

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



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

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# Membership

<b>Chair</b>	Ms Lynda Voltz MP, Member for Auburn
<b>Deputy Chair</b>	Ms Maryanne Stuart MP, Member for Heathcote
<b>Members</b>	Ms Donna Davis MP, Member for Parramatta Mr Nathan Hagarty MP, Member for Leppington Ms Sue Higginson MLC Mr Dave Layzell MP, Member for Upper Hunter The Hon. Jacqui Munro MLC The Hon. Cameron Murphy MLC
<b>Contact details</b>	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
<b>Telephone</b>	0491 961 338
<b>E-mail</b>	<a href="mailto:Legislation.Review@parliament.nsw.gov.au">Legislation.Review@parliament.nsw.gov.au</a>
<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# Guide to the Digest

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

## Part One: Functions Regarding Bills

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

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

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

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

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

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

**Insufficiently defined administrative powers:**

- insufficiently defined or wide powers

**Non-reviewable decisions:**

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

**Inappropriate delegation of legislative powers:**

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

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

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

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

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



## Part Two: Functions Regarding Regulations with Comments

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

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

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

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

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

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

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

## Conclusions on Bills and Regulations

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

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

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

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

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

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

# Digest Snapshot

## PART ONE – BILLS

### 1. Abortion Law Reform Amendment (Sex Selection Prohibition) Bill 2025\*

Issue identified	Conclusion of Committee
Access to healthcare	Referred
Freedom of contract - voiding of professional indemnity insurance	Referred

### 2. Companion Animals Amendment (Control of Cats) Bill 2025\*

No issues identified

### 3. Criminal Assets Recovery Amendment (Organised Crime Reforms) Bill 2025

Issue identified	Conclusion of Committee
Retrospectivity	Referred
Broad regulatory powers impacting property rights	No further comment
Commencement by proclamation	No further comment

### 4. Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Bill 2025

Issue identified	Conclusion of Committee
Retrospectivity	Referred
Legislative interference in judicial standing matters – separation of powers	Referred

### 5. Fines Legislation Amendment Bill 2025

Issue identified	Conclusion of Committee
Commencement by proclamation	No further comment

### 6. Human Rights Bill 2025\*

No issues identified

### 7. Statute Law (Miscellaneous Provisions) Bill (No 2) 2025

No issues identified

### 8. Surveillance Devices and Other Legislation Amendment Bill 2025

Issue identified	Conclusion of Committee
Right to privacy	Referred
Procedural fairness	Referred
Retrospectivity	No further comment
Henry VIII clause	No further comment
Commencement by proclamation	No further comment

## PART TWO – REGULATIONS WITH COMMENT

### 1. Child Protection (Offenders Registration) Amendment Regulation 2025

Issue identified	Conclusion of Committee
Clarity regarding applications for order to end reporting obligations	Referred

### 2. Surveillance Devices Amendment (ICAC) Regulation 2025

Issue identified	Conclusion of Committee
Right to privacy	Referred
Procedural fairness	Referred
Timing and retrospectivity	Referred

### 3. Sydney Water Regulation 2025

Issue identified	Conclusion of Committee
Strict liability offences	Referred
Privilege against self-incrimination	Referred

### 4. Water Management (General) Regulation 2025

Issue identified	Conclusion of Committee
Exemptions made under Henry VIII clause	No further comment

### 5. Water Management (Water Supply Authorities) Regulation 2025

Issue identified	Conclusion of Committee
Strict liability offences	Referred
Privilege against self-incrimination	Referred

### 6. Work Health and Safety Regulation 2025

Issue identified	Conclusion of Committee
Right to privacy	No further comment
Penalty notice offences	No further comment

# Summary of Conclusions

## PART ONE – BILLS

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### 1. Abortion Law Reform Amendment (Sex Selection Prohibition) Bill 2025\*

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

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##### *Access to healthcare*

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The Bill seeks to amend the *Abortion Law Reform Act 2019* to make it an offence for a person to arrange for, permit, perform, or assist in the performance of, a termination on a person for the purposes of sex selection. The offence under proposed section 11A(1) is subject to a maximum penalty of a \$22,000 fine (200 penalty units), or 5 years imprisonment, or both for an individual, or a \$44,000 fine (400 penalty units) for a corporation. Where the person is a registered health practitioner, an offence under proposed section 11A would also amount to professional misconduct under the Health Practitioner Regulation National Law. Additionally, proposed section 11A(2) would prohibit a registered health practitioner from performing, or assisting in the performance of, a termination for any reason, if they have previously committed an offence under section 11A(1).

The Bill may therefore impact on a person's right to access healthcare by deterring registered health practitioners from performing, or assisting in the performance of abortions, because of the potentially significant penalties and professional implications. The Committee acknowledges that the offence under section 11A(1) is limited to terminations 'for the purposes of sex selection'. However, the Bill does not provide any detail on how these purposes would be determined, nor does it define what would constitute 'assistance' in performing a termination. This uncertainty may have the effect of deterring practitioners from assisting persons seeking access to medical care for a termination, regardless of the purpose or intent of the termination.

The Committee also notes that proposed section 11A(2) would explicitly restrict a person's access to an abortion for any reason, where the practitioner has previously performed a termination for the purposes of sex selection. This would unduly restrict the right of an individual to access health care that is otherwise legal. For these reasons, the Committee refers the matter to Parliament for consideration.

##### *Freedom of contract - voiding of professional indemnity insurance*

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The Bill seeks to amend the *Health Care Liability Act 2001* to provide that approved professional indemnity insurance is void to that extent that it covers a registered health practitioner who performs, or assists in the performance of, a termination for the purposes of sex selection. Medical practitioners are required to be covered by an approved professional indemnity insurance under the *Health Care Liability Act 2001*.

By overriding the validity of approved professional indemnity insurance, the Bill may interfere with the freedom of contract between an insurance provider and an insured health practitioner. Freedom of contract is a fundamental common law right that protects the rights and obligations that are agreed to by contracting parties. The Committee generally comments on provisions that unduly interfere with contractual rights and obligations.

While the Committee acknowledges that the provisions would only void professional indemnity insurance to the extent that it covers terminations for the purposes of sex selection, it recognises the potentially significant impact on a practitioner who may be exposed to personal liability because their coverage is void. Further, the terms 'assist' and 'for the purposes of' are not clearly defined, and the Bill does not prescribe how these terms would be established. This uncertainty could potentially impact a broad range of health practitioners. For these reasons, the Committee refers the matter to Parliament for consideration.

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## 2. Companion Animals Amendment (Control of Cats) Bill 2025\*

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

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## 3. Criminal Assets Recovery Amendment (Organised Crime Reforms) Bill 2025

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

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#### *Retrospectivity*

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The Bill proposes to insert savings and transitional provisions into the *Criminal Assets Recovery Act 1990* to allow certain proposed amendments to apply to circumstances occurring before the commencement of the relevant provisions. For example, the proposed amendments to section 4(2), which would require an arms-length transaction for 'sufficient consideration', would extend to a transaction that occurred before the amendment commenced. The savings and transitional provisions would also remove the 6-year limitation that applies to the making of asset forfeiture orders, proceeds assessment orders and the assessment of proceeds for a proceeds assessment order.

By extending the application of these amendments to circumstances that existed before the provisions commenced, the Bill may therefore apply retrospectively. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. This is particularly the case where a Bill's provisions would impact on an individual's rights. In this case, the provision would capture activity that occurred before the commencement of the provision and would enable orders related to the confiscation of property.

The Committee acknowledges that, by expanding the scope of the Supreme Court's power to make orders relating to the proceeds of crime, the Bill may be intended to capture a broader range of criminal activity and address organised crime more effectively. However, as the powers may impact a person's property rights, it is important that a person is aware of the law that applies to them at any given time. For this reason, the Committee refers this issue to Parliament for consideration.

#### *Broad regulatory powers impacting property rights*

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The Bill proposes to remove the 6-year limitation on the use of asset forfeiture and proceeds assessment orders against a person who was engaged in a serious crime-related activity. By removing this limitation, the Bill would allow these orders to capture a broader group of people who may have engaged in such activity more than 6 years before the making of the order. It also proposes to remove the 6-year limitation on the period of time during which a person's expenditure can be assessed when evidence is considered during a hearing for a proceeds assessment order.

The removal of the 6-year limitation significantly expands the power of the Supreme Court and broadens the class of persons, and type of assets, that can be impacted by an assets forfeiture and proceeds assessment order. This has the potential to impact on the property rights and interests of a large group of people.

The Committee generally comments on laws that impact common law property rights. However, the Committee notes that those rights are not absolute, and that there is a clear policy rationale for expanding the power, in this case, to deter serious organised crime. For these reasons, the Committee makes no further comment.

#### *Commencement by proclamation*

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The Bill commences by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where those provisions would affect individual rights or obligations.

The Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as providing time for relevant agencies to establish the procedures necessary to administer the regulatory framework. It also recognises the important policy rationale for the amendments proposed by the Bill, including deterring serious organised crime. For these reasons, the Committee makes no further comment.

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## **4. Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Bill 2025**

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

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#### *Retrospectivity*

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The Bill proposes to insert savings and transitional provisions into the *Criminal Procedure Act 1986*, the *Independent Commission Against Corruption Act 1988* and the *Law Enforcement Conduct Commission Act 2016*. These provisions clarify that certain individuals are taken to have been acting in an official capacity if they commenced proceedings for the prosecution of another person for a criminal offence. The effect of these provisions is that they would retrospectively validate the commencement of proceedings by individuals acting as public officers of the Independent Commission Against Corruption, the Law Enforcement Conduct Commission and the former Police Integrity Commission.

The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. This is particularly important where the Bill would impact on an individual's rights and liberties. In this case, the Bill would retrospectively remove valid technical grounds on which an individual may choose to challenge a prosecution, where they have been found guilty of an offence.

The Committee acknowledges that the Bill would not retrospectively create new penalties or offences, or alter the elements of criminal offences. It also acknowledges the public interest in upholding convictions that involve serious corruption or criminal conduct, and the importance of deterring others from similar conduct. However, by retrospectively removing valid grounds on which an individual may otherwise challenge a prosecution, the Bill may unduly impact on an individual's right to procedural fairness. For this reason, the Committee refers the matter to Parliament for consideration.



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*Legislative interference in judicial standing matters – separation of powers*

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The Bill seeks to introduce provisions that would retrospectively validate prosecutions that may otherwise be at risk of challenge, based on the Court of Appeal's findings in *Gamage v Riashi* [2025] NSWCA 84. In that case, the Court determined that prosecutions commenced by an ICAC officer, under the *Criminal Procedure Act 1989*, were invalid. By retrospectively validating these prosecutions, the Bill would effectively override that outcome and reverse the Court's decision as to who may commence proceedings.

The Committee generally comments on provisions that could interfere with the independent conduct of judicial matters, as this may infringe the constitutional doctrine of the separation of powers. This doctrine protects the independence of the judiciary from the legislature and executive branches of government. For this reason, the Committee refers the matter to Parliament for consideration.

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**5. Fines Legislation Amendment Bill 2025**

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

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*Commencement by proclamation*

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Schedule 1[1] to [5] of the Bill, which proposes to amend the *Fines Act 1996*, would commence by proclamation. These provisions would allow a person to withdraw an election to have their matter dealt with by a court, where a penalty notice has been issued. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions. This is particularly the case where the proposed provisions would impact on an individual's rights.

However, the Committee acknowledges that a flexible start date may be needed to ensure that the appropriate administrative arrangements are in place to facilitate the changes proposed by the Bill. In the circumstances, the Committee makes no further comment.

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**6. Human Rights Bill 2025\***

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

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**7. Statute Law (Miscellaneous Provisions) Bill (No 2) 2025**

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

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**8. Surveillance Devices and Other Legislation Amendment Bill 2025**

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

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*Right to privacy*

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The Bill seeks to introduce exceptions to a number of offences under the *Surveillance Devices Act 2007*, which relate to the communication, publication and possession of records of private conversations obtained through the use of surveillance devices ('surveillance device records'). The exceptions under proposed sections 12(2) and 14B would permit an officer of an investigative body to possess, communicate or publish surveillance device records if it is in connection with

the exercise of the investigative body's functions. Proposed section 14A would also allow a person to communicate or publish a surveillance device record to an investigative body where it is 'in the public interest' to do so. By allowing surveillance device records to be produced and used by an investigative body, without consent or a warrant, the Bill has the potential to impact an individual's right to privacy.

The Committee understands that the proposed exceptions are intended to support investigations into crime, corruption and other unlawful conduct. It also notes that a person who is not an officer of an investigative body can only communicate a surveillance device record to an investigative body if it is 'in the public interest'. However, the Committee notes that the definition of public interest under section 14A(2) is non-exhaustive and, therefore, does not appropriately limit the circumstances under which a person can produce and disclose surveillance devices records. Noting the potential serious intrusions on an individual's right to privacy, the Committee refers the matter to Parliament for its consideration.

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#### *Procedural fairness*

The Bill would introduce exceptions to offences under Part 2 of the *Surveillance Devices Act 2007*, which would allow investigative bodies to legally use evidence that has been unlawfully obtained by a third party through the use of a surveillance device. Normally, evidence that has been unlawfully obtained would be inadmissible under the rules of evidence.

The Committee understands that the exceptions are intended to support the investigation of crime, corruption and other unlawful conduct. However, the Committee is concerned about the potential impact of the Bill on an individual's right to procedural fairness, particularly where the use of unlawfully obtained evidence may lead to the prosecution of individuals. For these reasons, the Committee refers the matter to Parliament for its consideration.

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#### *Retrospectivity*

Schedule 1[12] would insert savings and transitional provisions into the Act to provide that the exceptions under proposed section 8A apply retrospectively to the use of a listening device or surveillance device that occurred before the commencement of that section.

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

However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact a person's rights or liberties as it seeks to clarify the existing legislative framework only, where another Act has already authorised the use of surveillance devices. For these reasons, the Committee makes no further comment.

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

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##### *Henry VIII clause*

The Bill proposes to insert section 9(2)(d) into the *Surveillance Devices Act 2007*, which would allow the regulations to prescribe tracking devices as a device for which installation, use or maintenance is not an offence.

Therefore, the Bill would insert a provision that may amount to a Henry VIII clause by allowing the Executive to make regulations that alter the operation of the parent Act without reference to the

Parliament. The Committee generally considers Henry VIII clauses to be an inappropriate delegation of legislative powers.

However, the Committee recognises that any regulations made under this provision must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. For this reason, the Committee makes no further comment.

#### *Commencement by proclamation*

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Clause 2 of the Bill stipulates that the Act would commence on a day or days to be appointed by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

However, the Committee acknowledges the practical reasons for allowing a flexible start date, including to establish administrative procedures necessary to implement the amended provisions. For this reason, the Committee makes no further comment.

## **PART TWO – REGULATIONS WITH COMMENT**

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### **1. Child Protection (Offenders Registration) Amendment Regulation 2025**

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

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##### *Clarity regarding applications for order to end reporting obligations*

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Schedule 2, clause 34 of the *Child Protection (Offenders Registration) Act 2000* (the Act) allows the Commissioner of Police to make an order to end a person's reporting obligations under the Act, where that person was only required to report because of an offence they committed as a child. The Act allows regulations to be made in relation to the making of an order, including matters the Commissioner must consider before making an order, applications for an order, and review of decisions made by the Commissioner under clause 34.

The Regulation sets out matters that the Commissioner must consider before making a direction, and the process by which to apply for an internal review of the Commissioner's decision. However, the Regulation does not specify if, or how an application for an order under clause 34 may be made. In the absence of these provisions, it is unclear whether a registrable person can apply to the Commissioner for an order, or whether the intention is for the Commissioner to exclusively initiate the making of orders of their own accord.

The Committee prefers that provisions that affect the rights and obligations of individuals are drafted with sufficient precision and clarity so that individuals have a clear understanding of how those provisions may impact them. Noting that the intention of the Regulation with respect to the making of applications for an order is unclear, the Committee refers the matter to Parliament for consideration.

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## 2. Surveillance Devices Amendment (ICAC) Regulation 2025

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

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#### *Right to privacy*

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The Regulation extends the repeal of section 6A of the Surveillance Devices Regulation 2022, which exempts the Independent Commission Against Corruption (ICAC) and its officers from contravening provisions of Part 2 of the *Surveillance Devices Act 2007*.

This exemption has the potential to impact an individual's right to privacy, as it permits the ICAC to lawfully use certain material obtained illegally by a third party through the use of a surveillance device without consent or a warrant in certain circumstances. For example, the ICAC would be permitted to publish or communicate a recorded private conversation.

The Committee acknowledges that section 6A is not intended to exempt the ICAC from the requirement to apply for a surveillance device warrant in its investigations. It also recognises that the exemption is time-bound, as it will now expire on 30 June 2026. Additionally, the Committee understands that the exemption inserted under the Surveillance Devices Amendment (ICAC) Regulation 2023 was, at the time, associated with an ongoing investigation of the ICAC. However, it is unclear if this investigation remains ongoing. As the Committee noted in Legislation Review Digest No. 3/58, section 6A is not worded in a way which limits its application to any particular investigation.

The Committee therefore notes that the exemption under section 6A would allow the ICAC to use information that a third party has obtained without a requisite warrant or consent. It also notes the absence of any safeguards to limit or allow a challenge or review of its application. The use of surveillance devices without a warrant can impact on an individual's right to privacy without the requirement for judicial oversight. For these reasons, the Committee refers the matter to Parliament for its consideration.

#### *Procedural fairness*

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The Regulation allows the ICAC to use evidence obtained from a third party with the use of a surveillance device, which would otherwise be unlawful under Part 2 of the *Surveillance Devices Act 2007*. The Committee is concerned that in using such evidence, it may lead to the prosecution of individuals on the basis of unlawfully obtained evidence. Normally, evidence that has been unlawfully obtained would be inadmissible under the rules of evidence.

The Committee also notes that it is unclear whether the Director of Public Prosecutions can provide directions under the ICAC's wide powers of investigation. Therefore, the Committee is concerned about the potential impact of the Regulation on individuals' right to procedural fairness. For these reasons, the Committee refers the matter to Parliament for its consideration.

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

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#### *Timing and retrospectivity*

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Under section 59(3) of the *Surveillance Devices Act 2007*, the Regulation takes effect from the expiry of the period in which either House of Parliament may disallow it. Members of Parliament therefore have until 18 November 2025 in the Legislative Assembly and 20 November 2025 in the Legislative Council to give notice of a motion to disallow the Regulation. If notice is given during this time, the Regulation will remain disallowable until the notice is dealt with.

However, clause 2 of the Regulation states that it commences 'on the day on which it is published on the NSW legislation website', which was 10 September 2025. The Committee notes that this conflicts with section 59(3) of the Act. As such, it is not clear when the extension of the exemption would take effect. For these reasons, the Committee refers the matter to Parliament for further clarity on the timing and applicability of the Regulation.

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### 3. Sydney Water Regulation 2025

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

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##### *Strict liability offences*

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The Regulation re-establishes a number of strict liability offences that were contained in the now-repealed Sydney Water Regulation 2017, which relate to individuals in controlled areas.

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

The Committee notes that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance and that the relevant penalties are non-custodial. The Committee also notes that the penalties prescribed are within the remit of the Regulation under section 106(3) of the *Sydney Water Act 1994*.

However the Committee is concerned that these monetary penalties are particularly severe for strict liability offences. For these reasons, the Committee refers the matter to Parliament for its consideration.

##### *Privilege against self-incrimination*

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Section 35 of the Regulation makes it an offence for a person, who caused damage to a work or property of Sydney Water, to not immediately report that damage.

The Committee is concerned that this provision would infringe an individual's privilege against self-incrimination. The privilege against self-incrimination allows a person to refuse to answer any question, or produce anything, if doing so would expose the person to conviction for a crime. This privilege is necessary to preserve the presumption of innocence and to ensure that the burden of proof remains on the prosecution. For these reasons, the Committee refers the matter to Parliament for its consideration.

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### 4. Water Management (General) Regulation 2025

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

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##### *Exemptions made under Henry VIII clause*

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The Regulation creates additional exemptions from certain metering requirements under the *Water Management Act 2000* (the Act). Part 5, Division 2, Subdivision 2 creates exemptions from mandatory metering requirements under the Act, and Division 3, Subdivision 3 allows the Minister to exempt an approval holder from requirements to comply with a floodplain harvesting licence condition in relation to a work approval. The Regulation therefore modifies the operation of the Act by creating the exemptions to these requirements.

The Committee generally prefers amendments to an Act to be made by an amending bill rather than subordinate legislation. This is to foster a greater level of parliamentary oversight, as, unlike primary legislation, subordinate legislation is not required to be passed by Parliament and Parliament does not control when it commences.

However, the Committee acknowledges that amendment of the Act by subordinate legislation is, in this case, authorised by the principal Act. Section 101A(3) authorises the regulations to provide for exemptions from mandatory metering requirements under the Act, and section 400(2) authorises the regulations to make provision for exemptions under the Act, more broadly. In the circumstances, the Committee makes no further comment.

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## **5. Water Management (Water Supply Authorities) Regulation 2025**

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

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#### *Strict liability offences*

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The Regulation establishes a number of strict liability offences in relation to water supply services, including new offences that would require an owner of land to ensure that a water supply service meets certain requirements stipulated by the Regulation. The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee notes that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance, and that the relevant penalties are non-custodial. The Committee also notes that the penalties prescribed are within the remit of the Regulation, under section 400(3) of the *Water Management Act 2000*.

However, the Committee is concerned that the offences would unduly burden individual land owners by imposing significant obligations on them to ensure that water supply services, which water supply authorities are responsible for, comply with the requirements of the Regulation. For this reason, the Committee refers the matter to Parliament for its consideration.

Section 58 of the Regulation makes it an offence to not immediately report damage to a work or property of Essential Energy, caused in the course of carrying out plumbing work. This section re-establishes an offence that was contained in the now-repealed *Water Management (General) Regulation 2018*.

The Committee is concerned that this provision would infringe an individual's privilege against self-incrimination. The privilege against self-incrimination allows a person to refuse to answer any question, or produce anything, if doing so would expose the person to conviction for a crime. This privilege is necessary to preserve the presumption of innocence and to ensure that the burden of proof remains on the prosecution. For these reasons, the Committee refers the matter to Parliament for its consideration.

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## **6. Work Health and Safety Regulation 2025**

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

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#### *Right to privacy*

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The Regulation authorises the collection and sharing of personal health information about workers in circumstances where the workers may have been exposed to hazardous chemicals. The

compulsory nature of the health monitoring prescribed by the Regulation means that workers may be required to undergo testing and their medical information may be disclosed to the regulator and other duty-holders without their explicit consent.

The Committee generally comments on regulations that may limit a worker's ability to rely on the privacy protections available under the *Health Records and Information Privacy Act 2002* and the *Privacy and Personal Information Protection Act 1998*.

However, the Committee notes that these provisions are intended to protect workers' health and safety and to ensure that employers can take appropriate remedial action if a worker has been exposed to hazardous chemicals. The Regulation also contains important safeguards, including the duty to keep reports confidential and the restrictions on disclosure, except to persons who have a statutory duty to provide health monitoring. In the circumstances, the Committee makes no further comment.

#### *Penalty notice offences*

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Schedule 18A provides a list of offences under section 243 of the *Work Health and Safety Act 2011*, for which a penalty notice may be issued by an authorised officer.

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

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



# Part One – Bills



# 1. Abortion Law Reform Amendment (Sex Selection Prohibition) Bill 2025\*

Date introduced	22 October 2025
House introduced	Legislative Council
Member with carriage	The Hon. John Ruddick MLC
*Private Members Bill	

## Purpose and description

1.1 The objects of the Bill are as follows:

- (a) to amend the *Abortion Law Reform Act 2019* to prohibit the performance of terminations on persons for the purposes of sex selection
- (b) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* to provide that the performance of terminations by a registered health practitioner on persons for the purposes of sex selection amounts to professional misconduct
- (c) to amend the *Health Care Liability Act 2001* to void approved professional indemnity insurance for a registered health practitioner to the extent the insurance provides cover for the performance of a termination on a person for the purposes of sex selection.

## Background

1.2 The Bill would make it an offence for a person to arrange for, permit, perform, or assist in the performance of, a termination for the purposes of sex selection. The offence is subject to a maximum penalty of a \$22,000 fine (200 penalty units), or 5 years imprisonment, or both, for an individual, and a \$44,000 fine (400 penalty units) for a corporation.

1.3 Where the relevant person is a registered health practitioner, the Bill provides that such conduct would also amount to 'professional misconduct' and would not be covered by the practitioner's approved professional indemnity assurance.

1.4 During his second reading speech the Hon. John Ruddick MLC stated that 'the bill seeks to end the practice of aborting unborn babies based on nothing other than their sex.' He explained that:

...with the advent of modern medicine and the ability to determine the sex of a baby in the womb very early, there have been studies that have indicated that the ratio of 100 girls for every 105 boys can sometimes be way out of whack, resulting in what is known as a skewed sex ratio at birth. Those studies indicate that gender-selection abortion is the reason.

## Issues considered by the Committee

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

#### *Access to healthcare*

- 1.5 The Bill proposes to insert section 11A into the *Abortion Law Reform Act 2019*, which would make it an offence for a person to arrange for, permit, perform, or assist in the performance of, a termination on a person for the purposes of sex selection. The offence under proposed section 11A(1) is subject to a maximum penalty of a \$22,000 fine (200 penalty units), or 5 years imprisonment, or both, for an individual, or a \$44,000 fine (400 penalty units) for a corporation.
- 1.6 Proposed section 11A(2) states that a registered health practitioner must not perform, or assist in the performance of, a termination 'if the registered health practitioner has committed an offence under subsection (1).' This offence is subject to a maximum penalty of a \$22,000 fine (200 penalty units), or 5 years imprisonment, or both.
- 1.7 The explanatory note for the Bill also clarifies that proposed section 11A(2) prohibits a registered health practitioner from performing, or assisting in the performance of, a termination on a person 'for any reason' if the practitioner 'previously committed an offence under proposed section 11A(1).'
- 1.8 Schedule 2 of the Bill would also modify the *Health Practitioner Regulation (Adoption of National Law) Act 2009* by providing that a contravention of section 11A by a registered health practitioner amounts to professional misconduct.

**The Bill seeks to amend the *Abortion Law Reform Act 2019* to make it an offence for a person to arrange for, permit, perform, or assist in the performance of, a termination on a person for the purposes of sex selection. The offence under proposed section 11A(1) is subject to a maximum penalty of a \$22,000 fine (200 penalty units), or 5 years imprisonment, or both for an individual, or a \$44,000 fine (400 penalty units) for a corporation. Where the person is a registered health practitioner, an offence under proposed section 11A would also amount to professional misconduct under the *Health Practitioner Regulation National Law*. Additionally, proposed section 11A(2) would prohibit a registered health practitioner from performing, or assisting in the performance of, a termination for any reason, if they have previously committed an offence under section 11A(1).**

**The Bill may therefore impact on a person's right to access healthcare by deterring registered health practitioners from performing, or assisting in the performance of abortions, because of the potentially significant penalties and professional implications. The Committee acknowledges that the offence under section 11A(1) is limited to terminations 'for the purposes of sex selection'. However, the Bill does not provide any detail on how these purposes would be determined, nor does it define what would constitute 'assistance' in performing a termination. This uncertainty may have the effect of deterring practitioners from assisting persons seeking access to medical care for a termination, regardless of the purpose or intent of the termination.**

**The Committee also notes that proposed section 11A(2) would explicitly restrict a person's access to an abortion for any reason, where the practitioner has previously performed a termination for the purposes of sex selection. This would unduly restrict the right of an individual to access health care that is otherwise legal. For these reasons, the Committee refers the matter to Parliament for consideration.**

*Freedom of contract - voiding of professional indemnity insurance*

- 1.9 The Bill proposes to insert section 25 into the *Health Care Liability Act 2001* to provide that approved professional indemnity insurance is void in relation to abortions for the purposes of sex selection.
- 1.10 Under the *Health Care Liability Act 2001*, medical professionals are required to be covered by an approved professional indemnity insurance. Proposed section 25 would have the effect of voiding the professional indemnity insurance to the extent that it provides cover for a registered health practitioner who performs, or assists in the performance of, a termination for the purposes of sex selection.

**The Bill seeks to amend the *Health Care Liability Act 2001* to provide that approved professional indemnity insurance is void to that extent that it covers a registered health practitioner who performs, or assists in the performance of, a termination for the purposes of sex selection. Medical practitioners are required to be covered by an approved professional indemnity insurance under the *Health Care Liability Act 2001*.**

By overriding the validity of approved professional indemnity insurance, the Bill may interfere with the freedom of contract between an insurance provider and an insured health practitioner. Freedom of contract is a fundamental common law right that protects the rights and obligations that are agreed to by contracting parties. The Committee generally comments on provisions that unduly interfere with contractual rights and obligations.

While the Committee acknowledges that the provisions would only void professional indemnity insurance to the extent that it covers terminations for the purposes of sex selection, it recognises the potentially significant impact on a practitioner who may be exposed to personal liability because their coverage is void. Further, the terms 'assist' and 'for the purposes of' are not clearly defined, and the Bill does not prescribe how these terms would be established. This uncertainty could potentially impact a broad range of health practitioners. For these reasons, the Committee refers the matter to Parliament for consideration.

## 2. Companion Animals Amendment (Control of Cats) Bill 2025\*

Date introduced	22 October 2025
House introduced	Legislative Council
Member with carriage	Ms Sue Higginson MLC
*Private Members Bill	

### Purpose and description

2.1 The object of the Bill is to provide for measures to prevent cats from:

- (a) escaping from the place where the cat is kept
- (b) leaving the place without being under the control of a person.

### Background

2.2 The Bill seeks to amend the *Companion Animals Act 1998* to prohibit cat owners from intentionally releasing their cat from the premises on which the cat is kept, or failing to take reasonable precautions to prevent their cat from escaping.

2.3 The Bill also proposes to amend the *Local Government Act 1993* to give councils clear authority to issue orders to prevent cats from escaping.

2.4 A statutory defence to the new offences would be available where a person is experiencing homelessness or domestic abuse at the time of the alleged breach.

2.5 In her second reading speech, Ms Sue Higginson MLC explained:

The bill is about responsibility, balance and protection of our precious native animals from domestic cats that are allowed to roam. Roaming owned cats kill native birds, reptiles and small mammals. Recent Australian research shows that each roaming pet cat kills, on average, about 186 animals per year, of which around 110 are native animals, including 40 reptiles, 38 birds and 32 mammals.

2.6 The penalties for the offences under the *Companion Animals Act 1998* would commence 12 months from the Act's assent and involve a graduated increase of penalties for repeated non-compliance. A first offence would initially attract an \$11 fine (0.1 penalty units), while a second offence would attract a \$330 fine (3 penalty units), and a third or subsequent offence would attract an \$880 fine (8 penalty units).

2.7 In explaining the rationale for this penalty structure, Ms Higginson stated:

This scaling provides a fair and proportionate response to repeated breaches, while allowing time for owners to adjust their behaviour. The

model is designed to prioritise education before punishment, supporting a culture of responsible ownership rather than relying on punitive enforcement alone.

- 2.8 The Bill also provides for a staged commencement of the full penalty regime to allow 'time for education and cultural change to occur'. After five years, the full penalty regime would commence, with 3 penalty units for a first offence and 8 penalty units for a second or subsequent offence.

### Issues considered by the Committee

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

### 3. Criminal Assets Recovery Amendment (Organised Crime Reforms) Bill 2025

Date introduced	23 October 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 *Criminal Assets Recovery Act 1990* (the **Act**) for the following purposes:
- (a) to remove the requirement that the Supreme Court, when considering whether to make an assets forfeiture order or proceeds assessment order against a person, only considers the conduct of the person in the 6-year period before the making of the application for the order
  - (b) to require an arms-length transaction before a person can be said to have acquired an interest in property for sufficient consideration
  - (c) to clarify the Supreme Court must have regard to an increase in the value of property and money or property held in, or distributed from, a trust when making a proceeds assessment order
  - (d) to include certain offences under the *Public Health (Tobacco) Act 2008* as serious criminal offences
  - (e) to make other minor amendments.

#### Background

- 3.2 The Bill proposes to amend the Act to modify the powers available to the Supreme Court to make asset forfeiture orders or proceeds assessments against a person involved with a serious crime-related activity. It also modifies key terms under the Act related to the use of these powers for certain types of property or assets.

- 3.3 During his second reading speech the Hon. John Graham MLC said that:

The bill is intended to improve the effectiveness of applications for the confiscation of the proceeds of crime by the New South Wales Crime Commission under the [CAR] Act. The Crime Commission's key function is to prevent, disrupt and reduce the incidence of organised and other serious crime within New South Wales. It is in the public interest to ensure that the provisions of the [CAR] Act enable the commencement of confiscation proceedings where complex financial and legal arrangements have been used to conceal the proceeds of crime.

## Issues considered by the Committee

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

#### *Retrospectivity*

3.4 The Bill proposes to insert savings and transitional provisions into the Act to provide that certain amendments proposed by the Bill would apply to circumstances occurring before the commencement of the relevant provisions. These include the following:

- the proposed amendments to section 4(2) would extend to a transaction that occurred before the amendment commenced.
- an assets forfeiture order may be made under section 22, in relation to criminal activity, even if that activity occurred more than 6 years before the amendment.
- a proceeds assessment order may be made under section 27, in relation to criminal activity, even if that activity occurred more than 6 years before the amendment.
- the proposed amendment to section 28(3) would apply to an application made after the proposed amendment, even if the relevant expenditure occurred more than 6 years before the amendment commenced.
- the proposed amendments to the assessment of proceeds assessment orders, under section 28(1A), would extend to money or property held in trust before the commencement of the section, and the amendments to section 28(6), would extend to an increase in the value of property before the commencement of that subsection.

**The Bill proposes to insert savings and transitional provisions into the *Criminal Assets Recovery Act 1990* to allow certain proposed amendments to apply to circumstances occurring before the commencement of the relevant provisions. For example, the proposed amendments to section 4(2), which would require an arms-length transaction for 'sufficient consideration', would extend to a transaction that occurred before the amendment commenced. The savings and transitional provisions would also remove the 6-year limitation that applies to the making of asset forfeiture orders, proceeds assessment orders and the assessment of proceeds for a proceeds assessment order.**

**By extending the application of these amendments to circumstances that existed before the provisions commenced, the Bill may therefore apply retrospectively. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. This is particularly the case where a Bill's provisions would impact on an individual's rights. In this case, the provision would capture activity that occurred before the commencement of the provision and would enable orders related to the confiscation of property.**

**The Committee acknowledges that, by expanding the scope of the Supreme Court's power to make orders relating to the proceeds of crime, the Bill may be intended to capture a broader range of criminal activity and address organised crime more effectively. However, as the powers may impact a person's property rights, it is important that a person is aware of the law that applies to them at any given time. For this reason, the Committee refers this issue to Parliament for consideration.**

*Broad regulatory powers impacting property rights*

- 3.5 Section 22 of the Act allows the Crime Commission to apply to the Supreme Court for an order forfeiting to, and vesting in, the Crown specified interests in property of a person suspected of having engaged in serious crime-related activity or property suspected of being derived from serious criminal activity.
- 3.6 Under the current subsection 22(2), the Supreme Court must make an assets forfeiture order if the Court finds it more probable than not that the person was, within 6 years before the application for the order was made, engaged in a serious crime-related activity.
- 3.7 Section 27 of the Act enables the Supreme Court to make a proceeds assessment order for a person to pay the Treasurer an amount assessed as the value of the proceeds from an illegal activity which took place no more than 6 years before the application is made. Subsection 27(2) currently requires the Supreme Court to make the order if it finds it more probable than not that, at any time within 6 years before the application was made, the person against whom the order is being sought was engaged in a serious crime-related activity.
- 3.8 Section 28 of the Act prescribes the matters that can be taken into account when making an order under section 27 of the Act. Subsection 28(3) provides for the Supreme Court to consider evidence of the expenditure by the person subject to the application during the period 6 years before the application was made.
- 3.9 The Bill proposes to remove this 6-year limitation on the use of the powers in subsections 22(2), 27(1) and (2), and (2A)(c) by removing the words 'not more than 6 years before the making of the application for the order'. It also proposes to remove the words 'during the period of 6 years before the making of the application for the order' from subsection 28(3).

**The Bill proposes to remove the 6-year limitation on the use of asset forfeiture and proceeds assessment orders against a person who was engaged in a serious crime-related activity. By removing this limitation, the Bill would allow these orders to capture a broader group of people who may have engaged in such activity more than 6 years before the making of the order. It also proposes to remove the 6-year limitation on the period of time during which a person's expenditure can be assessed when evidence is considered during a hearing for a proceeds assessment order.**

**The removal of the 6-year limitation significantly expands the power of the Supreme Court and broadens the class of persons, and type of assets, that can be impacted by an assets forfeiture and proceeds assessment order. This has the potential to impact on the property rights and interests of a large group of people.**



**The Committee generally comments on laws that impact common law property rights. However, the Committee notes that those rights are not absolute, and that there is a clear policy rationale for expanding the power, in this case, to deter serious organised crime. For these reasons, the Committee makes no further comment.**

*Commencement by proclamation*

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

**The Bill commences by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where those provisions would affect individual rights or obligations.**

**The Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as providing time for relevant agencies to establish the procedures necessary to administer the regulatory framework. It also recognises the important policy rationale for the amendments proposed by the Bill, including deterring serious organised crime. For these reasons, the Committee makes no further comment.**

## 4. Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Bill 2025

Date introduced	23 October 2025
House introduced	Legislative Council
Member with carriage	The Hon. Daniel Mookhey MLC

### Purpose and description

- 4.1 The object of the Bill is to amend the following Acts in response to the decision of the New South Wales Court of Appeal in *Gamage v Riashi* [2025] NSWCA 84 (**Gamage**):
- (a) the *Criminal Procedure Act 1986*, to validate certain proceedings commenced by public officers
  - (b) the *Independent Commission Against Corruption Act 1988* (the **ICAC Act**), to validate the commencement of certain proceedings by officers of the Independent Commission Against Corruption (the **ICAC**)
  - (c) the *Law Enforcement Conduct Commission Act 2016* (the **LECC Act**), to validate the commencement of certain proceedings by officers of the Law Enforcement Conduct Commission (the **LECC**) or the former Police Integrity Commission (the **PIC**).

### Background

- 4.2 In his second reading speech the Hon. Daniel Mookhey MLC explained:

...up until 2016, the ICAC had an agreed procedure with the New South Wales Office of the Director of Public Prosecutions that, once advice was received from the Director of Public Prosecutions, the ICAC would prepare the court attendance notices and an ICAC officer would be named as the prosecutor. ...It was understood that this practice was consistent with the provisions in the Criminal Procedure Act and reflected a good-faith understanding of the law.

- 4.3 The Treasurer noted that this procedure appeared to be affirmed by legislation that was subsequently introduced, as well as subsequent decisions of NSW courts.
- 4.4 However, in the recent case of *Gamage*, the Court of Appeal found that the ICAC's functions did not include the institution of proceedings for offences arising out of an investigation into corrupt conduct. This meant that the ICAC officer who issued the court attendance notices for the relevant offences was not 'acting in an official capacity'. Consequently, the convictions were quashed.

- 4.5 In response to the Court's decision in *Gamage*, the Bill proposes to retrospectively validate prosecutions by public officers, including officers of the ICAC and the LECC, that were made in accordance with written advice from the Director of Public Prosecutions.
- 4.6 The Treasurer explained that the Bill seeks to address the fact that '...a number of convictions and sentences commenced by the ICAC up to around 2016 may be at risk of challenge on the basis that they were not validly commenced.' Prosecutions arising out of investigations by the LECC (and before that, the PIC) may also be at risk of being challenged as a result of the Court's decision in *Gamage*.
- 4.7 The Treasurer further stated that the changes are:
- ...important to ensure that prosecutions of public significance commenced by agencies and statutory bodies are not invalidated where they were commenced by agencies on a previously accepted interpretation of the law. Those convicted and sentenced for offences arising from court attendance notices issued by these agencies and bodies have gone through the court process and have been found guilty. It is not in the interests of justice that their convictions are overturned because of what is ultimately a defect in the way the proceedings were commenced and is not based on the integrity of the substance of the prosecutions. There is significant public interest in ensuring that these convictions are upheld, that individuals are punished for engaging in criminal conduct and that others are deterred from similar conduct in the future.

### Issues considered by the Committee

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

##### *Retrospectivity*

- 4.8 The Bill proposes to insert savings and transitional provisions into the *Criminal Procedure Act 1986*, the ICAC Act and the LECC Act.
- 4.9 Schedule 1 of the Bill would insert provisions into the *Criminal Procedure Act 1986* to clarify that, if proceedings were commenced by a public officer who purported to be acting in their role as a public officer, the person is taken to have been acting in their official capacity. Proposed sub-clause 3 provides that the clause would apply to any proceedings that have been finalised or are still ongoing prior to the commencement of the provision.
- 4.10 Schedules 2 and 3 would insert provisions into the ICAC Act and the LECC Act to retrospectively validate the commencement of proceedings by officers from the ICAC, LECC and the former PIC in accordance with written advice from the Director of Public Prosecutions. Proposed sub-clause 3 of both schedules provides that the clauses would apply to any proceedings that have been finalised or are still ongoing prior to the commencement of the provision.
- 4.11 In his second reading speech, the Treasurer explained the rationale for the retrospective application of these provisions:

There is a significant risk that a number of convictions and sentences for serious offences may be invalid based on Gamage reasoning. The amendments align the retrospective application of the law with a good-faith understanding of the law and an earlier shared understanding of the lawfulness of the procedure of commencing prosecutions by issuing court attendance notices. The amendments will not be retrospectively creating new penalties or offences or altering the elements of criminal offences and will not impact the substantive rights of a person. The amendments do not affect the judicial determination of fact. Rather, they validate the legal characterisation of persons issuing court attendance notices as "public officers".

**The Bill proposes to insert savings and transitional provisions into the *Criminal Procedure Act 1986*, the *Independent Commission Against Corruption Act 1988* and the *Law Enforcement Conduct Commission Act 2016*. These provisions clarify that certain individuals are taken to have been acting in an official capacity if they commenced proceedings for the prosecution of another person for a criminal offence. The effect of these provisions is that they would retrospectively validate the commencement of proceedings by individuals acting as public officers of the Independent Commission Against Corruption, the Law Enforcement Conduct Commission and the former Police Integrity Commission.**

The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. This is particularly important where the Bill would impact on an individual's rights and liberties. In this case, the Bill would retrospectively remove valid technical grounds on which an individual may choose to challenge a prosecution, where they have been found guilty of an offence.

The Committee acknowledges that the Bill would not retrospectively create new penalties or offences, or alter the elements of criminal offences. It also acknowledges the public interest in upholding convictions that involve serious corruption or criminal conduct, and the importance of deterring others from similar conduct. However, by retrospectively removing valid grounds on which an individual may otherwise challenge a prosecution, the Bill may unduly impact on an individual's right to procedural fairness. For this reason, the Committee refers the matter to Parliament for consideration.

*Legislative interference in judicial standing matters – separation of powers*

- 4.12 In Gamage, the Court held that the ICAC does not have an express or implied prosecutorial function and, therefore, that the ICAC officer issuing the court attendance notices under the *Criminal Procedure Act 1989* was not 'acting in an official capacity.'
- 4.13 Schedule 1 of the Bill would insert savings and transitional provisions into the *Criminal Procedure Act 1986* to provide that a person '...is taken to have been acting in an official capacity...' in commencing proceedings, irrespective of whether the person or agency had an express or implied function of commencing proceedings for prosecutions. The relevant clause applies irrespective of whether the proceedings

had been finalised, or were yet to be finalised, before the commencement of the provision.

- 4.14 In his second reading speech, the Mr Mookhey explained that 'There are more than 1,000 convictions entered which may be at risk as a result of the decision in *Gamage*.' The Bill would therefore '...retrospectively validate prosecutions which could face a technical challenge based on the court's reasoning in *Gamage*.'

**The Bill seeks to introduce provisions that would retrospectively validate prosecutions that may otherwise be at risk of challenge, based on the Court of Appeal's findings in *Gamage v Riashi* [2025] NSWCA 84. In that case, the Court determined that prosecutions commenced by an ICAC officer, under the *Criminal Procedure Act 1989*, were invalid. By retrospectively validating these prosecutions, the Bill would effectively override that outcome and reverse the Court's decision as to who may commence proceedings.**

**The Committee generally comments on provisions that could interfere with the independent conduct of judicial matters, as this may infringe the constitutional doctrine of the separation of powers. This doctrine protects the independence of the judiciary from the legislature and executive branches of government. For this reason, the Committee refers the matter to Parliament for consideration.**

## 5. Fines Legislation Amendment Bill 2025

Date introduced	22 October 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP

### Purpose and description

5.1 The objects of the Bill are to:

- (a) amend the *Fines Act 1996* to provide that:
  - (i) a person who elects to have a matter for which a penalty notice or penalty reminder notice has been issued dealt with by a court may withdraw the election
  - (ii) the Commissioner must notify an individual of the individual's right to apply to the Hardship Review Board (the **Board**) for the review of certain decisions
- (b) amend the *State Debt Recovery Act 2018* to:
  - (i) require the Chief Commissioner to notify an individual of the individual's right to apply to the Board for the review of certain decisions
  - (ii) expand the membership of the Board to include 2 non-government members
  - (iii) amend the functions of the Board to include advising the Minister on policy reform concerning hardship relating to fines, state debt and taxation laws, and to require the Board to publish information about applications received and dealt with by the Board
- (c) amend the *Taxation Administration Act 1996* to require the Chief Commissioner to notify an individual of the individual's right to apply to the Board for the review of a decision by the Chief Commissioner to not extend the time for payment of tax by the individual.

### Background

- 5.2 The Bill seeks to amend the *Fines Act 1996*, the *State Debt Recovery Act 2018* and the *Taxation Administration Act 1996* to make provision for the recovery of debts in a way that would strengthen procedural fairness and hardship review mechanisms.
- 5.3 The Bill would create a new right, under the *Fines Act 1996*, for individuals to withdraw an election to have a penalty matter heard in court within 21 days. It would also provide better transparency and clarity for individuals by requiring the Commissioner

to notify individuals of their right to seek a review of certain decisions by the Hardship Review Board.

- 5.4 In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained the rationale for introducing the withdrawal right:

It gives people an opportunity to seek legal advice and reconsider their decision without being locked into a costly and unnecessary court process that may have significant consequences. This change may also reduce unnecessary pressure on our already burdened court system.

- 5.5 The Attorney General further explained:

By introducing a right to withdraw a court election of a penalty notice, we are giving individuals the opportunity to correct course without unnecessary cost or consequence. By strengthening the Hardship Review Board, we are ensuring that compassion and consistency work in harmony with compliance—that our system sees the person, not just the penalty. It is measured reform. It balances the integrity of the fines system with the humanity that must underpin it. It supports those who are doing it tough while preserving the expectation that everyone meets their obligations under law. In short, the bill is about making our justice system work better—fairer, faster and more responsive to the real circumstances people face.

## Issues considered by the Committee

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

#### *Commencement by proclamation*

- 5.6 Clause 2(a) of the Bill states that, for Schedule 1[1] to [5], the provisions of the Bill would commence on a day or days to be appointed by proclamation.
- 5.7 The relevant provisions relate to the proposed amendments to the *Fines Act 1996*, which would allow a person to withdraw an election to have a matter dealt with by a court.

**Schedule 1[1] to [5] of the Bill, which proposes to amend the *Fines Act 1996*, would commence by proclamation. These provisions would allow a person to withdraw an election to have their matter dealt with by a court, where a penalty notice has been issued. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions. This is particularly the case where the proposed provisions would impact on an individual's rights.**

**However, the Committee acknowledges that a flexible start date may be needed to ensure that the appropriate administrative arrangements are in place to facilitate the changes proposed by the Bill. In the circumstances, the Committee makes no further comment.**

## 6. Human Rights Bill 2025\*

Date introduced	23 October 2025
House introduced	Legislative Assembly
Member with carriage	Ms Jenny Leong MP
*Private Members Bill	

### Purpose and description

- 6.1 The object of the Bill is to recognise the following:
- (a) human rights apply from the time an individual is born and are universal, indivisible and interdependent, and interrelated
  - (b) human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom
  - (c) human rights belong to all people without discrimination and the diversity of the people of Australia enhances our community
  - (d) human rights should be limited only after careful consideration and any limitation must only be done in a way that may be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law
  - (e) the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and pursue their economic, social and cultural development.

### Background

- 6.2 The Bill proposes to establish a statutory framework to protect and respect human rights in NSW. Part 2, Division 2 would enshrine 31 human rights within legislation, including rights to equality before the law, peaceful assembly, health, education and housing.
- 6.3 To support the protection of these rights, the Bill would:
- require statements of compatibility to be prepared for Bills and statutory rules introduced into Parliament
  - establish a Parliamentary Joint Committee on Human Rights to examine proposed legislation for compatibility with protected rights
  - create a NSW Human Rights Commission to deal with complaints, provide remedies for contraventions, and promote activities to increase public awareness



- require public authorities, including government sector agencies, Ministers, courts and tribunals, to report on any human rights complaints received.

6.4 In her second reading speech Ms Jenny Leong MP stated that the Bill would:

...protect the rights of all, while at the same time promoting a better understanding of human rights to empower everyone to seek justice if their rights are violated. A human rights Act brings together all our rights in one place, and requires public officials to respect them. Any laws introduced in this place will need to have regard to those rights.

### 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*.**

# 7. Statute Law (Miscellaneous Provisions) Bill (No 2) 2025

Date introduced	23 October 2025
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC

## Purpose and description

- 7.1 The objects of the Bill are to:
- (a) make minor amendments to various Acts and instruments—Schedule 1
  - (b) make minor amendments to certain Acts and instruments for the purpose of effecting statute law revision—Schedule 2
  - (c) make other provisions of a consequential or ancillary nature—Schedule 3.

## Background

- 7.2 The Bill proposes minor amendments to a number of Acts and statutory instruments. It also proposes statute law revision amendments of a technical nature to correct minor errors and update Ministerial portfolios for currency.
- 7.3 Additionally, the Bill provides for general savings and transitional provisions, including standard provisions that would allow for the making of regulations containing savings and transitional arrangements.
- 7.4 In his second reading speech the Hon. John Graham MLC explained that the Bill is a continuation of the Statute Law Revision Program, which has been in place for over 40 years. He further stated that:

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

## Issues considered by the Committee

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

## 8. Surveillance Devices and Other Legislation Amendment Bill 2025

Date introduced	21 October 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP

### Purpose and description

8.1 The object of the Bill is to amend:

- (a) the *Surveillance Devices Act 2007* (the **Act**) to:
  - (i) provide exceptions to offences for the use of listening devices and optical surveillance devices and the communication or publication of surveillance device records
  - (ii) make it an offence in certain circumstances to possess a record of a private conversation or the carrying on of an activity obtained in contravention of the Act
  - (iii) enable the regulations to:
    - A. exempt the overt use of surveillance devices from provisions of the Act
    - B. prescribe tracking devices the use of which is not an offence
  - (iv) make miscellaneous changes
- (b) the *Law Enforcement (Powers and Responsibilities) Act 2002* (**LEPRA**) to enable the New South Wales Police Force to use body-worn video equipment to record conversations between police officers and certain persons.

### Background

8.2 The Bill would introduce exceptions to the offences under Part 2 of the Act, where:

- the use of a surveillance device is overt and authorised by another Act (proposed section 8A)
- an officer of an investigative body is in possession of a surveillance device record in connection with the exercise of the investigative body's functions (proposed section 12(2))
- a person communicates a surveillance device record to an investigative body in the public interest (proposed section 14A(1)(a))

- an officer of an investigative body communicates or publishes a surveillance device record in the exercise of their functions (proposed section 14B).

8.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, noted that at least 76 Acts in New South Wales empower officers to enter non-residential premises without a warrant and make recordings during the exercise of their functions, in apparent conflict with the *Surveillance Devices Act*.

8.4 In explaining the rationale for the proposed exception under section 8A, the Attorney General stated:

The current legislative settings may inhibit agency officers from exercising powers conferred on them by Parliament for the purposes of their investigative and enforcement functions due to this lack of clarity. It cannot have been intended for agency officers to be given statutory authority to make audio and video recordings in the exercise of their functions while simultaneously creating an inconsistency with the operation of the provisions of the *Surveillance Devices Act* for using body-worn video or other devices to make such recordings.

8.5 The Attorney General further clarified that the exception under section 8A would not provide additional powers to use body-worn video recordings, where it is not already authorised by another Act.

8.6 In relation to the proposed exceptions under sections 12(2), 14A and 14B, the Attorney General explained:

The current prohibitions have also prevented the sharing of surveillance device records with investigative bodies, potentially hampering investigations into crime, corruption or other unlawful conduct. Sharing surveillance device records in those circumstances would clearly serve the public interest. The bill will ensure that records made by surveillance devices can be used by investigative bodies in their investigations into crimes and corruption when it is in the public interest, and will also enable New South Wales agencies to make appropriate use of surveillance devices in the exercise of their functions.

## Issues considered by the Committee

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

#### *Right to privacy*

8.7 The Act includes a number of offences regarding the communication, publication or possession of records of private conversations obtained through the use of surveillance devices. These include:

- Section 11, which prohibits the communication or publication of private conversations or recordings of activities
- Section 12, which prohibits the possession of records of private conversations or activities

- Section 14, which prohibits the communication or publication of information from the use of data surveillance devices.

8.8 The Bill seeks to introduce exceptions to the above offences. These exceptions would apply where:

- an officer of an investigative body is in possession of a surveillance device record in connection with the exercise of the investigative body's functions (proposed section 12(2))
- a person communicates a surveillance device record to an investigative body in the public interest (proposed section 14A(1)(a))
- an officer of an investigative body communicates or publishes a surveillance device record in the exercise of their functions (proposed section 14B).

8.9 Section 14A(2) provides a non-exhaustive definition of 'public interest', which includes 'the communication or publication of surveillance device records to an investigative body if the records are relevant to the investigative body's functions' under a law of NSW or the Commonwealth.

8.10 In his second reading speech, the Attorney General acknowledged that the use of surveillance devices in contravention of the Act 'may involve serious invasions of privacy', but stated:

These amendments will ensure that the Surveillance Devices Act strikes an appropriate balance between protecting the privacy of individuals and not hampering the ability of investigative bodies to make use of important information obtained unlawfully by a third party without the body's knowledge or dissuading people from providing such information to appropriate authorities for fear of persecution.

**The Bill seeks to introduce exceptions to a number of offences under the *Surveillance Devices Act 2007*, which relate to the communication, publication and possession of records of private conversations obtained through the use of surveillance devices ('surveillance device records'). The exceptions under proposed sections 12(2) and 14B would permit an officer of an investigative body to possess, communicate or publish surveillance device records if it is in connection with the exercise of the investigative body's functions. Proposed section 14A would also allow a person to communicate or publish a surveillance device record to an investigative body where it is 'in the public interest' to do so. By allowing surveillance device records to be produced and used by an investigative body, without consent or a warrant, the Bill has the potential to impact an individual's right to privacy.**

**The Committee understands that the proposed exceptions are intended to support investigations into crime, corruption and other unlawful conduct. It also notes that a person who is not an officer of an investigative body can only communicate a surveillance device record to an investigative body if it is 'in the public interest'. However, the Committee notes that the definition of public interest under section 14A(2) is non-exhaustive and, therefore, does not appropriately limit the circumstances under which a person can produce and disclose surveillance devices records. Noting the potential serious intrusions on**

**an individual's right to privacy, the Committee refers the matter to Parliament for its consideration.**

*Procedural fairness*

- 8.11 As discussed above, the Bill would introduce exceptions to the offences under Part 2 of the Act to permit investigative bodies to lawfully use certain material that has been obtained illegally by a third party with the use of a surveillance device.
- 8.12 'Investigative body' would be defined under section 4 as a law enforcement agency, or 'another person, agency, authority or organisation whose functions under a law of the State or the Commonwealth include investigative functions that may result in the person, agency, authority or organisation taking formal action or proceedings against a person in relation to whom the investigative functions are exercised.'

**The Bill would introduce exceptions to offences under Part 2 of the *Surveillance Devices Act 2007*, which would allow investigative bodies to legally use evidence that has been unlawfully obtained by a third party through the use of a surveillance device. Normally, evidence that has been unlawfully obtained would be inadmissible under the rules of evidence.**

**The Committee understands that the exceptions are intended to support the investigation of crime, corruption and other unlawful conduct. However, the Committee is concerned about the potential impact of the Bill on an individual's right to procedural fairness, particularly where the use of unlawfully obtained evidence may lead to the prosecution of individuals. For these reasons, the Committee refers the matter to Parliament for its consideration.**

*Retrospectivity*

- 8.13 The Bill proposes to insert section 8A into the Act, which would allow for exceptions to the offences under sections 7 and 8, where the use of the relevant device is authorised by another Act. Section 7 prohibits the installation, use and maintenance of listening devices, and section 8 prohibits the installation, use and maintenance of optical surveillance devices without consent.
- 8.14 Schedule 1[12] provides that proposed section 8A would extend to the use of a listening device or optical surveillance device that occurred before the commencement of that section.
- 8.15 In his second reading speech, the Attorney General noted that the exception under section 8A clarifies the existing legislative framework only and does not provide additional powers regarding the use of surveillance devices.

**Schedule 1[12] would insert savings and transitional provisions into the Act to provide that the exceptions under proposed section 8A apply retrospectively to the use of a listening device or surveillance device that occurred before the commencement of that section.**

**The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle**

**that a person is entitled to have knowledge of the law that applies to them at any given time.**

**However, in this case, the Committee notes that the retrospective application of the amendments would not adversely impact a person's rights or liberties as it seeks to clarify the existing legislative framework only, where another Act has already authorised the use of surveillance devices. For these reasons, the Committee makes no further comment.**

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

*Henry VIII clause*

- 8.16 Section 9 of the Act prohibits a person from knowingly installing, using or maintaining a tracking device to determine the geographical location of a person, without their consent, or an object, without the consent of the person in lawful possession of the object. The offence carries a maximum penalty of a \$55,000 fine (500 penalty units) for a corporation or a \$11,000 fine (100 penalty units) or 5 years imprisonment, or both in any other case.
- 8.17 Subsection 9(2) provides that the offence does not apply to the installation, use or maintenance of a tracking device in accordance with a warrant or emergency authorisation, or law of the Commonwealth, or for a lawful purpose.
- 8.18 The Bill proposes to insert subsection 9(2)(d) into the Act, which would allow regulations to prescribe another exception to the offence.

**The Bill proposes to insert section 9(2)(d) into the *Surveillance Devices Act 2007*, which would allow the regulations to prescribe tracking devices as a device for which installation, use or maintenance is not an offence.**

**Therefore, the Bill would insert a provision that may amount to a Henry VIII clause by allowing the Executive to make regulations that alter the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses to be an inappropriate delegation of legislative powers.**

**However, the Committee recognises that any regulations made under this provision must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. For this reason, the Committee makes no further comment.**

*Commencement by proclamation*

- 8.19 Clause 2 of the Bill stipulates that the Act is to commence on a day or days to be appointed by proclamation.

**Clause 2 of the Bill stipulates that the Act would commence on a day or days to be appointed by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.**

**However, the Committee acknowledges the practical reasons for allowing a flexible start date, including to establish administrative procedures necessary to implement the amended provisions. For this reason, the Committee makes no further comment.**





# Part Two – Regulations with comment

# 1. Child Protection (Offenders Registration) Amendment Regulation 2025

Date tabled	LA: 9 September 2025
	LC: 9 September 2025
Disallowance date	LA: 13 November 2025
	LC: 18 November 2025
Minister responsible	The Hon. Yasmin Catley MP
Portfolio	Police and Counter-terrorism

### Purpose and description

- 1.1 The object of the Regulation is to make consequential amendments to the Child Protection (Offenders Registration) Regulation 2025 based on amendments made to the *Child Protection (Offenders Registration) Act 2000* (the **Act**) by the *Child Protection (Offenders Registration) Amendment Act 2024*.
- 1.2 Schedule 2 is made under the Act, section 19BA(6), which is a Henry VIII provision that enables the making of regulations to amend the Act, Schedule 1.

### Issues considered by the Committee

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

#### Clarity regarding applications for order to end reporting obligations

- 1.3 Schedule 2, clause 34(1) of the Act states that the Commissioner of Police may, by order given to a registrable person, direct that the person's reporting obligations cease to have effect. The Commissioner may only make this order if the person has reporting obligations as a consequence of an offence committed when they were a child.
- 1.4 Schedule 2, clause 34(3) of the Act allows the regulations to make provision in relation to the making of an order, including:
- matters that the Commissioner must consider before making an order
  - applications for an order
  - review of decisions by the Commissioner under this clause.
- 1.5 Section 20A of the Regulation sets out matters that the Commissioner must consider when making a direction to end reporting obligations, and requires the Commissioner to notify a registrable person of a decision not to give a direction under clause 34(1).

- 1.6 Section 20B of the Regulation allows a registrable person to apply for an internal review of the Commissioner's decision not to give a reporting obligations cessation direction.

**Schedule 2, clause 34 of the *Child Protection (Offenders Registration) Act 2000* (the Act) allows the Commissioner of Police to make an order to end a person's reporting obligations under the Act, where that person was only required to report because of an offence they committed as a child. The Act allows regulations to be made in relation to the making of an order, including matters the Commissioner must consider before making an order, applications for an order, and review of decisions made by the Commissioner under clause 34.**

The Regulation sets out matters that the Commissioner must consider before making a direction, and the process by which to apply for an internal review of the Commissioner's decision. However, the Regulation does not specify if, or how an application for an order under clause 34 may be made. In the absence of these provisions, it is unclear whether a registrable person can apply to the Commissioner for an order, or whether the intention is for the Commissioner to exclusively initiate the making of orders of their own accord.

The Committee prefers that provisions that affect the rights and obligations of individuals are drafted with sufficient precision and clarity so that individuals have a clear understanding of how those provisions may impact them. Noting that the intention of the Regulation with respect to the making of applications for an order is unclear, the Committee refers the matter to Parliament for consideration.

## 2. Surveillance Devices Amendment (ICAC) Regulation 2025

Date tabled	LA: 11 September 2025
	LC: 11 September 2025
Disallowance date	LA: 18 November 2025
	LC: 20 November 2025
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

- 2.1 The object of the Regulation is to extend the exemption of the Independent Commission Against Corruption (**ICAC**) from the *Surveillance Devices Act 2007* (the **Act**), Part 2 in relation to the use of surveillance device recordings unlawfully obtained by a person other than ICAC.
- 2.2 The Regulation may be made under a Henry VIII provision because the exemption impliedly amends the Act by affecting its application.
- 2.3 The Regulation extends the repeal of section 6A of the Surveillance Devices Regulation 2022 from 31 December 2025 to 30 June 2026. Section 6A was inserted by the Surveillance Devices Amendment (ICAC) Regulation 2023 (the **2023 Regulation**), which the Committee reported in *Legislation Review Digest No. 3/58*. As this Regulation provides for the continuity of the provisions in the 2023 Regulation, the comments in this report are largely consistent with the comments in Digest No. 3/58.

### Issues considered by the Committee

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

##### *Right to privacy*

- 2.4 Section 6A of the 2023 Regulation provided that the ICAC and an officer of the ICAC were exempt from Part 2 of the Act in relation to the ICAC obtaining, possessing, publishing or communicating a record of a private conversation or activity obtained by the use of a surveillance device in contravention of the Act. This would allow the ICAC and its officers to use evidence obtained from surveillance devices without being subject to the penalties set out in Part 2 of the Act.
- 2.5 Part 2 of the Act regulates the installation, use and maintenance of surveillance devices. Subject to specified conditions, Part 2 of the Act sets out a number of offences which prohibit:
- (a) the installation, use and maintenance of listening devices

- (b) the installation, use and maintenance of optical surveillance devices without consent
- (c) the installation, use and maintenance of tracking devices
- (d) the installation, use and maintenance of data surveillance devices
- (e) communicating or publishing private conversations or recordings of activities
- (f) possessing a record of a private conversation or activity
- (g) manufacturing, supplying and possessing listening and other devices for unlawful use
- (h) communicating and publishing information from the use of a data surveillance device.

**The Regulation extends the repeal of section 6A of the Surveillance Devices Regulation 2022, which exempts the Independent Commission Against Corruption (ICAC) and its officers from contravening provisions of Part 2 of the *Surveillance Devices Act 2007*.**

**This exemption has the potential to impact an individual's right to privacy, as it permits the ICAC to lawfully use certain material obtained illegally by a third party through the use of a surveillance device without consent or a warrant in certain circumstances. For example, the ICAC would be permitted to publish or communicate a recorded private conversation.**

**The Committee acknowledges that section 6A is not intended to exempt the ICAC from the requirement to apply for a surveillance device warrant in its investigations. It also recognises that the exemption is time-bound, as it will now expire on 30 June 2026. Additionally, the Committee understands that the exemption inserted under the Surveillance Devices Amendment (ICAC) Regulation 2023 was, at the time, associated with an ongoing investigation of the ICAC. However, it is unclear if this investigation remains ongoing. As the Committee noted in Legislation Review Digest No. 3/58, section 6A is not worded in a way which limits its application to any particular investigation.**

**The Committee therefore notes that the exemption under section 6A would allow the ICAC to use information that a third party has obtained without a requisite warrant or consent. It also notes the absence of any safeguards to limit or allow a challenge or review of its application. The use of surveillance devices without a warrant can impact on an individual's right to privacy without the requirement for judicial oversight. For these reasons, the Committee refers the matter to Parliament for its consideration.**

#### *Procedural fairness*

- 2.6 As discussed above, section 6A of the Regulation exempts the ICAC from being subject to Part 2 of the Act, and it permits the ICAC to lawfully use certain material obtained illegally by a third party with the use of a surveillance device.

- 2.7 Section 14 of the *Independent Commission Against Corruption Act 1988* (the **ICAC Act**) provides that one of the ICAC's functions is gathering and assembling evidence that may be admissible in the prosecution of a criminal offence, and providing that evidence to the Director of Public Prosecutions (the **DPP**). Under section 52A of the ICAC Act, the DPP may request that the ICAC exercise its powers following an investigation, such as obtaining information and issuing a search warrant to furnish admissible evidence to the DPP.
- 2.8 Additionally, section 112 of the ICAC Act states that the ICAC is obligated to disclose information to the DPP, under section 15A of the *Director of Public Prosecutions Act 1986* (the **DPP Act**). Section 15A of the DPP Act provides that, in certain circumstances, law enforcement or investigating officers have a duty to disclose to the DPP all relevant information that might be expected to assist the case for the prosecution of an accused person.

**The Regulation allows the ICAC to use evidence obtained from a third party with the use of a surveillance device, which would otherwise be unlawful under Part 2 of the *Surveillance Devices Act 2007*. The Committee is concerned that in using such evidence, it may lead to the prosecution of individuals on the basis of unlawfully obtained evidence. Normally, evidence that has been unlawfully obtained would be inadmissible under the rules of evidence.**

**The Committee also notes that it is unclear whether the Director of Public Prosecutions can provide directions under the ICAC's wide powers of investigation. Therefore, the Committee is concerned about the potential impact of the Regulation on individuals' right to procedural fairness. For these reasons, the Committee refers the matter to Parliament for its consideration.**

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

##### *Timing and retrospectivity*

- 2.9 The Regulation is made under section 59(2) of the Act. Section 59(3) provides that regulations made under section 59(2) only take effect on and from the expiry of the period during which either House may disallow a regulation under the *Interpretation Act 1987*.
- 2.10 However, clause 2 of the Regulation states that it commences 'on the day on which this regulation is published on the NSW legislation website'. The Regulation was published on the NSW legislation website on 10 September 2025.
- 2.11 According to section 41(1) of the *Interpretation Act 1987*, either House may disallow a regulation at any time:
- before the relevant written notice is laid before the House, or
  - after the relevant written notice is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the relevant written notice was given.

**Under section 59(3) of the *Surveillance Devices Act 2007*, the Regulation takes effect from the expiry of the period in which either House of**

**Parliament may disallow it. Members of Parliament therefore have until 18 November 2025 in the Legislative Assembly and 20 November 2025 in the Legislative Council to give notice of a motion to disallow the Regulation. If notice is given during this time, the Regulation will remain disallowable until the notice is dealt with.**

**However, clause 2 of the Regulation states that it commences ‘on the day on which it is published on the NSW legislation website’, which was 10 September 2025. The Committee notes that this conflicts with section 59(3) of the Act. As such, it is not clear when the extension of the exemption would take effect. For these reasons, the Committee refers the matter to Parliament for further clarity on the timing and applicability of the Regulation.**

### 3. Sydney Water Regulation 2025

Date tabled	LA: 9 September 2025 LC: 9 September 2025
Disallowance date	LA: 13 November 2025 LC: 18 November 2025
Minister responsible	The Hon. Rose Jackson MLC
Portfolio	Water

#### Purpose and description

- 3.1 The object of the Regulation is to repeal and remake, with some changes, the Sydney Water Regulation 2017. The Regulation provides for the following:
- (a) the regulation of access to controlled areas, including fees and charges payable for entry to a controlled area
  - (b) the grant of authorisations, including conditions of an authorisation, for connections, alterations and use of works owned by the Sydney Water Corporation (the **Corporation**) and directions by the Corporation in relation to those activities or work
  - (c) the performance of work of water supply, sewerage or stormwater drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation and directions by the Corporation in relation to the work
  - (d) offences under the *Sydney Water Act 1994* (the **Act**) and this regulation that may be dealt with by penalty notice, and the corresponding penalty
  - (e) other miscellaneous matters.

#### Issues considered by the Committee

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

##### *Strict liability offences*

- 3.2 Section 106(3) of the Act provides that the regulations may create an offence punishable by a maximum penalty of a \$22,000 fine (200 penalty units) for a corporation and a \$11,000 fine (100 penalty units) for an individual.
- 3.3 The Regulation re-establishes several strict liability offences that were contained in the now-repealed Sydney Water Regulation 2017, including the following:
- a person must comply with the direction of an authorised officer to leave a controlled area or part of a controlled area if the authorised officer reasonably



believes that the person has contravened the direction or has not paid a fee or charge determined under section 15 (section 7)

- a person must not enter or remain in a controlled area (section 8), cause an animal to enter or remain in a controlled area (section 9), or drive or park a vehicle in a controlled area (section 10)
- a person must not carry out plumbing or drainage work without a permit (section 27).

3.4 The maximum penalty for each of the above offence provisions is a \$22,000 fine (200 penalty units) for a corporation and a \$11,000 fine (100 penalty units) for an individual.

**The Regulation re-establishes a number of strict liability offences that were contained in the now-repealed Sydney Water Regulation 2017, which relate to individuals in controlled areas.**

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

**The Committee notes that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance, and that the relevant penalties are non-custodial. The Committee also notes that the penalties prescribed are within the remit of the Regulation, under section 106(3) of the *Sydney Water Act 1994*.**

**However, the Committee is concerned that these monetary penalties are particularly severe for strict liability offences. For these reasons, the Committee refers the matter to Parliament for consideration.**

#### *Privilege against self-incrimination*

3.5 Section 35 of the Regulation re-establishes an offence that was contained in the now-repealed Sydney Water Regulation 2017 (section 25).

3.6 Section 35 requires a person who damages a work or property of the Corporation to immediately notify the Corporation of the damage. A failure to report the damage carries a maximum penalty of a \$22,000 fine (200 penalty units) for a corporation and a \$11,000 fine (100 penalty units) for an individual.

**Section 35 of the Regulation makes it an offence for a person, who has caused damage to a work or property of the Sydney Water Corporation, to not immediately report the damage.**

**The Committee is concerned that this provision would infringe an individual's privilege against self-incrimination. The privilege against self-incrimination allows a person to refuse to answer any question, or produce anything, if doing so would expose the person to conviction for a crime. This privilege is necessary to preserve the presumption of innocence and to ensure that the burden of proof remains on the prosecution. For these reasons, the Committee refers the matter to Parliament for consideration.**

## 4. Water Management (General) Regulation 2025

Date tabled	LA: 9 September 2025 LC: 9 September 2025
Disallowance date	LA: 13 November 2025 LC: 18 November 2025
Minister responsible	The Hon. Rose Jackson MLC
Portfolio	Water

### Purpose and description

- 4.1 The object of the Regulation is to remake, with changes, the Water Management (General) Regulation 2018 (the **2018 Regulation**), other than provisions relating to water supply authorities. The 2018 Regulation was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).
- 4.2 The Regulation provides for the following:
- (a) matters concerning water management planning, including water sharing plans
  - (b) access licences and dealings, including exemptions from requirements to hold access licences
  - (c) approvals for water management works, including exemptions from requirements to hold approvals
  - (d) metering and record-keeping requirements
  - (e) matters concerning irrigation corporations, private water corporations and private water trusts
  - (f) Hunter Valley flood mitigation works
  - (g) compliance and enforcement matters, including the valuing of water taken illegally
  - (h) fees and charges for specified matters
  - (i) offences for which penalty notices may be issued.

## Issues considered by the Committee

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

### *Exemptions made under Henry VIII clause*

- 4.3 Section 101A(3) of the *Water Management Act 2000* (the **Act**) authorises the regulations to provide for exemptions from mandatory metering requirements under the Act. It also allows the regulations to provide for the circumstances in which the Minister may exempt holders of water supply work approvals from mandatory conditions, with or without conditions.
- 4.4 Section 400(2) of the Act also authorises the regulations to make provision for or with respect to any person, matter or thing from the operation of the Act.
- 4.5 Part 5, Division 2, Subdivision 2 of the Regulation creates exemptions from metering requirements, including permanent exemptions (section 74), temporary exemptions (section 75), and Ministerial exemptions (section 76).
- 4.6 Part 5, Division 3, Subdivision 3 of the Regulation also allows the Minister to exempt an approval holder, or a class of approval holders, from compliance with a mandatory floodplain harvesting licence condition in relation to a work approval under section 101A(3)(b) of the Act.

**The Regulation creates additional exemptions from certain metering requirements under the *Water Management Act 2000* (the Act). Part 5, Division 2, Subdivision 2 creates exemptions from mandatory metering requirements under the Act, and Division 3, Subdivision 3 allows the Minister to exempt an approval holder from requirements to comply with a floodplain harvesting licence condition in relation to a work approval. The Regulation therefore modifies the operation of the Act by creating the exemptions to these requirements.**

**The Committee generally prefers amendments to an Act to be made by an amending bill rather than subordinate legislation. This is to foster a greater level of parliamentary oversight, as, unlike primary legislation, subordinate legislation is not required to be passed by Parliament and Parliament does not control when it commences.**

**However, the Committee acknowledges that amendment of the Act by subordinate legislation is, in this case, authorised by the principal Act. Section 101A(3) authorises the regulations to provide for exemptions from mandatory metering requirements under the Act, and section 400(2) authorises the regulations to make provision for exemptions under the Act, more broadly. In the circumstances, the Committee makes no further comment.**

## 5. Water Management (Water Supply Authorities) Regulation 2025

Date tabled	LA: 9 September 2025 LC: 9 September 2025
Disallowance date	LA: 13 November 2025 LC: 18 November 2025
Minister responsible	The Hon. Rose Jackson MLC
Portfolio	Water

### Purpose and description

- 5.1 The object of the Regulation is to remake, with amendments, the part of the Water Management (General) Regulation 2018 relating to water supply authorities. The Water Management (General) Regulation 2018 was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).
- 5.2 The Regulation provides for the following in relation to water supply authorities:
- (a) specification of the area of operations and exercise of functions
  - (b) the carrying out of water supply services and sewerage services
  - (c) plumbing permits and drainage approvals
  - (d) conduct within the special areas of Essential Energy
  - (e) charges and fees
  - (f) offences under the *Water Management Act 2000* (the **Act**) and this regulation that may be dealt with by penalty notice, and the corresponding penalty.

### Issues considered by the Committee

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

##### *Strict liability offences*

- 5.3 Section 400(3) of the Act provides that the regulations may create an offence punishable by a maximum penalty of a \$2,200 fine (20 penalty units). Section 301B also allows the regulations to make provisions about the regulation and prohibition of activities to protect the supply or quality of water.
- 5.4 The Regulation creates a number of new strict liability offences in relation to water supply services. These include the following:

- section 45 provides that an owner of land to which a water main is connected or available for connection must ensure that the installation and connection of a water supply service is done by the holder of a plumbing permit
- section 46 requires a land owner to ensure the water supply service complies with the Plumbing Code of Australia and is kept in good order and condition and free from blockages or leakages
- section 54 provides that a person must carry out plumbing work in accordance with the Plumbing Code of Australia.

5.5 The maximum penalty for each of the above offence provisions is a \$2,200 fine (20 penalty units), in accordance with section 400(3) of the Act.

**The Regulation establishes a number of strict liability offences in relation to water supply services, including new offences that would require an owner of land to ensure that a water supply service meets certain requirements stipulated by the Regulation. The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.**

**The Committee notes that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance, and that the relevant penalties are non-custodial. The Committee also notes that the penalties prescribed are within the remit of the Regulation, under section 400(3) of the *Water Management Act 2000*.**

**However, the Committee is concerned that the offences would unduly burden individual land owners by imposing significant obligations on them to ensure that water supply services, which water supply authorities are responsible for, comply with the requirements of the Regulation. For this reason, the Committee refers the matter to Parliament for its consideration.**

#### *Privilege against self-incrimination*

5.6 Section 58 of the Regulation re-establishes an offence that was contained in the now-repealed Water Management (General) Regulation 2018 (section 228).

5.7 Section 58 requires a person who, in the course of carrying out plumbing work, damages a work or property of Essential Energy, to immediately notify Essential Energy of the damage. A failure to report the damage carries a maximum penalty of a \$2,200 fine (20 penalty units).

**Section 58 of the Regulation makes it an offence to not immediately report damage to a work or property of Essential Energy, caused in the course of carrying out plumbing work. This section re-establishes an offence that was contained in the now-repealed Water Management (General) Regulation 2018.**

**The Committee is concerned that this provision would infringe an individual's privilege against self-incrimination. The privilege against self-incrimination allows a person to refuse to answer any question, or produce anything, if doing so would expose the person to conviction for**

**a crime. This privilege is necessary to preserve the presumption of innocence and to ensure that the burden of proof remains on the prosecution. For these reasons, the Committee refers the matter to Parliament for its consideration.**

## 6. Work Health and Safety Regulation 2025

Date tabled	LA: 9 September 2025 LC: 9 September 2025
Disallowance date	LA: 13 November 2025 LC: 18 November 2025
Minister responsible	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

### Purpose and description

- 6.1 The object of the Regulation is to remake, with no significant changes, the Work Health and Safety Regulation 2017, which was repealed on 1 September 2025 under the *Subordinate Legislation Act 1989*, section 10(2).
- 6.2 The Regulation prescribes matters under the *Work Health and Safety Act 2011* (the **Act**) to give effect to the operation of that Act. The provisions of the Regulation are substantially uniform with the Model Work Health and Safety Regulations 2011 prepared by Safe Work Australia.
- 6.3 The Regulation is made under the *Work Health and Safety Act 2011*, including section 276 and Schedule 3, the general regulation-making powers.
- 6.4 The Regulation comprises matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

### Issues considered by the Committee

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

##### *Right to privacy*

- 6.5 Division 6 of the Regulation imposes obligations on persons conducting a business or undertaking (**PCBU**) to ensure that workers who may be exposed to hazardous chemicals undergo health monitoring. For example:
- Under section 368, a PCBU must ensure that health monitoring is provided to a worker if the worker is engaged in ongoing work involving hazardous chemicals and there is a significant risk to their health.
  - Section 374 requires a PCBU to obtain a health monitoring report from a registered medical practitioner. The report must contain information including, but not limited to:
    - the name and date of birth of the worker

- any test results that indicate whether or not the worker has been exposed to a hazardous chemical
- any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work
- whether medical counselling is required for the worker in relation to the work.
- Under section 376, the PCBU must give a copy of the health monitoring report to the regulator if the report contains advice that the worker may have contracted a disease, injury or illness as a result of carrying out the work, or a recommendation that the PCBU take remedial measures.
- Under section 377, a person who commissions a health report also has a duty to share the report with all other PCBUs who have a corresponding duty to monitor the worker's health.

6.6 Section 378 requires the PCBU to keep all health monitoring reports as confidential records and to ensure that such reports are not disclosed without the worker's written consent, except in the circumstances prescribed above.

**The Regulation authorises the collection and sharing of personal health information about workers in circumstances where the workers may have been exposed to hazardous chemicals. The compulsory nature of the health monitoring prescribed by the Regulation means that workers may be required to undergo testing and their medical information may be disclosed to the regulator and other duty-holders without their explicit consent.**

**The Committee generally comments on regulations that may limit a worker's ability to rely on the privacy protections available under the *Health Records and Information Privacy Act 2002* and the *Privacy and Personal Information Protection Act 1998*.**

**However, the Committee notes that these provisions are intended to protect workers' health and safety and to ensure that employers can take appropriate remedial action if a worker has been exposed to hazardous chemicals. The Regulation also contains important safeguards, including the duty to keep reports confidential and the restrictions on disclosure, except to persons who have a statutory duty to provide health monitoring. In the circumstances, the Committee makes no further comment.**

#### *Penalty notice offences*


- 6.7 Schedule 18A provides a list of offences that are prescribed as penalty notice offences under section 243 of the Act.
- 6.8 Section 243 allows an authorised officer to issue a penalty notice '...if it appears to the officer that the person has committed a penalty notice offence.'
- 6.9 For the Act, section 243(6)(a), a police officer is an authorised officer for an offence under this Regulation.



**Schedule 18A provides a list of offences under section 243 of the *Work Health and Safety Act 2011*, for which a penalty notice may be issued by an authorised officer.**

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

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



# 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. Food Regulation 2025

The object of the Regulation is to remake, with changes, the Food Regulation 2015, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following:

- (a) food safety schemes in relation to dairy businesses, meat businesses, plant products businesses, seafood businesses, vulnerable persons food businesses and egg businesses
- (b) fees and levies in relation to licences for food businesses and charges for inspecting and auditing food businesses
- (c) other fees and charges for the *Food Act 2003* (the **Act**)
- (d) modifications of the Australia New Zealand Food Standards Code in the application of the Code to food businesses and food handlers in New South Wales
- (e) enforcement agencies for the Act
- (f) offences under the Act and this regulation for which penalty notices may be issued
- (g) other matters of an administrative or savings and transitional nature.

Part 3 is made under shell legislation as the details of the requirements for the display of nutritional information are specified by the Regulation.

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

## 2. Health Practitioner Regulation (New South Wales) Regulation 2025

The object of the Regulation is to remake, with minor changes, the Health Practitioner Regulation (New South Wales) Regulation 2016, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following:

- (a) the infection control standards that must be followed by registered health practitioners
- (b) the patient records that must be kept by medical practitioners and corporations employing medical practitioners
- (c) standards for pharmacy premises and the reference publications that must be available in pharmacy premises
- (d) the fees to be paid for the following:
  - (i) the approval of pharmacy premises
  - (ii) the registration of a financial interest in a pharmacy business

- (e) prescribing a security interest as an interest that is not a financial interest in a pharmacy business
- (f) membership of each Council established by the Health Practitioner Regulation National Law (NSW).

The Regulation is made under the Health Practitioner Regulation National Law (NSW), including sections 41E and 247A(2)(a)–(d) and Schedule 5F, clauses 5(2)(d) and 12(5). It does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

### 3. Mental Health Regulation 2025

The object of the Regulation is to remake the Mental Health Regulation 2019, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following:

- (a) admission to, and care in, mental health facilities
- (b) community treatment orders
- (c) psychosurgery and electro convulsive therapy
- (d) official visitors to mental health facilities
- (e) the Mental Health Review Tribunal
- (f) interstate patients and mental health laws
- (g) funds and accounts for patients in mental health facilities.

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation is made under the *Mental Health Act 2007* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

### 4. Protection of the Environment Operations (Waste) Amendment (Waste Facility Contributions) Regulation 2025

The object of the Regulation is to amend the Protection of the Environment Operations (Waste) Regulation 2014 to extend certain reductions of and exemptions to waste contributions payable by occupiers of scheduled waste disposal facilities until 31 August 2026.

The Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 88(5), 286 and 323, the general regulation-making power. It does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

### 5. Retirement Villages Regulation 2025

The object of the Regulation is to remake, with minor changes, the Retirement Villages Regulation 2017, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following:

- (a) matters that must be disclosed to prospective residents and the form of the disclosures
- (b) the standard form of village contracts and matters that must be attached to a contract
- (c) arrangements for annual management meetings, including for voting at meetings
- (d) financial matters concerning retirement villages, including:
  - (i) the determination of recurrent charges
  - (ii) the management of village assets
  - (iii) budgeting and financial reporting
  - (iv) exit payments by residents
- (e) applications to the Civil and Administrative Tribunal of New South Wales
- (f) information about retirement villages that:
  - (i) must be given to the Secretary
  - (ii) may be published on the Department of Customer Service's website
- (g) conduct rules for operators
- (h) the form of certain documents, including:
  - (i) termination notices
  - (ii) condition reports
  - (iii) proxy appointments
- (i) penalty notice offences.

The Regulation is made under the *Retirement Villages Act 1999* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

6. [Supreme Court Practice Note SC Gen 22 - Pronunciation of Names, Forms of Address, and Cultural Protocols for Deceased First Nations People in Proceedings](#)

The Practice Note commenced on 25 August 2025 and replaces the former Practice Note, which commenced on 22 April 2024. The Practice Note contains an amendment to paragraph 2 acknowledging the cultural sensitivity around naming and depicting deceased First Nations people. It also provides guidance on respectful references to deceased First Nations people, including the use of preferred names and the handling of images or depictions in court proceedings.

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

7. [Child Protection \(Offenders Registration\) Regulation 2025](#)

The object of the Regulation is to remake, with minor changes, the Child Protection (Offenders Registration) Regulation 2015, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following:

- (a) the authorities that are supervising authorities in relation to particular registrable persons
- (b) corresponding Acts and corresponding child protection registration orders for the *Child Protection (Offenders Registration) Act 2000* (the **Act**)
- (c) foreign witness protection laws for the Act
- (d) the exclusion of persons from being corresponding registrable persons for the Act
- (e) the exercise of particular functions by sentencing courts, supervising authorities and the Commissioner of Police
- (f) requirements for written notices
- (g) the reporting requirements of registrable persons
- (h) the form of identification required to be produced by a registrable person's representative
- (i) the information to be contained on the Child Protection Register
- (j) the communication of information to a registrable person's support person.

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public
- (c) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

The Regulation is made under the *Child Protection (Offenders Registration) Act 2000* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

## 8. [Children's Court of New South Wales - Practice Note 20 - Bail Proceedings](#)

The purpose of the Practice Note is to establish procedures that promote:

- (a) timely decisions (sections 46 and 71 of the *Bail Act 2013*)
- (b) participation of child defendants
- (c) consistency in decision-making
- (d) access to judicial officers with knowledge, qualifications, skills and experience in dealing with young people in Children's Court proceedings
- (e) access to prosecutors and legal practitioners with knowledge, skills and experience in Children's Court proceedings
- (f) access to support services, such as Youth Justice, Justice Health and Child Protection, that can provide information relevant to the circumstances of the young person to assist the Court's determination on bail.

The Practice Note, in its amended form, commenced on 1 September 2025. It originally commenced on 7 July 2025 and was amended on 29 August 2025.

The Practice Note is made under the *Children's Court Act 1987* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 9. Fines Regulation 2025

The object of the regulation is to remake, with amendments, the Fines Regulation 2020, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following:

- (a) enforcement costs and the waiver, postponement or refund of those costs
- (b) the prescribing of certain matters in relation to parking offences
- (c) the prescribing of certain offences as vehicle or vessel offences
- (d) the courts of other Australian jurisdictions that are reciprocating courts
- (e) the prescribing of an offence under the *Fines Act 1996* to be a penalty notice offence
- (f) alternatives to payment under penalty notices in relation to certain offences
- (g) savings and formal matters.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The regulation is made under the *Fines Act 1996* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 10. Major Events Regulation 2025

The object of the Regulation is to declare the AFC Women's Asian Cup 2026 to be a major event for the *Major Events Act 2009* (the **Act**). The Regulation:

- (a) describes the major event
- (b) designates Destination NSW as the responsible authority for the event
- (c) declares that the Act, section 38 applies to the event
- (d) provides for the process of applying to the responsible authority for approvals to sell or distribute articles in areas where restrictions are in place
- (e) prescribes the local organising committee for the event as a person to whom the responsible authority's functions may be delegated
- (f) prescribes classes of persons who may be appointed as authorised officers for the event
- (g) provides for the issuing of penalty notices in relation to offences.

The Regulation is made under the *Major Events Act 2009* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

11. [District Court Criminal Practice Note 34 - Management of Criminal Proceedings listed in the Downing Centre](#)

The Practice Note commenced on 15 September 2025 and replaces District Court Criminal Practice Note 32. It applies to the case management of criminal proceedings in the Downing Centre only (but excluding proceedings in the Walama List, which are subject to Practice Note 26 and proceedings under the Child Sexual Offence Evidence Program which are subject to Practice Note 31).

The Practice Note makes minor changes to solidify procedures and clarify timeframes. These include extending arraignment timeframes, introducing a Notice of Appearance filing requirement (7 days before arraignment) and indictment filing 5 days before arraignment, with expanded tables outlining party obligations and information to be provided.

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

12. [Casino Control Amendment \(Manager Appointment Extension\) Regulation \(No 2\) 2025](#)

The object of the Regulation is to extend the term of appointment of the manager of the casino operated by The Star Pty Limited at Pymont.

The Regulation is made under the *Casino Control Act 1992* and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.





# Appendices

# Appendix One – Functions of the Committee

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

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

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

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

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

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

# Appendix Two – Unconfirmed extracts of minutes

## Meeting no. 39

TIME & DATE: 3.00PM, 10 NOVEMBER 2025

LOCATION: ROOM 1136 AND VIA  
VIDEOCONFERENCE

### MEMBERS PRESENT

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

### OFFICERS PRESENT

Rohan Tyler, Carly McKenna, Alex Read, Joan Douce, Natasha Moir, Nicolle Gill and Art Bae.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Hagarty: That the minutes of the meeting of 20 October 2025 be confirmed.

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

#### 3. Consideration of bills with comment for Legislation Review Digest 38/58

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

- a) Abortion Law Reform Amendment (Sex Selection Prohibition) Bill 2025
- b) Criminal Assets Recovery Amendment (Organised Crime Reforms) Bill 2025
- c) Criminal Procedure and Other Legislation Amendment (Criminal Proceedings) Bill 2025
- d) Fines Legislation Amendment Bill 2025
- e) Surveillance Devices and Other Legislation Amendment Bill 2025.

#### 4. Consideration of bills without comment for Legislation Review Digest 38/58

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

- a) Companion Animals Amendment (Control of Cats) Bill 2025
- b) Human Rights Bill 2025
- c) Statute Law (Miscellaneous Provisions) Bill (No 2) 2025.

**5. Consideration of regulations with comment for Legislation Review Digest 38/58**

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

- a) Child Protection (Offenders Registration) Amendment Regulation 2025
- b) Surveillance Devices Amendment (ICAC) Regulation 2025
- c) Sydney Water Regulation 2025
- d) Water Management (General) Regulation 2025
- e) Water Management (Water Supply Authorities) Regulation 2025
- f) Work Health and Safety Regulation 2025.

**6. Consideration of regulations without comment for Legislation Review Digest 38/58**

Resolved, on the motion of Mr Layzell: That the Committee adopts the regulations without comment as Part Three to Digest No. 38/58.

**7. Legislation Review Digest 38/58**

Resolved, on the motion of Mr Murphy:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts Legislation Review Digest No. 38/58 and that it be signed by the Chair and presented to the House.

**8. Regulations to be reviewed**

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

Resolved, on the motion of Ms Munro: That the Committee considers all regulations and statutory instruments that are currently subject to disallowance (tabled 14 October and 21 October 2025), even if the relevant regulations have been disallowed by the time the next Digest is adopted.

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

**10. Next Meeting**

The meeting adjourned at 3.04 pm until Monday 17 November 2025.