows exemptions to be created by regulations under section 286. Regulations made under this provision 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.

3. Surrogacy Amendment (Qualified Counsellors) Regulation 2025

Date tabled	LA: 5 August 2025 LC: 5 October 2025
Disallowance date	LA: 23 October 2025 LC: 11 November 2025
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

3.1 The object of this regulation (the **Amending Regulation**) is to amend the Surrogacy Regulation 2016 (the **Principal Regulation**) to:

- (a) consolidate definitions of qualified counsellor for the *Surrogacy Act 2010* (the **Act**)
- (b) allow overseas counsellors to exercise the functions of a qualified counsellor under the Act for surrogacy arrangements entered into outside Australia
- (c) allow the continuation of counselling arrangements made with a person who met the experience and qualification requirements to exercise the functions of a qualified counsellor under the Act before this regulation commences, and
- (d) allow the affected parties in relation to a surrogacy arrangement entered into outside Australia before the commencement of the amendments to engage a counsellor qualified in Australia or in a jurisdiction outside Australia to exercise functions under the Act.

Issues considered by the Committee

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

Application of repealed clauses 6 and 7 of the Principal Regulation

- 3.2 Clauses 6 and 7 of the Principal Regulation previously set out multiple definitions of 'qualified counsellor', depending on what function the counsellor was performing under the Act.
- 3.3 The Amending Regulation repeals clauses 6 and 7 of the Principal Regulation and inserts consolidated, general definitions of qualified counsellor at clauses 6 (domestic arrangements) and clause 6A (international arrangements). The consolidated definitions raise the qualification threshold for counsellors performing some functions of the Act.

- 3.4 The Amending Regulation also inserts clause 6B (Independent Counsellor's report), which allows parties with surrogacy agreements entered into overseas to engage psychiatrists, psychologists and social workers registered outside of Australia for the purposes of the Act.
- 3.5 Additionally, the Amending Regulation inserts the following savings and transitional provisions at clause 7, which seek to clarify the application of certain amendments:
- Clauses 6 and 7, as in force before the Amending Regulation commenced, continue to apply to a person engaged to exercise the functions of a qualified counsellor under the Act before the commencement day.
 - Clauses 6A and 6B, as inserted by the Amending Regulation, apply to a person engaged to exercise the functions of a qualified counsellor under the Act in relation to a surrogacy arrangement entered into outside Australia before the commencement day.
- 3.6 The stated object of the savings and transitional provisions is to 'allow the continuation of counselling arrangements made with a person who met the experience and qualification requirements to exercise the functions of a qualified counsellor under the Act' before the Amending Regulation commenced.

The Amending Regulation consolidates multiple definitions of 'qualified counsellor' for the purposes of the *Surrogacy Act 2010*. The Amending Regulation repeals clauses 6 and 7 of the Principal Regulation and inserts consolidated, general definitions of qualified counsellor. The Amending Regulation also inserts savings and transitional provisions under clause 7(1), which states that clauses 6 and 7, as in force before the Amending Regulation commenced, continue to apply to a person engaged before the commencement day.

The Committee acknowledges that the intent of clause 7 is to allow the continuation of counselling arrangements made with a person who met the experience and qualification requirements before the Amending Regulation commenced. However, the Amending Regulation seeks to accomplish this by simultaneously repealing and enforcing omitted clauses 6 and 7. The Committee also notes that clause 7(1) relies on parties to a surrogacy agreement having the technical legal knowledge to access a historic version of the Principal Regulation that includes the repealed clauses 6 and 7. This may create confusion for people implementing the regulation and for the people whose rights may be affected. For this reason, the Committee refers this matter to Parliament for consideration.

Form or intention of the regulation calls for elucidation: LRA 9(1)(b)(vii)

Lack of definition for 'surrogacy agreement entered into outside Australia'

- 3.7 The Act requires parties affected by a surrogacy agreement to attend counselling at multiple stages of the surrogacy process. Qualified counsellors must be engaged to perform functions of the Act under sections 17, 29, 35(1) and 35(2). Section 15A of the *Assisted Reproductive Technology Act 2007* also requires an assessment report from a qualified counsellor as defined by the Act.

- 3.8 Clauses 6 and 7 of the Principal Regulation previously set out multiple definitions of 'qualified counsellor', depending on what function the counsellor was performing under the Act. The previous definitions of qualified counsellor did not include practitioners who held overseas qualifications.
- 3.9 The Amending Regulation repeals clauses 6 and 7 of the Principal Regulation and inserts consolidated, general definitions of qualified counsellor at clauses 6 (domestic arrangements) and clause 6A (international arrangements). The consolidated definitions raise the qualification threshold for counsellors performing some functions of the Act.
- 3.10 The Amending Regulation also inserts clause 6B (Independent Counsellor's report), which allows parties with surrogacy agreements entered into overseas to engage psychiatrists, psychologists and social workers registered outside of Australia for the purposes of the Act.

The previous definition of 'qualified counsellor' under the Surrogacy Regulation 2016 (the Principal Regulation) did not include overseas practitioners. The Amending Regulation inserts clause 6A, which allows parties with surrogacy agreements entered into overseas to engage certain overseas practitioners. The Committee notes that 'surrogacy agreements entered into overseas' is not defined in the Amending Regulation, the Principal Regulation or the Act. It is unclear whether an overseas surrogacy agreement is an agreement that is physically signed outside of Australia, or if it is an agreement where one or more of the parties are domiciled outside of Australia.

The form of clause 6A may not give effect to the intention of the regulation if that intention is to allow parties affected by a surrogacy agreement to access counselling in the jurisdiction most convenient for each individual. This may create confusion for people implementing the Regulation and for people whose rights may be affected. For these reasons, the Committee refers the matter to Parliament for consideration.



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 (Revenue Determinations) Regulation 2025

The object of the Regulation is to make amendments to the Electricity Infrastructure Investment Regulation 2021 relating to the publication of revenue determinations and related information by the regulator under the *Electricity Infrastructure Investment Act 2020*, being the Australian Energy Regulator. The regulation also makes other law revision amendments.

The Regulation is made under the *Electricity Infrastructure Investment Act 2020* and does not appear to engage with any issues set out in section 9 of the *Legislative Review Act 1987*.

2. Erratum for Public Notaries Appointment Amendment (Fees) Rule 2025

The object of the Erratum is to correct the notice of the Public Notaries Appointment Amendment (Fees) Rule 2025, which was published in the NSW Government Gazette No 246 of 20 June 2025. The Erratum re-publishes and replaces the Second Schedule Table of Fees in the earlier rule.

The Erratum is made under the *Public Notaries Act 1997* and does not appear to engage with any issues set out in section 9 of the *Legislative Review Act 1987*.

3. Practice Note – Bail Proceedings (Weekend Centralised Bail Courts)

The Practice Note applies to Centralised Bail Courts hearing adult Bail Application proceedings in the Local Court. The purpose of the Practice Note is to outline the practice and procedure to be adopted in these proceedings.

The Practice Note commenced on 26 October 2024 and was amended on 7 July 2025. It does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

4. Practice Note – Court Closure AVL Proceedings (Downing Centre)

The Practice Note applies to matters listed for hearing in the Downing Centre Local Court. It is issued for the purpose of directing an AVL appearance in certain matters before the Downing Centre Local Court where it is in the interests of justice for the accused person.

The Practice Note commenced on 7 July 2025 and expires on 25 December 2025. It does not appear to engage with any issues set out in section 9 of the *Legislative Review Act 1987*.

5. [Environmental Planning and Assessment Amendment \(Housing and Productivity Contributions Scheme\) Regulation 2025](#)

The object of the Regulation is to authorise payments from the Strategic Biodiversity Contributions Fund and the Housing and Productivity Fund, established under the *Environmental Planning and Assessment Act 1979*:

- (a) to a person who has made a housing and productivity contribution that exceeded the amount of the contribution required by a Ministerial planning order,
- (b) to the Consolidated Fund, in circumstances where a payment has been made to a person out of that Fund in relation to the person making a housing and productivity contribution.

The Regulation was made under the *Environmental Planning and Assessment Act 1979* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

6. [Motor Accident Guidelines Version 10](#)

The Guidelines support the administration of the Compulsory Third Party scheme and the objects of the *Motor Accident Injuries Act 2017* and the operation of the *Motor Accidents Injuries Regulation 2017* by establishing clear processes and procedures, scheme objectives and compliance requirements.

The Guidelines commenced on 15 September 2025 and apply until the State Insurance Regulatory Authority ends. They do not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

7. [Uniform Civil Procedure \(Amendment No 105\) Rule 2025](#)

The object of the Rule is to amend the circumstances in which a party to proceedings requires leave of the court before issuing a subpoena.

The Rule is made under the *Civil Procedure Act 2005* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

8. [NSW Admission Board Amendment \(Second Fees\) Rule 2025](#)

The object of the Rule is to amend the Third Schedule of the NSW Admission Board Rules 2015 to increase the Enrolment fee per subject, which covers the tuition, administration and examination costs in respect of the examinations offered by the Legal Profession Admission Board.

The Rule is made under the *Legal Profession Uniform Law Application Act 2014* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

9. [Public Notaries Appointment Amendment Rule 2025](#)

The object of the Rule is to amend the Public Notaries Appointment Rules to reflect that the annual particulars notification process commences in July of each year and to remove references in the Forms to DX as there is no longer a DX service in operation.

The Rule is made under the *Public Notaries Act 1997* and does not appear to engage with any issues set out in section 9 of the *Legislative Review Act 1987*.

10. Governor of New South Wales 2025 Annual Determination

The object of the Annual Determination is to make a determination for the remuneration to be paid to the Governor of New South Wales.

Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975*, the Statutory and Other Offices Remuneration Tribunal determined that there should be an increase of 3.5% to the salary payable to the Governor on and from 1 October 2025.

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

11. Judges and Magistrates Group 2025 Annual Determination

The object of the Annual Determination is to make a determination for the remuneration to be paid to the Judges and Magistrates Group.

Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975*, the Statutory and Other Offices Remuneration Tribunal determined that there should be an increase of 4.033% to the salaries payable to the relevant office holders on and from 1 July 2025. The Tribunal also made a determination on travel allowances for this group.

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

12. Public Office Holders Group 2025 Annual Determination

The object of the Annual Determination is to make a determination for the remuneration to be paid to the Public Office Holders Group.

Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975*, the Statutory and Other Offices Remuneration Tribunal determined that there should be an increase of 3.5% to the salaries payable to the relevant office holders on and from 1 July 2025.

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

13. Court and Related Office Holders Group 2025 Annual Determination

The object of the Annual Determination is to make a determination for the remuneration to be paid to the Court and Related Office Holders Group.

Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975*, the Statutory and Other Offices Remuneration Tribunal determined that there should be an increase of 3.5% to the salaries payable to the relevant office holders on and from 1 July 2025.

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

14. [Statutory and Other Offices Remuneration Act 1975—ERRATUM – SOORT 2025 Annual Determination – Court and Related Officers Group](#)

The object of this Erratum is to correct an error made in the Court and Related Officers Group – 2025 Annual Determination - Determination No. 2. The Erratum deletes the figure '\$22,455' in the Conveyance Allowance column and replaces it with '22,445'.

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

15. [Electoral Amendment \(Independent Candidate Logo\) Regulation 2025](#)

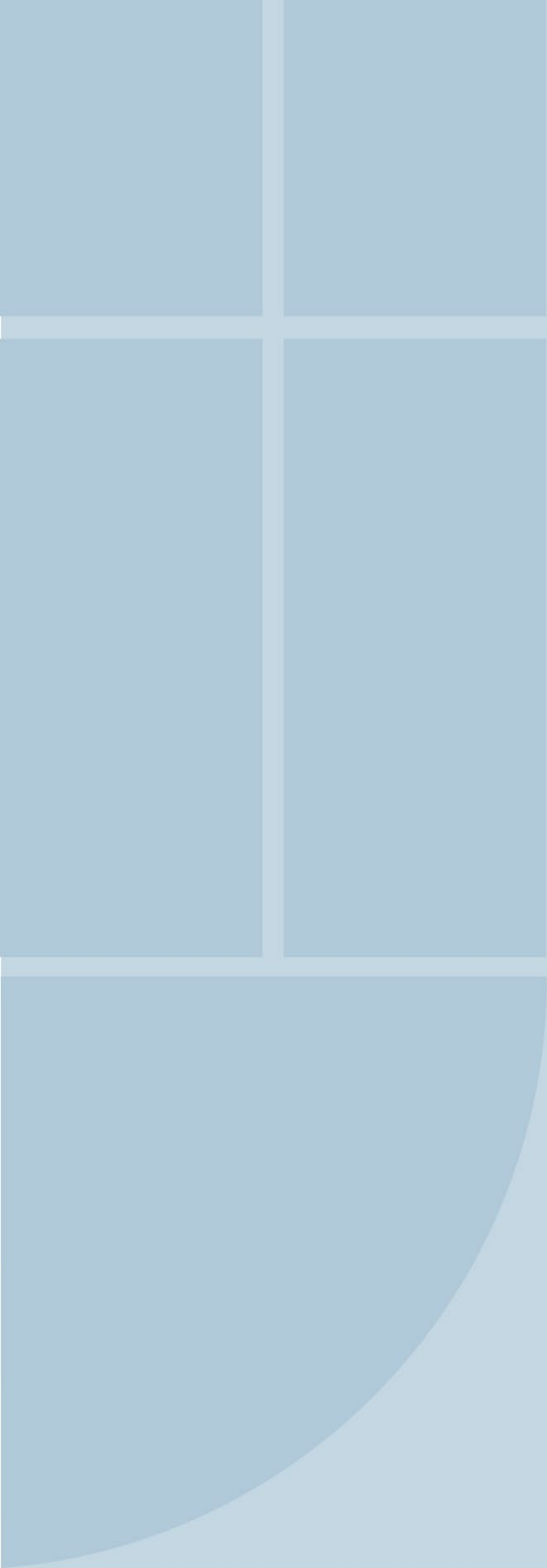
The object of this Regulation is to prescribe, for a by-election held before the 2027 general election, an alternative period within which a request for a logo to be printed on the ballot papers for the by-election adjacent to a candidate's name may be made.

This Regulation is made under the *Electoral Act 2017* and does not appear to engage with any issues set out in section 9 of the *Legislative Review Act 1987*.

16. [Uniform Civil Procedure \(Amendment No 106\) Rule 2025](#)

The object of this Rule is to amend the restriction on the use of generative artificial intelligence to generate the content of affidavits to ensure consistency with the restriction on the use of generative artificial intelligence to generate the content of witness statements.

This Rule is made under the *Civil Procedure Act 2005* and does not appear to engage with any issues set out in section 9 of the *Legislative Review Act 1987*.



Appendices

Appendix One – Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to regulations

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

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

Appendix Two – Unconfirmed extracts of minutes

Meeting no. 37

TIME & DATE: 3.01PM, 13 OCTOBER 2025

LOCATION: ROOM 1136 AND WEBEX

MEMBERS PRESENT

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

APOLOGIES

Mr Layzell.

OFFICERS PRESENT

Rohan Tyler, Carly McKenna, Natasha Moir, Alex Read and Nicolle Gill.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 15 September 2025 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 36/58

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

- a) Environmental Planning and Assessment (Planning System Reforms) Bill 2025
- b) Justice Legislation Amendment (Miscellaneous) Bill (No 2) 2025.

Resolved, on the motion of Ms Munro: That the Committee adopts the following draft bill report, as amended, with the following words to be inserted at page 33 of the Legislation Review Digest No. 36/58, as part of paragraph 3.4:

- a) Liquor Amendment (Airports) Bill 2025

'• expand the area in which liquor can be consumed outside of the licensed premises.'

4. Consideration of bills without comment for Legislation Review Digest 36/58

Resolved, on the motion of Ms Stuart: That the Committee adopts the draft report regarding the Local Court and Bail Legislation Amendment Bill 2025.

5. Consideration of regulations with comment for Legislation Review Digest 36/58

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

- a) National Parks and Wildlife Amendment Regulation 2025
- b) Protection of the Environment Operations (General) Amendment (Regulation of PFAS) Regulation 2025
- c) Surrogacy Amendment (Qualified Counsellors) Regulation 2025.

6. Regulations without comment for Legislation Review Digest 36/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Part Three to Digest No. 36/58.

7. Legislation Review Digest 36/58

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 Legislation Review Digest No. 36/58, as amended, 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.

Resolved, on the motion of Mr Murphy: That the Committee consider all regulations and statutory instruments that are currently subject to disallowance (tabled 5 August, 9 September and 16 September 2025), even if the relevant regulations have been disallowed by the time the next Digest is adopted.

9. Next meeting

The meeting adjourned at 3.13pm until Monday 20 October 2025 at 3.00pm.