

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



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

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Membership

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Guide to the Digest

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

Part One: Functions Regarding Bills

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

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

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

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

Trespass unduly on personal rights and liberties:

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

Insufficiently defined administrative powers:

- insufficiently defined or wide powers

Non-reviewable decisions:

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

Inappropriate delegation of legislative powers:

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

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny

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

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

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

Part Two: Functions Regarding Regulations with Comments

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

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

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

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

Part Three: Regulations without Comment

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

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

Conclusions on Bills and Regulations

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

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

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

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

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

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

Digest Snapshot

PART ONE – BILLS

[1. Constitution Amendment \(Parliamentary Cooling-Off Period\) Bill 2026; Constitution \(Parliamentary Cooling-Off Period – Referendum\) Bill 2026*](#)

Issue identified	Conclusion of Committee
Restriction of legislative power impacting right to democratic representation	Referred

[2. Crimes \(Sentencing Procedure\) Amendment \(Good Character at Sentencing\) Bill 2026](#)

Issue identified	Conclusion of Committee
Constraint on judicial discretion	No further comment
Retrospectivity	No further comment
Commencement by proclamation	No further comment

[3. Crimes Amendment \(Countering Violent Extremism\) Bill 2026*](#)

Issue identified	Conclusion of Committee
Broad definitions of 'violent extremism' and 'support'	No further comment

[4. Energy and Other Legislation Amendment \(Renewable Energy Infrastructure\) Bill 2026*](#)

Issue identified	Conclusion of Committee
No issues identified	

[5. Fair Trading and Building Legislation Amendment Bill 2026](#)

Issue identified	Conclusion of Committee
Broad information-sharing powers	Referred
Wide delegation of powers to unspecified persons	Referred
Commencement by proclamation	No further comment

[6. Library Amendment Bill 2026](#)

Issue identified	Conclusion of Committee
No issues identified	

[7. Local Government and Other Legislation Amendment \(Places of Public Worship\) Bill 2026](#)

Issue identified	Conclusion of Committee
No issues identified	

[8. Parliamentary Evidence Amendment \(Attendance of Witnesses\) Bill 2026*](#)

Issue identified	Conclusion of Committee
Power to compel the attendance of witnesses - right to liberty and freedom from arbitrary detention	Referred
Lack of procedural fairness	Referred

Power of the legislature to issue warrants executable by Police - separation of powers	Referred
Insufficiently defined powers - 'purported exercise or discharge' of functions	Referred
Lack of mechanism to challenge decision to issue warrant	Referred

9. Prevention of Antisemitism Bill 2026*

Issue identified	Conclusion of Committee
Broad definition of 'antisemitism' impacting the implied freedom of political communication	Referred
Wide regulation-making powers	Referred
Incorporation of external documents not subject to disallowance	Referred

PART TWO – REGULATIONS WITH COMMENT

1. Marine Safety Amendment Regulation 2025

Issue identified	Conclusion of Committee
Privilege against self-incrimination	Referred

Summary of Conclusions

PART ONE – BILLS

1. Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026; Constitution (Parliamentary Cooling-Off Period – Referendum) Bill 2026*

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

Restriction of legislative power impacting right to democratic representation

The Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026 proposes to amend the *Constitution Act 1902* to prevent Parliament from introducing, debating or voting on a bill that is related to a 'significant event', within 90 days of that event. A 'significant event' is defined as an act or occurrence within NSW, or 'directly affecting' residents of NSW, that 'results in widespread public grief, outrage or panic' in NSW.

By introducing a legislative 'cooling-off' period, the Bill would restrict the ability of Parliament to undertake its core legislative function in accordance with the principles of representative democracy. This restriction would interfere with the rights of individuals to be represented in Parliament, and to have their democratically elected representatives debate and vote on political issues affecting them. The restriction may also disproportionately impact the rights of individuals and communities who have been the target of such events and, therefore, may be more vulnerable and/or in need of representation.

The proposed provision provides examples of a 'significant event', including 'an act of terrorism', 'an outrageous or heinous crime' and 'another event triggering public grief, outrage or panic'. However, this non-exhaustive list does not limit the definition of a significant event. The definition remains vague, which may allow a 'cooling-off period' to be activated under a broad range of circumstances. The Bill also lacks guidance on how a significant event would be determined, and whose responsibility it is to determine that a significant event has occurred. It is therefore unclear in what circumstances a cooling-off period would apply.

The Committee acknowledges that the Bill would permit the repeal or amendment of the cooling-off restriction if a bill is passed by a special majority (90 per cent) of both Houses of Parliament. However, this is an extremely high threshold that requires a near-unanimous majority of Parliament to override the restriction. For these reasons, the Committee refers the issue to Parliament for consideration.

2. Crimes (Sentencing Procedure) Amendment (Good Character at Sentencing) Bill 2026

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

Constraint on judicial discretion

The Bill would expressly abolish the common law principle that allows a court to consider an offender's good character as a mitigating factor in sentencing at common law and under statute in NSW. Proposed subsections 21A(5E) and (5F) would direct courts not to consider evidence adduced solely for the purpose of establishing good character.

Removing the ability of an offender to rely on good character as a mitigating factor limits the material that may be placed before a court at sentencing and may constrain the court's discretion in determining an appropriate sentence. The Committee generally comments on provisions that would constrain judicial discretion, particularly where that limitation also impacts on a person's rights or liberties.

However, the Committee recognises that the intention of Bill is to remove an inherently subjective and vague factor that may contribute to inequality in the sentencing process. Additionally, abolishing good character as a mitigating factor is an important step in protecting victim-survivors from re-traumatisation. The Committee further notes that courts may consider the relevant evidence if it is adduced for another principle of, or factor in, sentencing. This means that offenders will still be able to rely on evidence about their background, community ties or employment if it is relevant to another mitigating factor. For these reasons, the Committee makes no further comment.

Retrospectivity

The Bill contains transitional provisions to clarify that, upon commencement of the proposed Act, the amendments would apply to sentencing proceedings commenced but not finalised before, and a sentence imposed after, the commencement of the proposed Act.

The Committee notes that the effect of the transitional provision is that good character would no longer be available as a mitigating factor at sentencing, even where the offence was committed before, or criminal proceedings were commenced before, the commencement of the amending Act. The Committee generally comments on provisions that operate retrospectively as they impact on the rule of law principle that a person is entitled to have knowledge and certainty of the law that applies to them at any given time.

However, the Committee acknowledges that the retrospective application of laws as proposed by the Bill is consistent with the general rule that offenders must be sentenced in accordance with the sentencing patterns and practices at the time of sentence. In the circumstances, the Committee makes no further comment.

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

Commencement by proclamation

The proposed Act would commence on a day or days appointed 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 the provisions would affect individual rights or obligations. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

However, the Committee acknowledges that the proposed commencement by proclamation is intended to facilitate the necessary arrangements between the Department of Communities and Justice and the Judicial Commission to conduct training and amend bench books as appropriate. For this reason, the Committee makes no further comment.

3. Crimes Amendment (Countering Violent Extremism) Bill 2026*

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

Broad definitions of 'violent extremism' and 'support'

The Bill seeks to introduce a number of new offences under the *Crimes Act 1900*. These offences would include grooming, recruiting, coercing, threatening, or deceiving another person to carry out, or assist in carrying out, violent extremism.

Each of these proposed offences would rely on broad definitions of 'violent extremism' and/or 'violent extremist material'. The Bill defines 'violent extremism' as an act of violence, or an act supporting the use of violence to achieve social, political or legal outcomes. The proposed definition of 'support' is drafted broadly and captures conduct that would 'encourage' or 'promote'. As a result of these definitions, a broad range of indirect conduct may potentially be captured under the new offences, including the display of material that indicates support for another act.

The Committee notes that an individual's personal rights and liberties may be unduly dependent on the broadly worded nature of the offences, as these offences all carry custodial penalties ranging from five to seven years' imprisonment, and, where the other person is a child, seven to ten years' imprisonment.

However, the Committee acknowledges that the proposed amendments are intended to protect children and other vulnerable persons by reducing the risk of them being influenced to carry out acts of violence. The Committee also notes that for the proposed offences to be made out, the prosecution must prove that a person intends for the other person to carry out, or assist in carrying out, violent extremism. For these reasons, the Committee makes no further comment.

4. Energy and Other Legislation Amendment (Renewable Energy Infrastructure) Bill 2026*

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

5. Fair Trading and Building Legislation Amendment Bill 2026

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

Broad information-sharing powers

The Bill would amend the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the Residential Apartment Buildings Act) to expand the circumstances in which information obtained in the exercise of regulatory functions may be disclosed to a 'relevant agency'.

Schedule 16[2] of the Bill would allow for the exchange of information that is 'reasonably necessary' to a 'relevant agency' for the administration of building legislation, or the investigation of offences against the laws of the State, the Commonwealth, or another State or Territory. Under section 65(7), a 'relevant agency' may include government agencies or persons or bodies prescribed by the regulations. Schedule 16[5] of the Bill would extend the range of relevant

agencies to the following Commonwealth entities: the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and the Australian Taxation Office.

The Committee acknowledges that information sharing between regulatory bodies may assist in the effective administration and enforcement of legislation, and may support compliance and consumer protection objectives. The Committee also notes that section 65 of the Residential Apartment Buildings Act limits the disclosure of information to circumstances where the disclosure is 'reasonably necessary' for the exercise of the functions under that Act.

However the test of what is 'reasonably necessary' involves a degree of judgment and subjectivity on the part of the Secretary. The Bill and existing provisions of the Residential Apartment Buildings Act do not prescribe objective criteria to guide the exercise of this assessment and do not specify the particular types of information that may be disclosed. Therefore, personal information or commercially sensitive information relating to individuals could be shared to entities outside of the State and to a non-exhaustive list of persons prescribed by regulations, dependent on the interpretation of the decision maker.

The Committee generally prefers that legislation clearly defines the scope of discretionary information-sharing powers, including specifying the classes of persons to whom information may be disclosed and the circumstances in which disclosure is permitted. For this reason, the Committee refers the issue to Parliament for consideration.

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

Wide delegation of powers to unspecified persons

The Bill would permit the Secretary to delegate functions conferred on the Secretary to an employee of the Department or 'a person prescribed by the regulations'.

The Committee notes that the Bill would therefore permit statutory functions to be delegated to a class of persons that is not defined in the primary legislation and that may be defined and expanded by regulations. This may permit the exercise of public powers by private individuals who are not public officials or office holders.

The Committee acknowledges that allowing regulations to prescribe categories of persons to exercise the functions of the Secretary may provide flexibility. It also acknowledges that regulations are tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee generally prefers that the classes of persons who may exercise statutory functions are set out in primary legislation to ensure clarity, certainty and transparency, and to facilitate appropriate parliamentary oversight. For this reason, the Committee refers the issue to Parliament for consideration.

Commencement by proclamation

The Bill provides that the proposed Act would commence on a day or days to be appointed by proclamation, with the exception of Schedules 2, 6[1] and [3], 16[2]–[5], 18[4] and [5], 19[7], 20 and 21.

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, such as to establish administrative procedures necessary to implement the amended provisions. The Committee also notes that the provisions it has commented on in this report, which may impact on personal rights and liberties, would commence on assent. For these reasons, the Committee makes no further comment.

6. Library Amendment Bill 2026

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

7. Local Government and Other Legislation Amendment (Places of Public Worship) Bill 2026

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

8. Parliamentary Evidence Amendment (Attendance of Witnesses) Bill 2026*

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

Power to compel the attendance of witnesses – right to liberty and freedom from arbitrary detention

The Bill would amend the *Parliamentary Evidence Act 1901* by inserting a new section 7, which would allow the President of the Legislative Council or Speaker of the Legislative Assembly to directly issue a warrant for the arrest of a person who has failed to appear to give evidence before the Parliament. Proposed subsection 8(1) would authorise the apprehension and detention of a person named in a section 7 warrant, so that they may be 'produced, from time to time' to give evidence or remanded until they are discharged from custody by the President or Speaker.

In doing so, the Bill would allow the President or Speaker to arrest and detain people for the purposes of giving evidence before the Legislative Council, Legislative Assembly, or a committee. This may impact an individual's right to liberty and freedom from arbitrary detention, as contained in Article 9 of the International Covenant on Civil and Political Rights. The Committee notes that there do not appear to be any provisions limiting the amount of time a person may be detained for, or the specific purpose for which they may be detained. This would vest broad coercive powers in the Presiding Officers to apprehend and detain a person indefinitely for the purposes of 'giving evidence'. For these reasons, the Committee refers the issue to Parliament for consideration.

Lack of procedural fairness

The Bill seeks to address the issues resolved in *Cullen v President of the Legislative Council of New South Wales* by allowing the President or Speaker of the Legislative Assembly to directly issue a warrant for the arrest of a person who has failed to appear to give evidence before the Parliament. There is no apparent process for any prior judicial oversight in the issuing of a warrant, which may therefore impact on an individual's right to procedural fairness.

The Committee notes that the Bill would not allow a person to contest the issuing of the warrant on the basis that the President or Speaker has the facts wrong, or is acting in bad faith. There is also no requirement for the warrant to be executed in a particular way or for the period of detention

to be limited, for example, to the period necessary for the giving of evidence. The Committee notes that none of the usual restrictions upon the exercise of powers of arrest and detention are available, and that there is nothing to require the proportionate use of these powers. For these reasons, the Committee refers the issue to Parliament for consideration.

Power of the legislature to issue warrants executable by Police – separation of powers

The form of a warrant, as set out in Schedule 1 of the Bill, would allow the President or Speaker to issue a warrant to be executed by the Usher of the Black Rod or Serjeant-at-Arms, as the case requires, or by the Commissioner of Police and all police officers. The Committee notes that the issuing of a warrant is ordinarily a judicial function and that the Bill would vest this function within the legislature. In doing so, the Bill may infringe on the Constitutional doctrine of the separation of powers.

The prescribed form of the warrant would also require Presiding Officers of the Parliament to exercise power over officers of another arm of government. The Committee notes that this is not dissimilar from the *Parliamentary Privilege Act 1858 (Tas)*, which requires the Sheriff, their officers, and all other constables to assist in the execution of a warrant issued by the President or Speaker, and in the apprehension and detention of a witness. Nevertheless, the Committee remains concerned that this model would be contrary to the fundamental principle of the separation of powers, which was a central to the Court of Appeal's decision in *Cullen*. For this reason, the Committee refers the issue to Parliament for consideration.

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

Insufficiently defined powers – 'purported exercise or discharge' of functions

The Bill would protect the Usher of the Black Rod, the Serjeant-at-Arms and police officers from incurring civil or criminal liability for any act or omission when carrying out warrants, if the relevant act or omission was a good faith exercise or discharge or 'purported exercise or discharge' of their duties under the warrant. This may impact an individual's ability to legally challenge acts or omissions made under a warrant for their arrest.

The Committee acknowledges that it is not uncommon for particular functions of government to limit their liability for acts or omissions made in the exercise of that role. However, in this instance, there do not appear to be any provisions defining or narrowing the ordinary meaning of 'purported exercise or discharge'. This may further impact an individual's right to procedural fairness, as it is not clear whether unlawful or inappropriate exercises of power under the warrant are excluded under law. For this reason, the Committee refers the issue to Parliament for consideration.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Lack of mechanism to challenge a decision to issue a warrant

As discussed above, the Bill would authorise the detention of a person subject to a warrant issued by the President or Speaker for a potentially indefinite period. Proposed subsection 7(3) provides that the President or Speaker must not issue a warrant under section 7 unless they are satisfied that the person failed to give evidence 'without just cause or reasonable excuse'. However, there do not appear to be any provisions allowing for an independent assessment prior to the arrest being made, or any mechanism for review following a person's detention.

The Committee notes that, while there are no provisions in the Bill to explicitly exclude an application for *habeas corpus* (a remedy for unlawful detention), that judicial remedy would only allow a court to test the legality of the detention authorised by the warrant, and order a person's release where the detention is unlawful. It would not entail a review of the merits of the decision to compel a person's attendance. The Committee notes that an individual's right to liberty and freedom from arbitrary detention would therefore be made unduly dependent upon a non-reviewable decision. For this reason, the Committee refers the issue to Parliament for consideration.

9. Prevention of Antisemitism Bill 2026*

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

Broad definition of antisemitism impacting the implied freedom of political communication

The Bill would require public authorities to adopt the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, and the examples provided with that definition, when dealing with the issue of racism. The IHRA defines antisemitism as '... a certain perception of Jews, which may be expressed as hatred towards Jews.' The IHRA 'contemporary examples' include, but are not limited to, denying the Jewish people their right to self-determination '...by claiming that the State of Israel is a racist endeavour.' This broad definition and the associated examples risk conflating antisemitism with legitimate criticism of the State of Israel and may be used to suppress claims that Israel is breaching international law.

The Bill would also attach potential disciplinary and/or criminal consequences to this broad definition. For example, public authorities and universities would be required to adopt, use and apply the IHRA definition and examples in their codes of conduct and/or when dealing with racism. Courts would also be required to have regard to the IHRA definition and examples in determining whether an offence has been committed under sections 93Z and 93ZAA of the *Crimes Act 1900*. The offences of publicly threatening or inciting violence on the grounds of race, or publicly inciting hatred on the grounds of race, carry significant maximum penalties of up to three years' imprisonment, an \$11,000 fine, or both, for an individual.

The combined effect of the proposed amendments may have a chilling effect on legitimate criticism of Israel. In doing so, the Bill may infringe on the implied freedom of political communication under the Australian Constitution. The Committee generally comments on laws that could have the effect of burdening the implied freedom of political communication. The Committee notes that the implied freedom of political communication can only be validly restricted where there is a legitimate purpose, and where the restriction is reasonably appropriate and adapted to achieving that purpose.

The Committee acknowledges that the Bill may be intended to address significant concerns about rising antisemitism, and to protect individuals and communities from conduct that incites hatred, intimidation or violence. However, by attaching severe penalties to a very broad definition of antisemitism, the Bill may effectively suppress legitimate criticism of the State of Israel and potential violations of international law. For these reasons, the Committee refers the issue to Parliament for consideration.

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

Wide regulation-making powers

The Bill would create a general regulation-making power, under proposed section 7, to prescribe anything 'necessary or convenient' for carrying out or giving effect to the proposed Act. The

Committee notes that there does not appear to be any provisions which define or narrow the ordinary meaning of 'convenient' or 'necessary'.

The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament. The Parliament also does not control when they commence.

The Committee recognises that a wide regulation-making power may allow for more flexible regulatory responses. It also acknowledges that any regulations would still need to be tabled in Parliament and would, therefore, be subject to disallowance under section 41 of the *Interpretation Act 1987*. However, in this case, the proposed regulation-making power would effectively allow regulations to prescribe matters potentially impacting on individual rights and liberties, with little limit. For these reasons, the Committee refers the matter to Parliament for consideration.

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

Incorporation of external documents not subject to disallowance

Proposed section 4 would incorporate the IHRA antisemitism examples given with the IHRA definition that was adopted on 26 May 2016. While the IHRA definition is stated in the text of the provision, the IHRA examples are incorporated by reference to an external document only.

The Committee understands that incorporation of external materials may provide greater flexibility and allow updates to reflect changing societal views on conduct that may incite hatred and violence. However, the Committee generally comments on legislative provisions that permit substantive matters to be determined by external instruments that are not subject to parliamentary scrutiny. The Committee prefers that substantive matters are set out in legislation where they can be subjected to a greater level of parliamentary scrutiny, particularly where they affect individual rights and liberties. In this case, the Committee notes that the adoption of the IHRA examples of antisemitism may give rise to significant disciplinary and/or criminal consequences. For this reason, the Committee refers the matter to Parliament for consideration.

PART TWO – REGULATIONS WITH COMMENT

1. Marine Safety Amendment Regulation 2025

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

Privilege against self-incrimination

Clause 55H of the Regulation sets out requirements, and associated offences, in relation to the mandatory marking and lighting of hazards that are in or over navigable waters. Specifically, subclause 55H(1) requires the owner of a hazard to ensure that it is marked and well lit. Subclause 55H(4) requires a person to comply with a direction given by Transport for NSW or the Port Authority of NSW (a regulator) to keep the marking or lighting in good condition. Non-compliance with these requirements carries a maximum penalty of a \$5,500 fine (50 penalty units).

However, subclause 55H(5) requires a person to notify a regulator as soon as they become aware of a defect in relation to the marking or lighting of the hazard. Failure to do so is also an offence under the Regulation. The requirement to report a defect may therefore create an obligation for a person to report a potential offence under subclause 55H(1) and/or 55H(4), or be subject to an offence under subclause 55H(5).

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.

Part One – Bills

1. Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026; Constitution (Parliamentary Cooling-Off Period – Referendum) Bill 2026*

Date introduced	4 February 2026
House introduced	Legislative Council
Member with carriage	The Hon John Ruddick MLC
	*Private member's bill

Purpose and description

Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026

- 1.1 The object of the Bill is to amend the *Constitution Act 1902* (the **NSW Constitution**) to provide for a 90-day period after certain significant events during which Bills may not be introduced, debated or enacted or regulations made.

Constitution (Parliamentary Cooling-Off Period – Referendum) Bill 2026

- 1.2 Under the NSW Constitution, section 7A, it is necessary for the Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026 (**Cooling-Off Period Bill**) to be submitted to a referendum and be approved by a majority of electors before that Bill is presented to the Governor for assent.
- 1.3 The object of this Bill (the **Referendum Bill**) is to appoint the date of the next general election as the date for taking the votes of electors at the referendum on the Cooling-Off Period Bill.

Background

- 1.4 The Cooling-Off Period Bill proposes to insert Part 11 into the NSW Constitution, which would prevent certain bills and regulations from being made within 90 days after the occurrence of a significant event.
- 1.5 Proposed section 58 defines a 'significant event' as an act or occurrence within NSW, or 'directly affecting' residents of NSW, that 'results in widespread public grief, outrage or panic' in NSW.
- 1.6 During his second reading speech, the Hon John Ruddick MLC described the proposed legislative cooling-off period as '... a modest, principled safeguard designed to protect the people of New South Wales from the very real dangers of

impulsive, emotion-charged lawmaking that so frequently follows tragedies, shocks or waves of public panic.'

1.7 Mr Ruddick further stated:

This is not a ban on responding; it is a requirement that responses be deliberate, evidence based and proportionate, rather than rushed reactions to headlines, grief and outrage.

1.8 The Referendum Bill would provide for the holding of a referendum on the Cooling-Off Period Bill and proposes the date of that referendum to be the date specified in the writ for the next general election of the Legislative Assembly.

1.9 Although these bills would operate as separate Acts if enacted, the Cooling-Off Period Bill and the Referendum Bill are cognate. As a result, they were introduced and will be considered together. Therefore, in accordance with the Committee's usual practice, both bills have been considered in a single report.

Issues considered by the Committee

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

Restriction of legislative power impacting right to democratic representation

1.10 Proposed section 58 provides that, during the period of 90 days following a 'significant event', a bill related to that significant event must not be introduced, debated or voted on in Parliament. It also provides that a regulation for a purpose related to the significant event must not be made.

1.11 This section defines a 'significant event' as an act or occurrence within NSW, or 'directly affecting' residents of NSW, that 'results in widespread public grief, outrage or panic' in NSW.

1.12 The provision includes examples of a significant event, including:

- an act of terrorism
- a mass casualty event
- an outrageous or heinous crime
- an event publicly acknowledged by an official day of mourning or remembrance
- another event triggering public grief, outrage or panic.

1.13 During his second reading speech, Mr Ruddick stated:

The definition is intentionally broad enough to capture the moments when rational decision-making is most at risk. It targets precisely those situations where the media, the community and politicians unite in demanding that "something be done", and then "anything be done"—

immediately—often at the expense of careful scrutiny, individual rights, economic reality or long-term consequences.

1.14 Proposed subsection 58(3) provides that the Cooling-Off Period Bill does not apply to:

- an Appropriation Bill
- a bill or regulation about the provision of victim support or compensation
- a bill or regulation about an inquiry or investigation of the significant event.

1.15 Proposed subsection 58(4) also provides that any bill to repeal or vary the proposed cooling-off period would require the third reading of the bill to be passed by a special majority (90 per cent) of both the Legislative Assembly and the Legislative Council.

1.16 Mr Ruddick stated:

The high threshold of 90 per cent super-majority protects the safeguard from casual repeal while allowing a near-unanimous majority of Parliament to override in truly exceptional circumstances.

The Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026 proposes to amend the *Constitution Act 1902* to prevent Parliament from introducing, debating or voting on a bill that is related to a 'significant event', within 90 days of that event. A 'significant event' is defined as an act or occurrence within NSW, or 'directly affecting' residents of NSW, that 'results in widespread public grief, outrage or panic' in NSW.

By introducing a legislative 'cooling-off' period, the Bill would restrict the ability of Parliament to undertake its core legislative function in accordance with the principles of representative democracy. This restriction would interfere with the rights of individuals to be represented in Parliament, and to have their democratically elected representatives debate and vote on political issues affecting them. The restriction may also disproportionately impact the rights of individuals and communities who have been the target of such events and, therefore, may be more vulnerable and/or in need of representation.

The proposed provision provides examples of a 'significant event', including 'an act of terrorism', 'an outrageous or heinous crime' and 'another event triggering public grief, outrage or panic'. However, this non-exhaustive list does not limit the definition of a significant event. The definition remains vague, which may allow a 'cooling-off period' to be activated under a broad range of circumstances. The Bill also lacks guidance on how a significant event would be determined, and whose responsibility it is to determine that a significant event has occurred. It is therefore unclear in what circumstances a cooling-off period would apply.

The Committee acknowledges that the Bill would permit the repeal or amendment of the cooling-off restriction if a bill is passed by a special majority (90 per cent) of both Houses of Parliament. However, this is an extremely high threshold that requires a near-unanimous majority of

Parliament to override the restriction. For these reasons, the Committee refers the issue to Parliament for consideration.

2. Crimes (Sentencing Procedure) Amendment (Good Character at Sentencing) Bill 2026

Date introduced	4 February 2026
House introduced	Legislative Assembly
Member with carriage	The Hon Michael Daley MP

Purpose and description

- 2.1 The object of the Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* (the **Act**) to prevent good character from being taken into account as a mitigating factor in determining appropriate sentences for offences and to make consequential and related amendments.

Background

- 2.2 The Bill proposes to abolish 'good character' as a mitigating factor in sentencing at common law and under statute in NSW.
- 2.3 In his second reading speech, the Hon Michael Daley MP, Attorney General, explained the operation of the existing principle in NSW:

Historically, people who are sentenced for criminal offences have been able to rely on their prior good character or lack of criminal record as factors that mitigate their culpability, and which may benefit them on sentence. Section 21A of the *Crimes (Sentencing Procedure) Act 1999* expressly provides that a person's good character or lack of previous convictions are mitigating factors which must be taken into account by the court in determining the appropriate sentence for an offence. There is currently an exception to this rule under section 21A (5A). This provision, known as the "special rule", requires courts to disregard good character or a lack of previous convictions in child sexual assault matters if one or more of those factors assisted the offender in the commission of the offence.

- 2.4 The Attorney General noted that he had asked the NSW Sentencing Council to review the relevant legislation and common law in response to the 'Your Reference Ain't Relevant' campaign and a subsequent petition that called for the abolition of good character references.
- 2.5 The Attorney General noted that the Bill was informed by 'the recommendations of the NSW Sentencing Council and longstanding and significant concerns of victim-survivors and victims advocacy groups about the use of good character evidence when sentencing offenders, particularly for sexual offences.'
- 2.6 In explaining the rationale for the Bill, the Attorney General stated:

This reform will reduce trauma for victim-survivors, who will no longer be subjected to hearing the offender described simply as a person of good character during the offender's sentencing proceedings. Furthermore, the vague and uncertain nature of good character, its focus on good reputation and moral worth, and its unequal application make it inappropriate any longer to justify mitigating a sentence in New South Wales today.

Issues considered by the Committee

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

Constraint on judicial discretion

- 2.7 Proposed subsection 21A(5D) would expressly abolish the common law principle of good character, which may currently be considered by a court as a mitigating factor during sentencing.
- 2.8 Proposed subsections 21A(5E) and (5F) clarify that, while a court must not consider evidence adduced solely for the purpose of establishing good character, this does not prevent the court from considering that evidence if it is adduced for another principle of, or factor in, sentencing.
- 2.9 In his second reading speech, the Attorney General clarified that written references would:

... remain admissible insofar as they address relevant factors, rather than good character alone.

This overall approach will ensure that offenders will still be able to rely on evidence about their subjective case, including background, community ties and employment, if it is relevant to another mitigating factor or principle or purpose of sentencing.

- 2.10 The Attorney General also clarified that other mitigating factors in section 21A of the Act would be retained. This includes consideration of an offender's lack of previous convictions, whether the offender is unlikely to reoffend, and whether the offender has good prospects of rehabilitation.

The Bill would expressly abolish the common law principle that allows a court to consider an offender's good character as a mitigating factor in sentencing at common law and under statute in NSW. Proposed subsections 21A(5E) and (5F) would direct courts not to consider evidence adduced solely for the purpose of establishing good character.

Removing the ability of an offender to rely on good character as a mitigating factor limits the material that may be placed before a court at sentencing and may constrain the court's discretion in determining an appropriate sentence. The Committee generally comments on provisions that would constrain judicial discretion, particularly where that limitation also impacts on a person's rights or liberties.

However, the Committee recognises that the intention of Bill is to remove an inherently subjective and vague factor that may contribute to

inequality in the sentencing process. Additionally, abolishing good character as a mitigating factor is an important step in protecting victim-survivors from re-traumatisation. The Committee further notes that courts may consider the relevant evidence if it is adduced for another principle of, or factor in, sentencing. This means that offenders will still be able to rely on evidence about their background, community ties or employment if it is relevant to another mitigating factor. For these reasons, the Committee makes no further comment.

Retrospectivity

- 2.11 Schedule 1[9] of the Bill contains a transitional provision which makes clear that the amendments to the Act would apply to sentencing proceedings commenced but not finalised before, and a sentence imposed after, the commencement of the proposed Act. The transitional provision would apply regardless of whether the offence was committed before, or criminal proceedings were commenced before the commencement of the amending Act.
- 2.12 In his second reading speech, the Attorney General explained that this is consistent with section 21B of the Act, '... which provides for a general rule that offenders must be sentenced in accordance with the sentencing patterns and practices at the time of sentence.'

The Bill contains transitional provisions to clarify that, upon commencement of the proposed Act, the amendments would apply to sentencing proceedings commenced but not finalised before, and a sentence imposed after, the commencement of the proposed Act.

The Committee notes that the effect of the transitional provision is that good character would no longer be available as a mitigating factor at sentencing, even where the offence was committed before, or criminal proceedings were commenced before, the commencement of the amending Act. The Committee generally comments on provisions that operate retrospectively as they impact on the rule of law principle that a person is entitled to have knowledge and certainty of the law that applies to them at any given time.

However, the Committee acknowledges that the retrospective application of laws as proposed by the Bill is consistent with the general rule that offenders must be sentenced in accordance with the sentencing patterns and practices at the time of sentence. In the circumstances, the Committee makes no further comment.

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

Commencement by proclamation

- 2.13 Clause 2 of the Bill provides that it commences on a day or days to be appointed by proclamation.
- 2.14 In his second reading speech, the Attorney General stated:

The bill will commence on proclamation. Given that this is a change to a longstanding sentencing principle, delayed commencement will allow

time for the Department of Communities and Justice and the Judicial Commission to work closely with judicial officers and other officers of the court to conduct training and amend bench books as appropriate. It is incredibly important that time is taken to communicate with the legal profession and the judiciary about these reforms to ensure they are effectively implemented; further, commencement by proclamation on a particular day will provide certainty to those with matters on foot when the reforms commence.

The proposed Act would commence on a day or days appointed 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 the provisions would affect individual rights or obligations. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

However, the Committee acknowledges that the proposed commencement by proclamation is intended to facilitate the necessary arrangements between the Department of Communities and Justice and the Judicial Commission to conduct training and amend bench books as appropriate. For this reason, the Committee makes no further comment.

3. Crimes Amendment (Countering Violent Extremism) Bill 2026*

Date introduced	4 February 2026
House introduced	Legislative Council
Member with carriage	The Hon Damien Tudehope MLC
	*Private member's bill

Purpose and description

- 3.1 The object of the Bill is to:
- (a) amend the *Crimes Act 1900* (the **Crimes Act**) to create certain offences that deal with violent extremism
 - (b) amend the *Children's Guardian Act 2009* to make provision for the reporting of employees to employers if the employee has carried out offences in relation to violent extremism involving children.

Background

- 3.2 The Bill seeks to amend the Crimes Act to define 'violent extremism' and create new offences in relation to it. The proposed offences include grooming, recruiting, coercing, threatening, or deceiving a person to carry out violent extremism. These offences would be aggravated where the other person is a child.
- 3.3 In his second reading speech, the Hon Damien Tudehope MLC explained that '... the increasing recruiting of vulnerable people into violent extremism needs a comprehensive response.' He stated that the Bill seeks to address '... some of the current gaps in the law ...' to contribute to this response.
- 3.4 Mr Tudehope further stated:
- ... the bill focuses on the processes by which vulnerable people, including children, become involved in violent extremism. ...
- We need to acknowledge the role that adults play in the grooming process and move to ensure that there exist protections to prohibit this behaviour, such as specific legislation and offences that target predatory recruiters.

Issues considered by the Committee

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

Broad definitions of 'violent extremism' and 'support'

- 3.5 The Bill seeks to introduce a number of new offences under the Crimes Act. These include:
- grooming persons to carry out, or assist in carrying out, violent extremism, under proposed section 310M. This offence would carry a maximum penalty of 5 years' imprisonment, or 7 years' imprisonment, where the other person is a child
 - recruiting persons to carry out, or assist in carrying out, violent extremism, under proposed section 310N. This offence would carry a maximum penalty of 5 years' imprisonment, or 7 years' imprisonment, where the other person is a child
 - coercing, threatening or deceiving persons to carry out, or assist in carrying out, violent extremism, under proposed section 310O. This offence would carry a maximum penalty of 7 years' imprisonment, or 10 years' imprisonment, where the other person is a child.
- 3.6 Each of these offences would rely on the proposed definitions of 'violent extremism', 'violent extremist material' and 'support', under proposed section 310L.
- 3.7 'Violent extremism' is defined as an act of violence, or an act supporting the use of violence:
- to achieve social, political or legal outcomes, or
 - in response to specified political or social grievances.
- 3.8 'Violent extremist material' is defined as a document that a reasonable person would consider to be:
- supporting, or seeking support for, the carrying out of violent extremism, or
 - advocating for or justifying the carrying out of violent extremism, or
 - instructing on the carrying out of violent extremism.
- 3.9 The definition of 'support', under proposed section 310L includes to: facilitate, fund, contribute to, encourage, promote and glorify.
- 3.10 In his second reading speech, Mr Tudehope clarified that the Bill's definition of violent extremism '... intentionally captures a broader range of activity than is covered by the definition of a "terrorist act".'

The Bill seeks to introduce a number of new offences under the *Crimes Act 1900*. These offences would include grooming, recruiting, coercing,

threatening, or deceiving another person to carry out, or assist in carrying out, violent extremism.

Each of these proposed offences would rely on broad definitions of 'violent extremism' and/or 'violent extremist material'. The Bill defines 'violent extremism' as an act of violence, or an act supporting the use of violence to achieve social, political or legal outcomes. The proposed definition of 'support' is drafted broadly and captures conduct that would 'encourage' or 'promote'. As a result of these definitions, a broad range of indirect conduct may potentially be captured under the new offences, including the display of material that indicates support for another act.

The Committee notes that an individual's personal rights and liberties may be unduly dependent on the broadly worded nature of the offences, as these offences all carry custodial penalties ranging from five to seven years' imprisonment, and, where the other person is a child, seven to ten years' imprisonment.

However, the Committee acknowledges that the proposed amendments are intended to protect children and other vulnerable persons by reducing the risk of them being influenced to carry out acts of violence. The Committee also notes that for the proposed offences to be made out, the prosecution must prove that a person intends for the other person to carry out, or assist in carrying out, violent extremism. For these reasons, the Committee makes no further comment.

4. Energy and Other Legislation Amendment (Renewable Energy Infrastructure) Bill 2026*

Date introduced	5 February 2026
House introduced	Legislative Assembly
Member with carriage	Mr James Griffin MP
	*Private member's bill

Purpose and description

4.1 The objects of the Bill are as follows:

- (a) to amend the *Electricity Infrastructure Investment Act 2020* to:
 - (i) make the efficient decommissioning of solar and wind energy infrastructure and the remediation of land on which the infrastructure was located objects of the Act
 - (ii) require the NSW renewable energy sector board to plan for how to achieve the objectives
- (b) to amend the *Protection of the Environment Operations Act 1997* to require:
 - (i) environment protection licences for solar electricity generating works
 - (ii) Ministerial consent for the transfer of a licence relating to solar or wind electricity generating works
- (c) to amend the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021* to impose conditions on development consents relating to solar and wind electricity generating works requiring:
 - (i) the decommissioning of the works and the remediation of the land on which the development is located
 - (ii) the giving of security to ensure compliance with decommissioning and remediation requirements.

Background

4.2 The Bill proposes to amend multiple Acts to provide for the management and regulation of renewable energy infrastructure, including the decommissioning and rehabilitation of solar and wind generation works.

4.3 During his second reading speech, Mr James Griffin MP referred to '... the ambiguity and lack of transparency about who is responsible for what and when at the end of the life of a renewable energy project.' He explained that the Bill would provide '... a sensible framework for the entire renewable energy project lifecycle.'

4.4 Mr Griffin further stated:

The bill ensures that planning for the end happens at the beginning, moving beyond a focus solely on construction to include mandatory decommissioning and remediation. It is a commonsense measure to ensure that New South Wales transitions to renewable energy without leaving a legacy of unfunded or abandoned infrastructure across rural and regional New South Wales.

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*.

5. Fair Trading and Building Legislation Amendment Bill 2026

Date introduced	4 February 2026
House introduced	Legislative Assembly
Member with carriage	The Hon Anoulack Chanthivong MP

Purpose and description

5.1 The object of this Bill is to make miscellaneous amendments to the following legislation:

- a) the *Building and Construction Industry Security of Payment Act 1999*
- b) the *Building and Development Certifiers Act 2018*
- c) the *Building Products (Safety) Act 2017*
- d) the *Charitable Fundraising Act 1991*
- e) the *Community Gaming Act 2018*
- f) the *Community Land Management Act 2021*
- g) the *Conveyancers Licensing Act 2003*
- h) the *Design and Building Practitioners Act 2020*
- i) the *Duties Act 1997*
- j) the *Fair Trading Act 1987*
- k) the *Home Building Act 1989*
- l) the *Motor Dealers and Repairers Act 2013*
- m) the *Paintball Act 2018*
- n) the *Pawnbrokers and Second-hand Dealers Act 1996*
- o) the *Property and Stock Agents Act 2002*
- p) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*
- q) the *Residential Tenancies Act 2010*

- r) the *Retirement Villages Act 1999*
- s) the *Strata Schemes Management Act 2015*
- t) the *Strata Schemes Legislation Amendment Act 2025*
- u) the *Swimming Pools Act 1992*
- v) the *Tow Truck Industry Act 1998*.

Background

- 5.2 The Bill seeks to amend various Acts to strengthen regulatory oversight, enhance consumer protections, reinforce legislation governing licensing and improve enforcement responses to non-compliance and misconduct within the fair trading and building sectors.
- 5.3 In his second reading speech, the Hon Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, explained:

Collectively, the amendments enhance consistency across licensing and regulatory schemes, improve clarity for consumers and industry participants, and strengthen the tools available to regulators in carrying out their statutory responsibilities. This is achieved through enhancing industry confidence through effective regulation of the building industry, strengthening consumer protection laws such as ensuring regulators can keep unsuitable industry players out of key industries, and making amendments that clarify the intent of the legislation or tighten language to ensure licensing frameworks are effective and fit for purpose.

Issues considered by the Committee

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

Broad information-sharing powers

- 5.4 Existing section 65 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the **Residential Apartment Buildings Act**) allows for the exchange of information that is 'reasonably necessary' for the purposes of enabling or assisting a 'relevant agency' to regulate or take other action in certain circumstances.
- 5.5 Schedule 16[2] would insert additional circumstances under which the Secretary may provide information to a relevant agency. These include:
- the administration of building legislation, or
 - the investigation of offences against the laws of the State, the Commonwealth, or another State or Territory
- 5.6 Subsection 65(7) of the Residential Apartment Buildings Act provides that a 'relevant agency' means any of the following:

- a government sector agency within the meaning of the *Government Sector Employment Act 2013*
- a local council
- other persons or bodies prescribed by the regulations.

5.7 Schedule 16[5] of the Bill would amend the definition of 'relevant agency' to include the following Commonwealth entities to which the information exchange provisions would apply:

- (i) the Australian Prudential Regulation Authority
- (ii) the Australian Securities and Investments Commission
- (iii) the Australian Taxation Office.

The Bill would amend the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the Residential Apartment Buildings Act) to expand the circumstances in which information obtained in the exercise of regulatory functions may be disclosed to a 'relevant agency'.

Schedule 16[2] of the Bill would allow for the exchange of information that is 'reasonably necessary' to a 'relevant agency' for the administration of building legislation, or the investigation of offences against the laws of the State, the Commonwealth, or another State or Territory. Under section 65(7), a 'relevant agency' may include government agencies or persons or bodies prescribed by the regulations. Schedule 16[5] of the Bill would extend the range of relevant agencies to the following Commonwealth entities: the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and the Australian Taxation Office.

The Committee acknowledges that information sharing between regulatory bodies may assist in the effective administration and enforcement of legislation, and may support compliance and consumer protection objectives. The Committee also notes that section 65 of the Residential Apartment Buildings Act limits the disclosure of information to circumstances where the disclosure is 'reasonably necessary' for the exercise of the functions under that Act.

However the test of what is 'reasonably necessary' involves a degree of judgment and subjectivity on the part of the Secretary. The Bill and existing provisions of the Residential Apartment Buildings Act do not prescribe objective criteria to guide the exercise of this assessment and do not specify the particular types of information that may be disclosed. Therefore, personal information or commercially sensitive information relating to individuals could be shared to entities outside of the State and to a non-exhaustive list of persons prescribed by regulations, dependent on the interpretation of the decision maker.

The Committee generally prefers that legislation clearly defines the scope of discretionary information-sharing powers, including specifying the classes of persons to whom information may be disclosed and the

circumstances in which disclosure is permitted. For this reason, the Committee refers the issue to Parliament for consideration.

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

Wide delegation of powers to unspecified persons

- 5.8 Schedule 21 of the Bill inserts a new provision into the *Swimming Pools Act 1992*. Proposed section 39 would allow the Secretary to delegate the exercise of a function of the Secretary under the Act to 'a person employed in the Department', or 'a person prescribed by the regulations'.

The Bill would permit the Secretary to delegate functions conferred on the Secretary to an employee of the Department or 'a person prescribed by the regulations'.

The Committee notes that the Bill would therefore permit statutory functions to be delegated to a class of persons that is not defined in the primary legislation and that may be defined and expanded by regulations. This may permit the exercise of public powers by private individuals who are not public officials or office holders.

The Committee acknowledges that allowing regulations to prescribe categories of persons to exercise the functions of the Secretary may provide flexibility. It also acknowledges that regulations are tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee generally prefers that the classes of persons who may exercise statutory functions are set out in primary legislation to ensure clarity, certainty and transparency, and to facilitate appropriate parliamentary oversight. For this reason, the Committee refers the issue to Parliament for consideration.

Commencement by proclamation

- 5.9 Clause 2 of the Bill provides that Schedules 2, 6[1] and [3], 16[2]–[5], 18[4] and [5], 19[7], 20 and 21 would commence on the date of assent to the Act, while all other provisions within the proposed Act would commence on a day or days to be appointed by proclamation.

The Bill provides that the proposed Act would commence on a day or days to be appointed by proclamation, with the exception of Schedules 2, 6[1] and [3], 16[2]–[5], 18[4] and [5], 19[7], 20 and 21.

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, such as to establish administrative procedures necessary to implement the amended provisions. The Committee also notes that the provisions it has commented on in this report, which may impact on personal rights and liberties, would

commence on assent. For these reasons, the Committee makes no further comment.

6. Library Amendment Bill 2026

Date introduced	5 February 2026
House introduced	Legislative Council
Member with carriage	The Hon John Graham MLC

Purpose and description

- 6.1 The object of the Bill is to amend the *Library Act 1939* (the **Act**) as follows:
- (a) to provide that a local library is free to collect and make available library material
 - (b) to enable the governing body of a library to make rules about the use of the library and the library's services.

Background

- 6.2 The Bill proposes to modify the service requirements for libraries, under the Act, to clarify that NSW local libraries are free to collect any library material. It would also amend the Act to allow for the making of rules relating to the use of a library.

- 6.3 During his second reading speech, the Hon John Graham MLC, Minister for the Arts, stated:

This bill seeks to protect the ability of public libraries to freely develop their collections. This bill is about the freedom to read and the freedom of choice for our libraries and book lovers. We want to make sure we do not go down the path of US-style book bans ...

- 6.4 In explaining the rationale for the amendments, the Minister further stated:

After a single councillor at Cumberland City Council in 2024 attempted to ban a book about same-sex marriage from the local library, I was alerted to the vulnerability in our existing framework—that the principle of freedom to collect and freedom to read was only in the guidelines accompanying the legislation and not protected in the law itself.

...

The bill is designed to elevate this principle to the level of legislative force and enshrine it for the long term. It is a straightforward change that moves an existing principle from guidelines to legislation.

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. Local Government and Other Legislation Amendment (Places of Public Worship) Bill 2026

Date introduced	3 February 2026
House introduced	Legislative Assembly
Member with carriage	The Hon Ron Hoenig MP

Purpose and description

7.1 The objects of this Bill are:

- (a) to amend the *Local Government Act 1993* to increase the maximum penalty for a failure to comply with certain orders given under that Act, section 124
- (b) to amend the Environmental Planning and Assessment Regulation 2021 to:
 - (i) prescribe places of public worship as development that may be subject to a utilities order under the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**), Schedule 5, clause 35(1)(b)
 - (ii) increase the amount payable for a penalty notice issued for failing to comply with certain orders given under the EP&A Act.

Background

7.2 The Bill proposes amendments to the *Local Government Act 1993* and the Environmental Planning and Assessment Regulation 2021 to expand the existing powers of local councils to regulate and manage unauthorised places of worship.

7.3 During his second reading speech, the Hon Ron Hoenig MP, Minister for Local Government, stated that the Bill introduces reforms to enhance community safety following the terror attack that occurred at Bondi Beach on 14 December 2025:

... in order to prevent further acts of terrorism and hate, action must be taken to prevent individuals preaching hate in unauthorised, unlawful places of worship across the State. This important measure is tailored specifically to improve the ability of local councils to respond. It builds on councils' existing powers and responsibilities to regulate and manage unauthorised religious premises, particularly those that incite hate.

7.4 The Minister explained that the Bill would:

- enable local councils to apply to the Land and Environment Court for orders directing utility providers of water, gas and electricity to cut off services to premises being used as places of public worship, where they have failed to comply with a 'stop use' order

- increase the maximum penalty for a failure to comply with a stop use order issued under the EP&A Act from a \$3,000 fine to a \$6,000 fine for individuals, and from a \$6,000 fine to a \$12,000 fine for corporations
- increase the maximum penalty for a person's failure to comply with certain public safety orders issued under the *Local Government Act 1993* from a \$11,000 fine to a \$110,000 fine for individuals, and from a \$22,000 fine to a \$220,000 fine for corporations.

7.5 Although the maximum penalties are significant, the Minister noted that 'Important safeguards are already built into the planning Act to ensure that the rules of procedural fairness are observed ... ' when making utilities orders. For example:

- a council must provide at least seven days' notice of a proposed application for a utilities order
- an owner or occupier of a premises, or a utilities provider who is affected by an application for a utilities order, is entitled to be heard and represented in proceedings
- the Land and Environment Court is required to consider a range of matters in determining whether to make a utilities order, including the impact of the order and the uses of the premises.

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. Parliamentary Evidence Amendment (Attendance of Witnesses) Bill 2026*

Date introduced	4 February 2026
House introduced	Legislative Council
Member with carriage	The Hon Damien Tudehope MLC
	*Private member's bill

Purpose and description

- 8.1 The object of the Bill is to amend the *Parliamentary Evidence Act 1901* (the **Act**) in relation to the summoning of witnesses to attend before the Houses of Parliament or a committee of Parliament for examination.
- 8.2 The Bill was introduced in response to the decision of the Court of Appeal in *Cullen v President of the Legislative Council of New South Wales [2025] NSWCA 278 (Cullen)*, which declared the Act, sections 7 – 9 invalid.

Background

- 8.3 The Bill would give the President of the Legislative Council and Speaker of the Legislative Assembly the power to issue a warrant to compel a person to give evidence in Parliament, where that person has been summoned and has failed to attend and give evidence as required.
- 8.4 Historically, a warrant could only be issued by the NSW Supreme Court after the President or Speaker had certified the witness's non-attendance without just cause or reasonable excuse, under sections 7 – 9 of the Act.
- 8.5 On 23 December 2025, the Court of Appeal declared these provisions invalid in *Cullen*, noting:

The lending of the authority of the Court, or of a judge of the Court, to what in substance is the original and subsequent decisions of the President for the indefinite detention of a person, is antithetical to the Court's essential attributes of impartiality and independence which the *Kable* doctrine is directed to securing.

- 8.6 In his second reading speech, the Hon Damien Tudehope MLC explained the rationale for empowering a Presiding Officer to issue a warrant to compel attendance:

With the provisions of the Parliamentary Evidence Act relating to powers of arrest being declared invalid, we are left with no option but to rewrite the Act in accordance with the ruling of the court. The form of the bill is simple: removing the need for a judge and vesting those powers directly in the President or the Speaker.

- 8.7 The Committee acknowledges that, by removing the role of the Court, the amendments proposed by the Bill are intended to resolve the issues raised in *Cullen* and, therefore, to preserve Parliament's ability to compel the attendance of witnesses. However, the Committee notes that the Court of Appeal's decision in *Cullen* may still be subject to an appeal.
- 8.8 The Committee understands that the proposed amendments would adopt a similar model to that under the *Parliamentary Privilege Act 1858 (Tas)*. Unlike other jurisdictions, the Tasmanian model allows the Sheriff's Office and Police to assist in executing a warrant, issued by the President or Speaker, to compel the attendance of witnesses before Parliament.

Issues considered by the Committee

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

Power to compel the attendance of witnesses – right to liberty and freedom from arbitrary detention

- 8.9 Proposed section 7 of the Bill would allow the President or Speaker to issue a warrant for the apprehension of a person who has failed to attend and give evidence before the Parliament.
- 8.10 This section applies if a person is summoned to attend and give evidence before the Legislative Council, Legislative Assembly, or a committee, as per subsection 7(1).
- 8.11 The President or Speaker must not issue the warrant unless they are satisfied that the person named has failed to attend to give evidence 'without just cause or reasonable excuse', as stated in proposed subsection 7(3).
- 8.12 Proposed subsection 8(1) provides that a warrant issued under section 7 is sufficient authority for all persons acting under the warrant to apprehend the person and keep them in custody, so that the person may be:
- produced, from time to time, for the purpose of giving evidence, or
 - remanded, and finally discharged from custody, as the case requires.

The Bill would amend the *Parliamentary Evidence Act 1901* by inserting a new section 7, which would allow the President of the Legislative Council or Speaker of the Legislative Assembly to directly issue a warrant for the arrest of a person who has failed to appear to give evidence before the Parliament. Proposed subsection 8(1) would authorise the apprehension and detention of a person named in a section 7 warrant, so that they may be 'produced, from time to time' to give evidence or remanded until they are discharged from custody by the President or Speaker.

In doing so, the Bill would allow the President or Speaker to arrest and detain people for the purposes of giving evidence before the Legislative Council, Legislative Assembly, or a committee. This may impact an individual's right to liberty and freedom from arbitrary detention, as contained in Article 9 of the International Covenant on Civil and Political

Rights.¹ The Committee notes that there do not appear to be any provisions limiting the amount of time a person may be detained for, or the specific purpose for which they may be detained. This would vest broad coercive powers in the Presiding Officers to apprehend and detain a person indefinitely for the purposes of 'giving evidence'. For these reasons, the Committee refers the issue to Parliament for consideration.

Lack of procedural fairness

- 8.13 Prior to the decision in *Cullen*, as noted above, sections 7 – 9 of the Act required the President or Speaker to certify the non-attendance of a witness to a Judge of the Supreme Court. The Judge was then required to issue a warrant for the apprehension of the person for the purpose of bringing them before Parliament to give evidence. These provisions were declared invalid by the Court of Appeal in *Cullen*.
- 8.14 The new proposed section 7 would remove the role of the Judge and allow the President or Speaker to directly issue a warrant for the apprehension of a person who has failed to attend and give evidence.
- 8.15 The President or Speaker must not issue the warrant unless they are satisfied that the person named has failed to attend to give evidence 'without just cause or reasonable excuse', as outlined in proposed subsection 7(3).
- 8.16 Proposed subsection 8(1) provides that a warrant issued under section 7 is sufficient authority for all persons acting under the warrant to apprehend the person, and keep them in custody, so that the person may be:
- produced, from time to time, for the purpose of giving evidence, or
 - remanded, and finally discharged from custody, as the case requires.

The Bill seeks to address the issues resolved in *Cullen v President of the Legislative Council of New South Wales*² by allowing the President or Speaker of the Legislative Assembly to directly issue a warrant for the arrest of a person who has failed to appear to give evidence before the Parliament. There is no apparent process for any prior judicial oversight in the issuing of a warrant, which may therefore impact on an individual's right to procedural fairness.

The Committee notes that the Bill would not allow a person to contest the issuing of the warrant on the basis that the President or Speaker has the facts wrong, or is acting in bad faith. There is also no requirement for the warrant to be executed in a particular way or for the period of detention to be limited, for example, to the period necessary for the giving of evidence. The Committee notes that none of the usual restrictions upon the exercise of powers of arrest and detention are available, and that there is nothing to require the proportionate use of these powers. For

¹ United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966.

² [Cullen v President of the Legislative Council of New South Wales \[2025\] NSWCA 278](#).

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

Power of the legislature to issue warrants executable by Police – separation of powers

- 8.17 Schedule 1 sets out the proposed form of a warrant, which would require 'the [*Usher of the Black Rod/Serjeant-at-Arms, as the case requires*], the Commissioner of Police and all police officers' to execute the warrant.
- 8.18 Proposed section 8 clarifies that a warrant issued by the President or Speaker is 'sufficient authority for all persons acting under the warrant'.

The form of a warrant, as set out in Schedule 1 of the Bill, would allow the President or Speaker to issue a warrant to be executed by the Usher of the Black Rod or Serjeant-at-Arms, as the case requires, or by the Commissioner of Police and all police officers. The Committee notes that the issuing of a warrant is ordinarily a judicial function and that the Bill would vest this function within the legislature. In doing so, the Bill may infringe on the Constitutional doctrine of the separation of powers.

The prescribed form of the warrant would also require Presiding Officers of the Parliament to exercise power over officers of another arm of government. The Committee notes that this is not dissimilar from the *Parliamentary Privilege Act 1858 (Tas)*, which requires the Sheriff, their officers, and all other constables to assist in the execution of a warrant issued by the President or Speaker, and in the apprehension and detention of a witness.³ Nevertheless, the Committee remains concerned that this model would be contrary to the fundamental principle of the separation of powers, which was a central to the Court of Appeal's decision in *Cullen*. For this reason, the Committee refers the issue to Parliament for consideration.

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

Insufficiently defined powers – 'purported exercise or discharge' of functions

- 8.19 Proposed section 8(3) of the Bill states that an individual does not incur civil or criminal liability for an act or omission done 'in good faith in the exercise or discharge, or purported exercise or discharge' of a function relating to the warrant.
- 8.20 The Macquarie Dictionary defines the word 'purport' as:

(verb) 1. to profess or claim...

2. to convey to the mind as the meaning or thing intended; express, imply...

(noun) 3. tenor, import, or meaning.

³ [Parliamentary Privilege Act 1858 \(Tas\)](#), s 8.

4. purpose or object.

The Bill would protect the Usher of the Black Rod, the Serjeant-at-Arms and police officers from incurring civil or criminal liability for any act or omission when carrying out warrants, if the relevant act or omission was a good faith exercise or discharge or 'purported exercise or discharge' of their duties under the warrant. This may impact an individual's ability to legally challenge acts or omissions made under a warrant for their arrest.

The Committee acknowledges that it is not uncommon for particular functions of government to limit their liability for acts or omissions made in the exercise of that role. However, in this instance, there do not appear to be any provisions defining or narrowing the ordinary meaning of 'purported exercise or discharge'. This may further impact an individual's right to procedural fairness, as it is not clear whether unlawful or inappropriate exercises of power under the warrant are excluded under law. For this reason, the Committee refers the issue to Parliament for consideration.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Lack of mechanism to challenge a decision to issue a warrant

8.21 Proposed subsection 7(3) provides that the President or Speaker must not issue a warrant under section 7 unless they are satisfied that the person named has failed to attend to give evidence 'without just cause or reasonable excuse'.

As discussed above, the Bill would authorise the detention of a person subject to a warrant issued by the President or Speaker for a potentially indefinite period. Proposed subsection 7(3) provides that the President or Speaker must not issue a warrant under section 7 unless they are satisfied that the person failed to give evidence 'without just cause or reasonable excuse'. However, there do not appear to be any provisions allowing for an independent assessment prior to the arrest being made, or any mechanism for review following a person's detention.

The Committee notes that, while there are no provisions in the Bill to explicitly exclude an application for *habeas corpus* (a remedy for unlawful detention), that judicial remedy would only allow a court to test the legality of the detention authorised by the warrant, and order a person's release where the detention is unlawful. It would not entail a review of the merits of the decision to compel a person's attendance. The Committee notes that an individual's right to liberty and freedom from arbitrary detention would therefore be made unduly dependent upon a non-reviewable decision. For this reason, the Committee refers the issue to Parliament for consideration.

9. Prevention of Antisemitism Bill 2026*

Date introduced	4 February 2026
House introduced	Legislative Council
Member with carriage	The Hon Damien Tudehope MLC
	*Private member's bill

Purpose and description

9.1 The object of the Bill is as follows:

- (a) to adopt and apply the International Holocaust Remembrance Alliance (the **IHRA**) definition of antisemitism for public and university purposes in New South Wales
- (b) to amend certain Acts in relation to the prevention of antisemitism.

Background

9.2 The Bill would require all public authorities and universities in NSW to adopt the IHRA definition of antisemitism and IHRA antisemitism examples when dealing with the issue of racism.

9.3 The Bill also proposes amendments to three key pieces of legislation to prevent antisemitic conduct in NSW. It would:

- amend the *Crimes Act 1900* (the **Crimes Act**) to require courts to have regard to the IHRA definition of antisemitism and the IHRA antisemitism examples when dealing with prohibited public conduct on the grounds of race
- amend the *Government Sector Finance Act 2018* and the *Public Works and Procurement Act 1912* to restrict the approval of grants and procurement of goods and services from persons or bodies that have engaged in, or are reasonably suspected of being likely to engage in, antisemitic activities.

9.4 In his second reading speech, the Hon Damien Tudehope MLC explained:

The International Holocaust Remembrance Alliance, the IHRA, is an alliance of 35 member countries, including Australia, which is dedicated to remembering the Holocaust and ensuring that never again is there such a resurgence of antisemitism. As a vital part of its work, the IHRA has put forward a definition of antisemitism, along with a set of illustrative examples, which is aimed at helping identify antisemitism in its contemporary disguises.

9.5 The IHRA definition of antisemitism, adopted by the IHRA on 26 May 2016, is set out in the Bill as follows:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

- 9.6 The IHRA antisemitism examples are the examples given with the IHRA definition of antisemitism at the time it was adopted on 26 May 2016.
- 9.7 In his second reading speech, Mr Tudehope explained that the Bill seeks to give effect to the Special Envoy's Plan to Combat Antisemitism, released in July 2025. The Plan calls for state governments '... to require the IHRA working definition of antisemitism to be used across all levels of government and public institutions to inform their practical understanding of antisemitism.'

Issues considered by the Committee

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

Broad definition of antisemitism impacting the implied freedom of political communication

- 9.8 Proposed section 4 of the Bill provides that the IHRA definition of antisemitism is the definition of antisemitism adopted on 26 May 2016, and the IHRA antisemitism examples are '... the examples given with the IHRA definition of antisemitism at the time it was adopted ...'.
- 9.9 The IHRA definition provides:
- Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.
- 9.10 The 'contemporary examples' given with the definition include, but are not limited to:
- denying the Jewish people their right to self-determination, for example, by claiming that the existence of a State of Israel is a racist endeavour
 - applying double standards by requiring of Israel a behaviour not expected or demanded of any other democratic nation
 - drawing comparisons of contemporary Israeli policy to that of the Nazis.
- 9.11 Proposed section 5 of the Bill would require each public authority to adopt the IHRA definition and examples when 'dealing with the issue of racism'. Similarly, proposed section 6 would require universities to adopt the IHRA definition (or the definition adopted by Universities Australia) and apply the IHRA examples.
- 9.12 Schedule 1[1] of the Bill would also amend the offence provisions under sections 93Z and 93ZAA of the Crimes Act, in relation to publicly threatening or inciting racial violence, or publicly inciting racial hatred.

- 9.13 Proposed subsections 93Z(2A) and 93ZAA(3) would require the courts to have regard to the IHRA definition of antisemitism and the IHRA antisemitism examples when determining whether an offence has been committed against Jewish persons or groups under sections 93Z and 93ZAA. The maximum penalty for these offences is an \$11,000 fine (100 penalty units), up to three years' or two years' imprisonment, respectively, or both, for an individual.

The Bill would require public authorities to adopt the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, and the examples provided with that definition, when dealing with the issue of racism. The IHRA defines antisemitism as '... a certain perception of Jews, which may be expressed as hatred towards Jews.' The IHRA 'contemporary examples' include, but are not limited to, denying the Jewish people their right to self-determination '...by claiming that the State of Israel is a racist endeavour.'⁴ This broad definition and the associated examples risk conflating antisemitism with legitimate criticism of the State of Israel and may be used to suppress claims that Israel is breaching international law.

The Bill would also attach potential disciplinary and/or criminal consequences to this broad definition. For example, public authorities and universities would be required to adopt, use and apply the IHRA definition and examples in their codes of conduct and/or when dealing with racism. Courts would also be required to have regard to the IHRA definition and examples in determining whether an offence has been committed under sections 93Z and 93ZAA of the *Crimes Act 1900*. The offences of publicly threatening or inciting violence on the grounds of race, or publicly inciting hatred on the grounds of race, carry significant maximum penalties of up to three years' imprisonment, an \$11,000 fine, or both, for an individual.

The combined effect of the proposed amendments may have a chilling effect on legitimate criticism of Israel. In doing so, the Bill may infringe on the implied freedom of political communication under the Australian Constitution. The Committee generally comments on laws that could have the effect of burdening the implied freedom of political communication. The Committee notes that the implied freedom of political communication can only be validly restricted where there is a legitimate purpose, and where the restriction is reasonably appropriate and adapted to achieving that purpose.

The Committee acknowledges that the Bill may be intended to address significant concerns about rising antisemitism, and to protect individuals and communities from conduct that incites hatred, intimidation or violence. However, by attaching severe penalties to a very broad definition of antisemitism, the Bill may effectively suppress legitimate criticism of the State of Israel and potential violations of international law. For these reasons, the Committee refers the issue to Parliament for consideration.

⁴⁴ International Holocaust Remembrance Alliance, [IHRA non-legally binding working definition of antisemitism](#), 26 May 2016, p 2.

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

Wide regulation-making powers

- 9.14 The Bill seeks to create regulation-making powers under proposed section 7. This power includes a general regulation-making power that would allow the Governor to make regulations about anything required or permitted to be prescribed by the Bill, or 'necessary or convenient' to be prescribed for carrying out or giving effect to the Act.

The Bill would create a general regulation-making power, under proposed section 7, to prescribe anything 'necessary or convenient' for carrying out or giving effect to the proposed Act. The Committee notes that there does not appear to be any provisions which define or narrow the ordinary meaning of 'convenient' or 'necessary'.

The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament. The Parliament also does not control when they commence.

The Committee recognises that a wide regulation-making power may allow for more flexible regulatory responses. It also acknowledges that any regulations would still need to be tabled in Parliament and would, therefore, be subject to disallowance under section 41 of the *Interpretation Act 1987*. However, in this case, the proposed regulation-making power would effectively allow regulations to prescribe matters potentially impacting on individual rights and liberties, with little limit. For these reasons, the Committee refers the matter to Parliament for consideration.

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

Incorporation of external documents not subject to disallowance

- 9.15 As discussed above, proposed section 4 provides that the IHRA definition of antisemitism is the definition of antisemitism adopted on 26 May 2016, and the IHRA antisemitism examples are '... the examples given with the IHRA definition of antisemitism at the time it was adopted ...'.
- 9.16 The text of the IHRA definition is included in proposed section 4, but the examples are incorporated by reference only.
- 9.17 Proposed section 5 of the Bill would require each public authority to adopt the IHRA definition and examples when 'dealing with the issue of racism'. Similarly, proposed section 6 would require universities to adopt the IHRA definition (or the definition adopted by Universities Australia) and apply the IHRA examples.
- 9.18 Proposed subsections 93Z(2A) and 93ZAA(3) would require the courts to have regard to the IHRA definition of antisemitism and the IHRA antisemitism examples when determining whether an offence has been committed against Jewish persons or groups under sections 93Z and 93ZAA.

Proposed section 4 would incorporate the IHRA antisemitism examples given with the IHRA definition that was adopted on 26 May 2016. While the IHRA definition is stated in the text of the provision, the IHRA examples are incorporated by reference to an external document only.

The Committee understands that incorporation of external materials may provide greater flexibility and allow updates to reflect changing societal views on conduct that may incite hatred and violence. However, the Committee generally comments on legislative provisions that permit substantive matters to be determined by external instruments that are not subject to parliamentary scrutiny. The Committee prefers that substantive matters are set out in legislation where they can be subjected to a greater level of parliamentary scrutiny, particularly where they affect individual rights and liberties. In this case, the Committee notes that the adoption of the IHRA examples of antisemitism may give rise to significant disciplinary and/or criminal consequences. For this reason, the Committee refers the matter to Parliament for consideration.

Part Two – Regulations with comment

1. Marine Safety Amendment Regulation 2025

Date tabled	LA: 18 November 2025 LC: 18 November 2025
Disallowance date	LA: 24 March 2026 LC: 18 March 2026
Minister responsible	The Hon Jenny Aitchison MP

Purpose and description

- 1.1 The object of the Regulation is to amend the Marine Safety Regulation 2016 consequent on the commencement of the *Marine Safety Amendment Act 2025* to:
 - 1.2 require the marking and lighting of hazards that are in or over navigable waters
 - 1.3 provide for marine safety licences, including the suspension and cancellation of licences
 - 1.4 clarify the form of certain directions
 - 1.5 provide for the disposal of unsafe vessels
 - 1.6 prescribe fees
 - 1.7 prescribe certain offences as penalty notice offences
 - (a) update terminology and cross-references.
- 1.8 The Regulation also makes a consequential amendment to the Ports and Maritime Administration Regulation 2021.

Issues considered by the Committee

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

Privilege against self-incrimination

- 1.9 Clause 55H of the Regulation sets out requirements in relation to the mandatory marking and lighting of hazards that are in or over navigable waters.
- 1.10 Subclause 55H(1) requires the owner of a hazard to ensure that the hazard is marked and lit so it does not cause a danger to the safe navigation of vessels. Failure to do so carries a maximum penalty of a \$5,500 fine (50 penalty units).

- 1.11 Subclause 55H(2) empowers Transport for NSW or the Port Authority of NSW (a **regulator**) to give the owner of a hazard a written direction to:
- mark or light the hazard in the time and manner specified in the direction
 - keep the marking or lighting in good condition.
- 1.12 Subclause 55H(4) requires that a person who is given a direction must comply with the direction.
- 1.13 Subclause 55H(5) provides that a person who is given a direction must notify the regulator as soon as the person becomes aware of a defect in relation to the marking or lighting of the hazard. A failure to report carries a maximum penalty of a \$5,500 fine (50 penalty units).

Clause 55H of the Regulation sets out requirements, and associated offences, in relation to the mandatory marking and lighting of hazards that are in or over navigable waters. Specifically, subclause 55H(1) requires the owner of a hazard to ensure that it is marked and well lit. Subclause 55H(4) requires a person to comply with a direction given by Transport for NSW or the Port Authority of NSW (a regulator) to keep the marking or lighting in good condition. Non-compliance with these requirements carries a maximum penalty of a \$5,500 fine (50 penalty units).

However, subclause 55H(5) requires a person to notify a regulator as soon as they become aware of a defect in relation to the marking or lighting of the hazard. Failure to do so is also an offence under the Regulation. The requirement to report a defect may therefore create an obligation for a person to report a potential offence under subclause 55H(1) and/or 55H(4), or be subject to an offence under subclause 55H(5).

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.

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. [Public Health \(Tobacco\) Amendment \(Miscellaneous\) Regulation 2025](#)

The object of the Regulation is to amend the Public Health (Tobacco) Regulation 2022 to support the amendments made to the *Public Health (Tobacco) Act 2008* (the **Act**) by the *Tobacco Legislation (Closure Orders) Amendment Act 2025*, including in relation to the following:

- (a) prescribed quantities of tobacco products
- (b) prescribed positions for the definition of relevant person in the Act
- (c) for licences – grounds for refusal of applications, refund of application fees and standard conditions
- (d) seizure and disposal of illicit goods
- (e) the procedure for internal review of decisions about licences and licence applications.

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

2. [Children's Court Act 1987 – Practice Note 19 – Support Plan Conference Pilot](#)

The Practice Note makes provision for the conduct of a pilot program for alternative dispute resolution in the Children's Court . The program operates at the Surry Hills Children's Court and applies to applications for care orders.

Alternative Dispute Resolution Conferences, known as the Support Plan Conferences, are overseen by a Children's Registrar.

The Support Plan Conferences aim to assist parties to reach agreement on the:

- (a) specific risks and safety concerns for a child
- (b) actions a parent or carer can take to reduce the risk and safety concerns for a child
- (c) support that will be provided to the parent or carer to address the risk and safety concerns
- (d) persons or agencies that will fund or provide programs or services
- (e) level of engagement or achievement by a parent or carer that would demonstrate a reduction in risk
- (f) most appropriate short-term or proposed long-term placement for a child
- (g) contact arrangements between a child, their parents and others during court proceedings
- (h) cultural planning.

The Practice Note commenced on 2 May 2024 and was last amended on 31 October 2025. It is made under section 23A of the *Children's Court Act 1987* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

3. [Court Security Amendment \(Personal Injury Commission\) Regulation 2025](#)

The object of the Regulation is to prescribe the Personal Injury Commission as a court for the *Court Security Act 2005*.

The Regulation is made under the *Court Security Act 2005* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

4. [National Electricity \(New South Wales\) Amendment \(Orderly Exit Management Framework Opt-in\) Regulation 2025](#)

The objects of the Regulation are:

- (a) to apply the National Electricity Law, Part 8AA, which establishes the orderly exit management framework (the **OEMF**) as a law of New South Wales
- (b) as part of the OEMF, to provide that the Minister must appoint as the financial vehicle the person or body the Minister is satisfied is appropriate to undertake the functions of the financial vehicle.

The Regulation is made under the *National Electricity (New South Wales) Act 1997*, section 8A, and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Passenger Transport \(General\) Amendment \(Urinary Drug Testing\) Regulation 2025](#)

The object of the Regulation is to update references to the Australian and New Zealand Standard for urinary drug testing.

The Regulation is made under the *Passenger Transport Act 1990* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

6. [Poisons and Therapeutic Goods Amendment \(Fees\) Regulation 2025](#)

The object of the Regulation is to amend the Poisons and Therapeutic Goods Regulation 2008 to increase application and licence fees in line with changes in the Consumer Price Index.

The Regulation is made under the *Poisons and Therapeutic Goods Act 1966* does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

7. [Children \(Education and Care Services\) NSW Regulation 2025](#)

The Regulation amends the application of the Education and Care Services National Regulations in NSW with the modifications set out in Schedule 1 of the Regulation. The key amendments include:

- amending definitions
- modifying penalties for offences

- modifying requirements of educators that work with children
- modifying requirements for compliance and enforcement information.

The Regulation is made under the *Children (Education and Care Services National Law Application) Act 2010* and commences on the day on which Schedule 1[10] of the *Children (Education and Care Services National Law Application) Amendment Act 2025* commences.

The Regulation does not appear to engage with any of 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. 42

TIME & DATE: 3:01PM, 9 FEBRUARY 2026 **LOCATION: ROOM 1136 AND VIA VIDEOCONFERENCE**

MEMBERS PRESENT

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

APOLOGIES

Ms Munro.

OFFICERS PRESENT

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

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 2 February 2026 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 41/58

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

- a) Constitution Amendment (Parliamentary Cooling-Off Period) Bill 2026; Constitution (Parliamentary Cooling-Off Period – Referendum) Bill 2026
- b) Crimes (Sentencing Procedure) Amendment (Good Character at Sentencing) Bill 2026
- c) Crimes Amendment (Countering Violent Extremism) Bill 2026
- d) Fair Trading and Building Legislation Amendment Bill 2026
- e) Prevention of Antisemitism Bill 2026.

Resolved, on the motion of Mr Murphy:

That the following words be omitted from the conclusion on page 47, after paragraph 8.16:

'This would remove any prior judicial oversight in the issuing of a warrant, however superficial, and may therefore impact on an individual's right to procedural fairness.'

That the following words be inserted in their place:

'There is no apparent process for any prior judicial oversight in the issuing of a warrant, which may therefore impact on an individual's right to procedural fairness.'

That the Committee adopts the following draft bill report, as amended:

- a) Parliamentary Evidence Amendment (Attendance of Witnesses) Bill 2026.

4. Consideration of bills without comment for Legislation Review Digest 41/58

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

- a) Energy and Other Legislation Amendment (Renewable Energy Infrastructure) Bill 2026
- b) Library Amendment Bill 2026
- c) Local Government and Other Legislation Amendment (Places of Public Worship) Bill 2026.

5. Consideration of regulations with comment for Legislation Review Digest 41/58

Resolved, on the motion of Ms Davis: That the Committee adopts the following draft report with comment:

- a) Marine Safety Amendment Regulation 2025.

6. Consideration of regulations without comment for Legislation Review Digest 41/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Part Three to Digest No. 41/58.

7. Legislation Review Digest 41/58

Resolved, on the motion of Mr Murphy:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 41/58, as amended, and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

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

9. Next Meeting

The meeting adjourned at 3:06pm until Monday 16 March 2026.