

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. Crimes Amendment (Breaking and Entering Offences) Bill 2026

Issue identified	Conclusion of Committee
Removal of defence to serious criminal offences	No further comment
Commencement by proclamation	No further comment

2. Emergency Services Legislation Amendment Bill 2026

Issue identified	Conclusion of Committee
Procedural fairness - removal of native title service provider from Bush Fire Co-Ordinating Committee	Referred
Removal of procedural protections – acquisition of land for authorised works	Referred

3. Environmental Legislation Amendment (Plastic Reduction and Container Recycling) Bill 2026

Issue identified	Conclusion of Committee
Disclosure of information exemptions impacting privacy rights	Referred
Strict liability offences and continuing offences	Referred
Wide power of delegation	Referred
Henry VIII clauses	No further comment

4. Health Services Amendment (Right to Primary Health Care) Bill 2026*

No issues identified

5. Motor Vehicles Taxation Amendment (Rural Vehicles) Bill 2026*

No issues identified

6. Road Transport Amendment (Non-registrable Motor Vehicles) Bill 2026

Issue identified	Conclusion of Committee
Power to seize and impound impacting property rights	Referred
Procedural fairness and reverse onus of proof for return of seized and surrendered motor vehicles	Referred
Exclusion of liability impacting an individual's right to procedural fairness	Referred
Penalty notices issued to minors	Referred
Substantive matters deferred to regulations	Referred
Commencement by proclamation	Referred
Power of Minister to amend the Tweed River Entrance Sand Bypassing Act by written order	Referred

Summary of Conclusions

PART ONE – BILLS

1. Crimes Amendment (Breaking and Entering Offences) Bill 2026

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

Removal of defence to serious criminal offences

The Bill would insert section 115AA into the *Crimes Act 1900*, which would allow a court to find a person guilty of a 'break and enter' offence, regardless of that person's legal or equitable interest in a premises. A legal interest in a property, such as a leasehold interest, ordinarily provides a lawful excuse for entry and means that a person cannot be guilty of 'breaking in' to the premises. The Bill would effectively override this and remove a defence to a serious criminal offence that would otherwise be available to an accused person. This may expose them to criminal liability for break and enter offences with significant custodial penalties.

However, the Committee notes that the provision is targeted at, and limited to, circumstances where the accused person is no longer occupying the property and where they have committed a personal violence offence against their current or former intimate partner. The Committee also acknowledges that the Bill is intended to protect victims of domestic violence and address a gap in the criminal law, by ensuring that legal proprietary interests aren't used to shield serious criminal offending. For these reasons, the Committee makes no further comment.

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

Commencement by proclamation

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

However the Committee acknowledges that there may be practical reasons for allowing a flexible start date. The unique nature of the proposed reform may mean that additional time will be required to enable justice agencies to make the necessary systems changes, and to develop and deliver training and education prior to the Bill's commencement. For these reasons the Committee makes no further comment.

2. Emergency Services Legislation Amendment Bill 2026

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

Procedural fairness - removal of native title service provider from Bush Fire Co-ordinating Committee

The Bill would amend section 47(1)(o) of the *Rural Fires Act 1997* to remove NTSCorp Ltd, the native title service provider for NSW and the ACT, from a list of permanent members of the Bush Fire Co-ordinating Committee (the BFCC). NTSCorp's nominee would be replaced by a person appointed by the Minister for Emergency Services on the recommendation of the Minister for

Aboriginal Affairs and Treaty. This may undermine current and prospective native title holders' rights to procedural fairness by removing their representation on the BFCC.

The Committee acknowledges the Minister for Emergency Services' comments that NTSCorp has not nominated a representative to attend the BFCC since 2020. However, it is not clear to the Committee if NTSCorp are aware of, or consent to, the proposed change. Further, the person nominated on the recommendation of the Minister for Aboriginal Affairs and Treaty is not required to have any specialised knowledge or experience in native title advocacy. For these reasons, 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

Removal of procedural protections – acquisition of land for authorised works

The Bill would amend section 79 of the *Fire and Rescue Act 1989* (the Fire and Rescue Act) to classify fire brigade premises as 'authorised works' under section 39 of the *Public Works and Procurement Act 1912* (the Public Works Act), for the purposes of acquiring land. The 'authorised works' pathway under section 39 is usually a stricter pathway for land acquisition than the pathway under section 40 for 'public purposes other than authorised works', as authorised works are subject to the requirements under Part 3 of the Public Works Act.

However, proposed section 79(4) would specifically exempt works constructed under the Fire and Rescue Act from needing to meet the requirements under Part 3 of the Public Works Act. The Bill may therefore grant a wide and insufficiently defined power to the Minister to acquire land by agreement or compulsorily, without the safeguards set out in Part 3 of the Public Works Act. The power to compulsorily acquire land may impact on an individual's property rights, and the exemption of such acquisitions from the usual procedural requirements may impact affected individuals' rights to procedural fairness.

The Committee acknowledges the Minister for Emergency Services' comments that the Bill seeks to ensure the Minister has the 'standard ministerial land acquisition powers' for fire brigade premises by classifying them as 'authorised works'. However, the Minister already has land acquisition powers under section 40 of the Public Works Act. The amendments proposed by the Bill do not impact the Minister's power to acquire land, but rather, remove the usual procedural protections in relation to such acquisitions for authorised works. For these reasons, the Committee refers the matter to Parliament for consideration.

3. Environmental Legislation Amendment (Plastic Reduction and Container Recycling) Bill 2026

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

Disclosure of information exemptions impacting privacy rights

The Bill proposes to create exemptions from restrictions on the disclosure of information under the *Contaminated Land Management Act 1997* and the *Pesticides Act 1999*. Proposed sections 107 and 44, respectively, provide that a person can disclose information obtained in connection with the administration or execution of the relevant Act or regulations in a range of prescribed circumstances. Those circumstances are broad and include circumstances where the disclosure is made to another government agency, or where the Minister or regulations permit the disclosure. The Bill does not appear to limit the type of information that can be disclosed, as long as it is obtained '... in connection with the administration or execution of this Act or regulations ...'. The

Bill may therefore authorise the disclosure of personal information, which would impact on a person's right to privacy.

The Committee acknowledges that the information concerned must be obtained in connection with the administration or execution of the relevant Act or regulations, and that this information may be needed to support compliance and enforcement actions.

However, the Committee notes that the Bill would authorise the disclosure of information in a broad range of circumstances, and that the regulations may expand the circumstances under which disclosure is allowed, without clear limits or requirements for the de-identification of any personal information. The Committee further notes that the Bill does not include any specific protections to prevent the disclosure of personal information. The Bill may therefore permit disclosure of personal information in broad and undefined circumstances. For these reasons, the Committee refers the issue to Parliament for consideration.

Strict liability offences and continuing offences

The Bill seeks to amend the *Plastic Reduction and Circular Economy Act 2021* to create new offences, including continuing offences for each day the offence continues. For example, the Bill proposes to insert section 35A to make it an offence for a person to fail to prepare, keep and make a prescribed record available for inspection. The offence is subject to a maximum penalty of a \$110,000 fine (1,000 penalty units) for an individual and a \$440,000 fine (4,000 penalty units) for a corporation, with additional penalties for each day the offence continues. The Bill also proposes to insert similar continuing offences under sections 35B, 35C, 37 and 61A.

The Bill would therefore introduce strict liability offences with continuing penalties. The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. This is exacerbated by the additional penalties that apply each day that the offence continues, without fault being proven.

The Committee acknowledges that strict liability offences are common in environmental regulatory frameworks to encourage compliance, and that, in this case, compliance is necessary to ensure the effective operation of the waste management framework. However, as the offences carry significant monetary penalties and ongoing penalties for each day the offence continues, the Committee refers the issue to Parliament for consideration.

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

Wide power of delegation

The Bill proposes to insert a delegation power into the *Waste Avoidance and Resource Recovery Act 2001* to allow the Environment Protection Authority (EPA) to delegate one or more of its functions under the Act to a member of staff of the EPA or a person of a class prescribed by regulations.

The Bill would therefore provide for the wide delegation of statutory functions to a class of unknown persons. This may enable private individuals to be delegated functions under the Act that may be expected to be performed by public officials or authorities. The Committee generally prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation to provide clarity as well as greater oversight of those Executive and public functions.

The Committee acknowledges that the delegation of functions may assist the EPA to perform its functions with more flexibility. This could support the effective operation and administration of the

regulatory framework. However, as the delegation power is not limited to a specified group of persons and the class can be prescribed by regulations, the Committee refers the issue to Parliament for consideration.

Henry VIII clauses

The Bill proposes to replace section 61(9) of the *Plastic Reduction and Circular Economy Act 2021* to provide a power for the regulator to vary or revoke an exemption by a further notice. It also inserts section 68(3) to provide a regulation-making power to exempt a person, matter or thing from the operation of the Act or the regulations. The Bill further seeks to replace section 286 of the *Protection of the Environment Operations Act 1997* to provide a regulation-making power to exempt a person, matter or thing from the operation of that Act or regulations. Lastly, the Bill proposes to insert section 22A into the *Waste Avoidance and Resource Recovery Act 2001* to provide that regulations can determine the meaning of 'supply' and when a beverage in a container is taken or taken not to be a first supply in the State of the beverage.

These provisions amount to Henry VIII clauses, as they allow the Executive to amend the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislation power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

However, the Committee notes that regulations made under this provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also recognises that the use of these provisions may be needed to provide flexibility in the administration of the regulatory framework, and to accommodate technological developments. For these reasons, the Committee makes no further comment.

4. Health Services Amendment (Right to Primary Health Care) Bill 2026*

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

5. Motor Vehicles Taxation Amendment (Rural Vehicles) Bill 2026*

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

6. Road Transport Amendment (Non-registrable Motor Vehicles) Bill 2026

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

Power to seize and impound impacting property rights

The Bill proposes to insert section 79A into the *Road Transport Act 2013*, which would give police officers and other authorised officers the power to seize and impound motor vehicles, where the officer has a reasonable suspicion that the vehicle is non-registrable and that a person used the vehicle on a road or public place within the last 28 days. A 'non-registrable motor vehicle' is defined under proposed section 4 as a vehicle that cannot be registered because it does not comply with existing vehicle standards prescribed by the statutory rules.

The Committee considers that the power to seize and impound a vehicle on the basis of 'reasonable suspicion' may impact an individual's property rights. The Committee acknowledges that the seizure powers may be intended to streamline the process of reducing the number of non-registrable motor vehicles on roads and public spaces. However, the ownership of non-registrable motor vehicles is not, in itself, an offence. The Bill may therefore result in individuals having their legal property seized due to an officer's reasonable suspicion of public use. For this reason, the Committee refers the matter to Parliament for consideration.

Procedural fairness and reverse onus of proof for return of seized and surrendered motor vehicles

Proposed subsections 79B(1)-(2) would allow a person to apply for the return of a motor vehicle that has been seized or surrendered under other provisions of the Bill within 14 days. To be successful, the applicant would have to prove that they were the owner of the vehicle, that they, or a member of their immediate family, was not the rider of the vehicle, and that the suspected unlawful use of the vehicle occurred without the applicant's knowledge or consent. This would place the onus on the applicant to prove that they did not commit an offence. This may, therefore, undermine an individual's right to be presumed innocent until proven guilty, as enshrined in Article 14 of the International Covenant on Civil and Political Rights.

The Committee acknowledges that these subsections may be intended to ensure that non-registrable motor vehicles are not released back to individuals who have used them illegally. However, noting that the threshold for seizure or surrender notices is 'reasonable suspicion', it is possible that property could be impounded even if it has not been used illegally. This, then, would require applicants to prove that a crime has not occurred in order to retrieve the property. For these reasons, the Committee refers the matter to Parliament for consideration.

Exclusion of liability impacting an individual's right to procedural fairness

The Bill seeks to insert section 255C, which would protect certain government employees and agencies from liability if a surrendered or seized vehicle is damaged or stolen while impounded. This may undermine an individual's right to procedural fairness by preventing them from being able to seek a legal remedy for property damage or loss caused by the Government. Without a specific policy rationale for the exclusion of liability in these circumstances, the Committee considers this an undue impact on individual rights and liberties. In the circumstances, the Committee refers the matter to Parliament for consideration.

Penalty notices issued to minors

The Bill would insert a new penalty notice offence into the *Road Transport Act 2013* (the Road Transport Act). The offence relates to non-compliance with a police officer or another authorised officer's direction to surrender a non-registrable motor vehicle, under proposed subsection 255A(5). The maximum penalty for this offence is a \$3,300 fine (30 penalty units) or, alternatively, a penalty notice amount of \$1,688.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount, rather than appearing before a court to have their matter heard. This may impact a person's right to a fair trial, specifically, the automatic right to have their matter heard by an impartial decision maker. The Committee acknowledges that an individual would retain the right to elect to have their matter heard and decided by a court. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of a penalty notice, including reducing the costs and time associated with the administration of justice.

However, under proposed subsections 255A(1)-(2), surrender notices may be issued to a person less than 16 years of age. Consequently, a minor may be liable for the non-compliance offence. Minors are a particularly vulnerable group for penalty notice offences because they may not understand that they have the option of accepting a penalty notice offence, or choosing to challenge the offence in court. For this reason, the Committee refers the matter to Parliament for consideration.

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

Substantive matters deferred to regulations

The Bill would insert section 79B(9) into the *Road Transport Act 2013*, which delegates the creation of an internal review process to the regulations. The Bill would also insert section 255D(1), which delegates the prescription of fees to the regulations, including the persons responsible for paying the fees. This may amount to an inappropriate delegation of legislative powers to regulations. The Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, in both instances, certain rights and liberties of individuals may be impacted, including the right to procedural fairness. For this reason, the Committee refers the matter to Parliament for consideration.

Commencement by proclamation

The Bill would commence 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. Noting the number of issues that the Committee has raised in relation to the Bill, the Committee refers the matter to Parliament for consideration.

Power of Minister to amend the Tweed River Entrance Sand Bypassing Act by written order

The Bill would amend section 6(4) of the *Tweed River Entrance Sand Bypassing Act 1995* to change the process for updating the Act to include further agreements between a Queensland Minister and a NSW Minister. Currently, the Act may be amended by a proclamation of the Governor to include a complete copy of each further agreement. However, the proposed amendments to section 6(4) would allow the Act to be amended by Ministerial order instead. This provision may therefore operate like a Henry VIII provision, by allowing the Executive to amend the operation of the parent Act without reference to Parliament. The Committee generally considers Henry VIII provisions to be an inappropriate delegation of legislative power, as instruments such as Ministerial orders are not subject to the same level of parliamentary scrutiny as primary legislation. In this case, a Ministerial order is also subject to less scrutiny than a proclamation by the Governor, which is guided by Cabinet.

The Committee acknowledges that the agreements being inserted into the Act are still valid regardless of whether they are referenced in the Act. However, by removing the requirement for the full version of the agreement to be included in the Act, and instead requiring only the name and date of each agreement to be included, this may reduce transparency. For these reasons, the Committee refers the matter to Parliament for consideration.

Part One – Bills

1. Crimes Amendment (Breaking and Entering Offences) Bill 2026

Date introduced	25 March 2026
House introduced	Legislative Assembly
Member with carriage	The Hon Michael Daley MP

Purpose and description

- 1.1 The object of the Bill is to amend the *Crimes Act 1900* (the **Act**), in response to the decision of the High Court of Australia in *BA v The King* [2023] HCA 14 (**BA v The King**), to provide that a person (an **accused person**) may be found guilty of specified offences, regardless of the accused person's legal or equitable interest in the premises the subject of the offence, if the accused person:
- (a) enters a dwelling-house of which the accused person is not an occupant
 - (b) commits or intends to commit a personal violence offence against the accused person's current or former intimate partner.

Background

- 1.2 The Bill proposes to insert new provisions into the Act in response to the High Court's decision in *BA v The King*.¹ In that decision, the High Court found that a person who holds a legal or equitable interest in a dwelling-house (such as a leaseholder) cannot commit a 'breaking and entering' offence under Part 4 of the Act, because trespass is a fundamental element of 'breaking'.
- 1.3 In his second reading speech, the Hon Michael Daley MP, Attorney General, explained that the decision in *BA v The King* '... raised major concerns in the context of intimate partner violence ...' and '... created a gap where the community would expect the criminal law to apply.' He stated that the Bill followed targeted consultation with the legal sector, justice agencies, and the domestic and family violence specialist sector.
- 1.4 The Attorney General explained:

The focused provisions in this bill will ensure that in circumstances of intimate partner violence, it does not matter what someone's technical legal or equitable interest is or may be in a property. If it is not that person's home but they intend to commit violence against someone who lives there, then that person will be prosecuted for a break and enter offence. This will ensure that offenders just like the one in *BA [BA v The King]* will be able to be held responsible for the full extent of their criminal and violent conduct. The bill also reflects the approach taken by the

¹ [BA v The King \[2023\] HCA 14](#).

minority of the High Court in BA, who found that the core purpose of break and enter offences is to protect the peaceful occupation of residential premises from intrusion and criminal conduct by non-occupants.

Issues considered by the Committee

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

Removal of defence to serious criminal offences

- 1.5 Proposed section 115AA provides that an accused person can be found guilty of a 'break and enter' offence (a **relevant offence**), regardless of that person's legal or equitable interest in a premises, if:
- the premises is a dwelling-house
 - the accused person is not an occupant of the dwelling-house when the relevant offence is alleged to have been committed
 - the serious indictable offence the accused person committed, or intended to commit, in relation to the relevant offence is a personal violence offence
 - the personal violence offence was committed, or intended to be committed, against the accused person's current or former intimate partner.
- 1.6 A 'relevant offence' is defined under proposed subsection 115AA(4) as an offence against sections 109(1), (2) or (3); section 110; sections 112(1), (2) or (3); and sections 113(1), (2) or (3) of the Act. These offences all carry significant custodial penalties.
- 1.7 A 'dwelling-house' is defined under subsection 4(1) of the Act as any building intended for and capable of occupation, and 'current or former intimate partner' is defined under section 54C of the Act.
- 1.8 Proposed subsection 115AA(2) sets out a non-exhaustive list of matters to which the trier of fact may have regard in determining whether the accused person is an 'occupant', including:
- the status of the intimate relationship
 - the circumstances in which the accused person stopped residing at the dwelling-house, including whether the circumstances involved domestic abuse
 - financial contributions to rent or mortgage
 - the length of absence
 - whether the accused person has commenced residing elsewhere.
- 1.9 Proposed subsection 115AA(1)(c) also requires that the serious indictable offence committed is in relation to a 'personal violence offence'. In his second reading speech, the Attorney General explained that the proposed provision would only apply '... where a break and enter is connected to serious offending, such as physical assault, stalking and intimidation, and destruction of property.'

The Bill would insert section 115AA into the *Crimes Act 1900*, which would allow a court to find a person guilty of a 'break and enter' offence, regardless of that person's legal or equitable interest in a premises. A legal interest in a property, such as a leasehold interest, ordinarily provides a lawful excuse for entry and means that a person cannot be guilty of 'breaking in' to the premises. The Bill would effectively override this and remove a defence to a serious criminal offence that would otherwise be available to an accused person. This may expose them to criminal liability for break and enter offences with significant custodial penalties.

However, the Committee notes that the provision is targeted at, and limited to, circumstances where the accused person is no longer occupying the property and where they have committed a personal violence offence against their current or former intimate partner. The Committee also acknowledges that the Bill is intended to protect victims of domestic violence and address a gap in the criminal law, by ensuring that legal proprietary interests aren't used to shield serious criminal offending. For these reasons, the Committee makes no further comment.

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

Commencement by proclamation

- 1.10 Clause 2 of the Bill provides that it would commence on a day or days to be appointed by proclamation.
- 1.11 In his second reading speech, the Attorney General acknowledged that this is a 'novel reform' and explained:

That is why, under proposed section 2 of the bill, it will commence on a date to be fixed by proclamation to enable justice agencies to make required systems changes, and to develop and deliver training and education.

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

However the Committee acknowledges that there may be practical reasons for allowing a flexible start date. The unique nature of the proposed reform may mean that additional time will be required to enable justice agencies to make the necessary systems changes, and to develop and deliver training and education prior to the Bill's commencement. For these reasons the Committee makes no further comment.

2. Emergency Services Legislation Amendment Bill 2026

Date introduced	25 March 2026
House introduced	Legislative Assembly
Member with carriage	The Hon Jihad Dib MP

Purpose and description

2.1 The object of the Bill is to make miscellaneous amendments to the following Acts:

- the *Fire and Rescue NSW Act 1989* (the **Fire and Rescue Act**)
- the *NSW Reconstruction Authority Act 2022* (the **Reconstruction Authority Act**)
- the *Rural Fires Act 1997* (the **Rural Fires Act**)
- the *State Emergency and Rescue Management Act 1989* (the **SERM Act**).

Background

2.2 The Bill proposes a range of amendments to emergency management legislation, including to:

- amend the Minister's power to acquire land (including compulsory acquisition) for fire brigades under the Fire and Rescue Act
- change the functions of the NSW Reconstruction Authority and allow the Minister to make authorisations under the Reconstruction Authority Act.
- replace NTSCorp, the native title service provider for NSW and the ACT, as a statutory member of the Bush Fire Co-ordinating Committee (the **BFCC**) under the Rural Fires Act.
- delegate the definition of 'prescribed organisation' to the regulations under the SERM Act.

2.3 In his second reading speech, the Hon Jihad Dib MP, Minister for Emergency Services, stated:

The bill contains a range of proposals to amend several of the State's emergency management laws. ... These changes include addressing recommendations from the Joint Select Committee on the NSW Reconstruction Authority's Review of the *NSW Reconstruction Authority Act 2022* and improving protections available to emergency volunteers outside the emergency services organisations. The bill also makes minor amendments to remove ambiguity, improve governance and streamline administration to support the emergency management sector.

Issues considered by the Committee

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

Procedural fairness - removal of native title service provider from Bush Fire Co-Ordinating Committee

- 2.4 Division 2 of the Rural Fires Act establishes the BFCC, which is primarily responsible for planning and advising on bush fire prevention and bush firefighting.
- 2.5 Section 47(1)(o) of the Rural Fires Act states that BFCC membership must include a person nominated by NTSCorp Ltd, the native title service provider for NSW and the ACT.²
- 2.6 Proposed section 47(1)(o) would remove the reference to NTSCorp Ltd and instead require Committee membership to include 'a person appointed by the Minister on the recommendation of the Minister for Aboriginal Affairs and Treaty'.
- 2.7 In his second reading speech, the Minister stated:

NTSCORP has not nominated a representative to attend the BFCC since 2020. The proposed change will enable the Minister for Aboriginal Affairs and Treaty to recommend a suitable person to the committee and ensure that the membership of the committee continues to include appropriate representation from Aboriginal and Torres Strait Islander groups.

The Bill would amend section 47(1)(o) of the *Rural Fires Act 1997* to remove NTSCorp Ltd, the native title service provider for NSW and the ACT, from a list of permanent members of the Bush Fire Co-ordinating Committee (the BFCC). NTSCorp's nominee would be replaced by a person appointed by the Minister for Emergency Services on the recommendation of the Minister for Aboriginal Affairs and Treaty. This may undermine current and prospective native title holders' rights to procedural fairness by removing their representation on the BFCC.

The Committee acknowledges the Minister for Emergency Services' comments that NTSCorp has not nominated a representative to attend the BFCC since 2020. However, it is not clear to the Committee if NTSCorp are aware of, or consent to, the proposed change. Further, the person nominated on the recommendation of the Minister for Aboriginal Affairs and Treaty is not required to have any specialised knowledge or experience in native title advocacy. For these reasons, the Committee refers the issue to Parliament for consideration.

² NTSCORP, '[About NTSCORP](#)', accessed 28 April 2026.

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

Removal of procedural protections – acquisition of land for authorised works

2.8 The *Public Works and Procurement Act 1912* (the **Public Works Act**) currently allows the Minister to acquire land by agreement or by compulsory process under the following sections:

- section 39, for 'authorised works'
- section 40, for 'public purposes other than authorised works'.

2.9 Part 3 of the Public Works Act sets out a number of procedural requirements for public works to become authorised works.

2.10 Section 79 of the Fire and Rescue Act currently classifies fire brigade premises as public works under section 40 of the Public Works Act.

2.11 The Bill would amend section 79 of the Fire and Rescue Act to provide that the acquisition of land for fire brigade premises is taken to be an authorised work. Proposed section 79 also states that Part 3 of the Public Works Act does not apply to or in relation to works constructed under this Act.

2.12 In his second reading speech, the Minister stated:

The amendment removes language in the Act that may allow for an interpretation that the Minister's role under the Public Works and Procurement Act 1912 is limited to that of the constructing authority and brings the section into alignment with standard ministerial land acquisition powers across New South Wales legislation. This change ensures clarity and consistency in the statute, consistent with the intent of the existing legislation to ensure efficiency in the acquisition of land for fire brigades.

The Bill would amend section 79 of the *Fire and Rescue Act 1989* (the *Fire and Rescue Act*) to classify fire brigade premises as 'authorised works' under section 39 of the *Public Works and Procurement Act 1912* (the *Public Works Act*), for the purposes of acquiring land. The 'authorised works' pathway under section 39 is usually a stricter pathway for land acquisition than the pathway under section 40 for 'public purposes other than authorised works', as authorised works are subject to the requirements under Part 3 of the Public Works Act.

However, proposed section 79(4) would specifically exempt works constructed under the Fire and Rescue Act from needing to meet the requirements under Part 3 of the Public Works Act. The Bill may therefore grant a wide and insufficiently defined power to the Minister to acquire land by agreement or compulsorily, without the safeguards set out in Part 3 of the Public Works Act. The power to compulsorily acquire land may impact on an individual's property rights, and the exemption of such acquisitions from the usual procedural requirements may impact affected individuals' rights to procedural fairness.

The Committee acknowledges the Minister for Emergency Services' comments that the Bill seeks to ensure the Minister has the 'standard ministerial land acquisition powers' for fire brigade premises by classifying them as 'authorised works'. However, the Minister already has land acquisition powers under section 40 of the Public Works Act. The amendments proposed by the Bill do not impact the Minister's power to acquire land, but rather, remove the usual procedural protections in relation to such acquisitions for authorised works. For these reasons, the Committee refers the matter to Parliament for consideration.

3. Environmental Legislation Amendment (Plastic Reduction and Container Recycling) Bill 2026

Date introduced	24 March 2026
House introduced	Legislative Assembly
Member with carriage	The Hon Jihad Dib MP

Purpose and description

- 3.1 The object of the Bill is to amend the following Acts:
- (a) the *Contaminated Land Management Act 1997*
 - (b) the *Environmental Legislation Amendment Act 2025*
 - (c) the *Pesticides Act 1999*
 - (d) the *Plastic Reduction and Circular Economy Act 2021*
 - (e) the *Product Lifecycle Responsibility Act 2025*
 - (f) the *Protection of the Environment Operations Act 1997*
 - (g) the *Waste Avoidance and Resource Recovery Act 2001*.

Background

3.2 The Bill seeks to amend multiple Acts to modify the waste management regulatory framework and associated environmental management responsibilities, including how products are managed across their lifecycle.

3.3 During her second speech, Ms Trish Doyle MP, on behalf of the Hon Jihad Dib MP, said:

In November 2025 the New South Wales Government released the NSW Plastics Plan 2.0. The plan sets out 27 finalised actions to reduce plastic waste generation and increase re-use and recycling, ensuring that plastic items are not littered or landfilled. The New South Wales Government presents this bill as the first stage in progressing these actions, targeting some of the most harmful and highly littered plastic items in our environment. The bill also makes changes to support the New South Wales container deposit scheme, Return and Earn – one of the best litter reduction and recycling tools available to us – as well as making other minor amendments to strengthen environmental legislation.

- 3.4 Schedule 1 of the Bill seeks to amend the *Contaminated Land Management Act 1997* to provide for the circumstances in which information obtained in connection with the administration of the Act can be disclosed.
- 3.5 Schedule 2 of the Bill seeks to amend the *Environmental Legislation Amendment Act 2025* to substitute references to the 'relevant authority' with references to the 'EPA' or 'appropriate regulatory authority'.
- 3.6 Schedule 3 proposes to amend the *Pesticides Act 1999* to insert a new framework for the disclosure of information that is identical to the proposed framework under the *Contaminated Land Management Act 1997*.
- 3.7 Schedule 4 of the Bill proposes substantive amendments to the *Plastic Reduction and Circular Economy Act 2021*, including to:
- provide for the mandatory use of reusable cups in takeaway businesses by creating offences for the operator of a takeaway business to sell a beverage in single-use plastic cup and to not supply a reuseable cup
 - insert a framework for information gathering by prescribing record keeping requirements
 - set out a compliance regime to issue compliance notices and establish penalties for non-compliance
 - create an offence of providing false or misleading information in connection with reuseable cups.
- 3.8 Schedule 5 proposes to amend the *Product Lifecycle Responsibility Act 2025* to make minor administrative amendments.
- 3.9 Schedule 6 proposes substantive amendments to the *Protection of the Environment Operations Act 1997*, including to:
- insert restrictions on the release of lighter-than-air balloons that include penalties for the release of 100 or more lighter-than-air balloons
 - enable regulations to provide for the exemptions of relevant provisions of the Act or regulations and exemptions granted by the Environment Protection Authority (EPA).
- 3.10 Schedule 7 seeks to make substantive amendments to the *Waste Avoidance and Resource Recovery Act 2001* to give effect to recommendations from the statutory review of the Act, including amendments to:
- provide for the delegation of functions under the Act
 - insert principles of a circular economy
 - provide for the payment of export rebates to exporters of certain beverage containers

- make it an offence for the supplier of a beverage container to supply a container without a refund marking
- create multiple offences related to false claims for refunds for a container under a relevant scheme
- enable the making of regulations to provide for exemptions of provisions of the Act or regulations in certain circumstances and provide for matters concerning powers of the EPA.

Issues considered by the Committee

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

Disclosure of information exemptions impacting privacy rights

3.11 The Bill proposes to create exemptions to restrictions on the disclosure of certain information under the *Contaminated Land Management Act 1997*.

3.12 Proposed section 107 provides that a person must not disclose information obtained in connection with the administration or execution of the Act or regulations, unless the disclosure is made in certain prescribed circumstances. These include circumstances where the disclosure is made:

- with the consent of the person
- in connection with the administration or execution of environment protection legislation
- by a member of staff of the EPA or another regulatory authority and is reasonably related to the prevention of harm to the public, a person or property, or the environment
- to another government sector agency
- to an agency of the Commonwealth or another State involved in the administration of a law relating to contaminated land
- with the permission of the Minister
- as prescribed by the regulations
- with another lawful excuse.

3.13 The Bill proposes to insert an identical disclosure provision into section 44 of the *Pesticides Act 1999*.

3.14 Ms Doyle stated that the Bill makes amendments that:

... [modernise] disclosure of information provisions in various pieces of legislation, aligning them with other comparable disclosure of information provisions and to reflect best practice, and minor changes to reflect the policy intent of the Environmental Legislation Amendment Act 2025

regarding existing notice powers and ancillary directions amended or introduced by that Act.

The Bill proposes to create exemptions from restrictions on the disclosure of information under the *Contaminated Land Management Act 1997* and the *Pesticides Act 1999*. Proposed sections 107 and 44, respectively, provide that a person can disclose information obtained in connection with the administration or execution of the relevant Act or regulations in a range of prescribed circumstances. Those circumstances are broad and include circumstances where the disclosure is made to another government agency, or where the Minister or regulations permit the disclosure. The Bill does not appear to limit the type of information that can be disclosed, as long as it is obtained '... in connection with the administration or execution of this Act or regulations ...'. The Bill may therefore authorise the disclosure of personal information, which would impact on a person's right to privacy.

The Committee acknowledges that the information concerned must be obtained in connection with the administration or execution of the relevant Act or regulations, and that this information may be needed to support compliance and enforcement actions.

However, the Committee notes that the Bill would authorise the disclosure of information in a broad range of circumstances, and that the regulations may expand the circumstances under which disclosure is allowed, without clear limits or requirements for the de-identification of any personal information. The Committee further notes that the Bill does not include any specific protections to prevent the disclosure of personal information. The Bill may therefore permit disclosure of personal information in broad and undefined circumstances. For these reasons, the Committee refers the issue to Parliament for consideration.

Strict liability offences and continuing offences

3.15 The Bill seeks to amend the *Plastic Reduction and Circular Economy Act 2021* to insert the following offences and continuing offences:

- failing to prepare, keep and make a prescribed record available for inspection, which is subject to a maximum penalty of a \$110,000 fine (1,000 penalty units) for an individual and a \$440,000 fine (4,000 penalty units) for a corporation, with additional penalties for each day the offence continues (section 35A)
- failing to comply with a written notice to give an authorised officer information or documents, which is subject to a maximum penalty of a \$110,000 fine (1,000 penalty units) for an individual and a \$440,000 fine (4,000 penalty units) for a corporation, with additional penalties for each day the offence continues (section 35B)
- failing to give information or documents to another person that the person is required to give, which is subject to a maximum penalty of a \$110,000 fine (1,000 penalty units) for an individual and a \$440,000 fine (4,000 penalty units) for a corporation, with additional penalties for each day that the offence continues (section 35C)

- non-compliance with a stop notice, which is subject to a maximum penalty of a \$55,000 fine (500 penalty units) for an individual and a \$275,000 fine (2,500 penalty units) for a corporation, with additional penalties for each day the offence continues (section 37)
- an exempt person failing to prepare, keep and make a prescribed record available for inspection, which is subject to a maximum penalty of a \$110,000 fine (1,000 penalty units) for an individual and a \$440,000 fine (4,000 penalty units) for a corporation, with additional penalties for each day the offence continues (section 61A).

The Bill seeks to amend the *Plastic Reduction and Circular Economy Act 2021* to create new offences, including continuing offences for each day the offence continues. For example, the Bill proposes to insert section 35A to make it an offence for a person to fail to prepare, keep and make a prescribed record available for inspection. The offence is subject to a maximum penalty of a \$110,000 fine (1,000 penalty units) for an individual and a \$440,000 fine (4,000 penalty units) for a corporation, with additional penalties for each day the offence continues. The Bill also proposes to insert similar continuing offences under sections 35B, 35C, 37 and 61A.

The Bill would therefore introduce strict liability offences with continuing penalties. The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. This is exacerbated by the additional penalties that apply each day that the offence continues, without fault being proven.

The Committee acknowledges that strict liability offences are common in environmental regulatory frameworks to encourage compliance, and that, in this case, compliance is necessary to ensure the effective operation of the waste management framework. However, as the offences carry significant monetary penalties and ongoing penalties for each day the offence continues, the Committee refers the issue to Parliament for consideration.

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

Wide power of delegation

3.16 The Bill proposes to insert section 7 into the *Waste Avoidance and Resource Recovery Act 2001* to allow the EPA to delegate one or more of its functions under the Act to:

- a member of staff of the EPA, or
- person of a class prescribed by regulations.

The Bill proposes to insert a delegation power into the *Waste Avoidance and Resource Recovery Act 2001* to allow the Environment Protection Authority (EPA) to delegate one or more of its functions under the Act to a member of staff of the EPA or a person of a class prescribed by regulations.

The Bill would therefore provide for the wide delegation of statutory functions to a class of unknown persons. This may enable private individuals to be delegated functions under the Act that may be expected to be performed by public officials or authorities. The Committee generally prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation to provide clarity as well as greater oversight of those Executive and public functions.

The Committee acknowledges that the delegation of functions may assist the EPA to perform its functions with more flexibility. This could support the effective operation and administration of the regulatory framework. However, as the delegation power is not limited to a specified group of persons and the class can be prescribed by regulations, the Committee refers the issue to Parliament for consideration.

Henry VIII clauses

3.17 The Bill proposes to replace section 61(9) of the *Plastic Reduction and Circular Economy Act 2021* to provide that the regulator may vary or revoke an exemption by a further notice published or given in accordance with the section.

3.18 It also proposes to replace section 68(3) to provide a regulation-making power to exempt a person, matter or thing from the operation of the Act or the regulations, either conditionally or unconditionally.

3.19 The Bill further proposes to replace section 286 of the *Protection of the Environment Operations Act 1997* to provide a similar regulation-making power to exempt or provide for the exemption of a relevant matter from a specified provision of the Act or regulations in any circumstances and subject to any conditions that may be specified in the regulations.

3.20 Lastly, the Bill proposes to insert section 22A into the *Waste Avoidance and Resource Recovery Act 2001* to provide for the meaning of 'supply'. Proposed section 22A(2) provides that regulations may provide for circumstances in which a supply of a beverage in a container is taken to be the first supply in the State of the beverage or is taken not to be the first supply in the State of the beverage.

3.21 During her second reading speech, Ms Doyle explained the use of Henry VIII provisions in the Bill:

They have been included in the bill only because they are essential for the purposes I have outlined. Innovations in plastic packaging are constant, as are advances in recycling technology, and these powers support the ability to respond to those changes and to grant appropriate exemptions to reflect the policy intent and ensure that there are no unintended circumstances. The core obligations, associated offences and penalties are maintained in the relevant Acts.

The Bill proposes to replace section 61(9) of the *Plastic Reduction and Circular Economy Act 2021* to provide a power for the regulator to vary or revoke an exemption by a further notice. It also inserts section 68(3) to provide a regulation-making power to exempt a person, matter or thing from the operation of the Act or the regulations. The Bill further seeks to replace section 286 of the *Protection of the Environment*

Operations Act 1997 to provide a regulation-making power to exempt a person, matter or thing from the operation of that Act or regulations. Lastly, the Bill proposes to insert section 22A into the *Waste Avoidance and Resource Recovery Act 2001* to provide that regulations can determine the meaning of 'supply' and when a beverage in a container is taken or taken not to be a first supply in the State of the beverage.

These provisions amount to Henry VIII clauses, as they allow the Executive to amend the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislation power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

However, the Committee notes that regulations made under this provision are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also recognises that the use of these provisions may be needed to provide flexibility in the administration of the regulatory framework, and to accommodate technological developments. For these reasons, the Committee makes no further comment.

4. Health Services Amendment (Right to Primary Health Care) Bill 2026*

Date introduced	26 March 2026
House introduced	Legislative Assembly
Member with carriage	Dr Joe McGirr MP
	*Private member's bill

Purpose and description

- 4.1 The object of the Bill is to amend the *Health Services Act 1997* (the **HS Act**) to provide for the provision of appropriate and timely primary health care services in rural and regional areas by local health districts.

Background

- 4.2 The Bill seeks to amend the HS Act to provide for a new function of rural and regional local health districts, that being to ensure residents of those areas have appropriate and timely access to in-person primary health care services.
- 4.3 The Bill provides that, in determining whether appropriate and timely access to an in-person primary health care service is accessible, consideration must be given to:
- whether the service is accessible within a 2-hour drive of a resident's home
 - whether public transport services are available to a resident of the local health district's area to transport the resident to and from the service.
- 4.4 The Bill would also amend the dictionary of the HS Act to define 'rural and regional local health district' and 'primary health care service'.
- 4.5 In his second reading speech, Dr Joe McGirr MP stated that the Bill seeks to secure:

...access to comprehensive primary health care where we have a range of professionals—GPs but also allied health staff, nurse practitioners and paramedics—working at the top of their scope of practice in rural, regional and remote New South Wales to ensure our communities receive primary health care when they need it, and at the time they need it.

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. Motor Vehicles Taxation Amendment (Rural Vehicles) Bill 2026*

Date introduced	26 March 2026
House introduced	Legislative Assembly
Member with carriage	Mr Roy Butler MP
	*Private member's bill

Purpose and description

- 5.1 The object of the Bill is to limit the amount of motor vehicle tax payable by rural residents for motor vehicles weighing more than 1,550kg to the amount payable for a vehicle weighing 1,550kg.

Background

- 5.2 The Bill proposes to amend the *Motor Vehicles Taxation Act 1988* to prescribe amounts of tax for vehicles registered in rural areas.
- 5.3 The Bill would insert a new section 6, which provides that if a vehicle is registered in a rural area and weighs more than 1,550kg, the vehicle is taken to weigh 1,550kg for the purpose of calculating the amount of motor vehicle tax applicable to the vehicle.
- 5.4 During his second reading speech, Mr Roy Butler MP said:

The intent of this bill is to redress an inequity that affects people living in the country with regard to what they must pay to be able to use the road network more safely.

...

We can achieve equity by saying we are going to charge the same tax for someone with a vehicle that might weigh 1,800 kilograms as we do for 1,500 kilograms. It should save people about \$300 per year. This would provide some measure of relief for those who need to drive heavy vehicles and who need to pay higher prices to register them, insure them, fuel them and run them.

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*.

6. Road Transport Amendment (Non-registrable Motor Vehicles) Bill 2026

Date introduced	26 March 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 *Road Transport Act 2013* (the **Act**) to:
- (a) provide for the seizure, inspection, surrender and disposal of non-registrable motor vehicles
 - (b) protect the Crown and certain persons from liability for adverse acts caused by, or arising from, the seizure, impounding, surrender and inspection of a suspected non-registrable motor vehicle
 - (c) make it clear that the existing power to seize unregistered registrable motor vehicles does not extend to non-registrable motor vehicles.
- 6.2 The Bill also:
- (a) makes consequential amendments to the Road Transport (General) Regulation 2021 and the Road Transport (Vehicle Registration) Regulation 2017
 - (b) makes miscellaneous amendments to the *Tweed River Entrance Sand Bypassing Act 1995*.

Background

- 6.3 In his second reading speech, the Hon John Graham MLC, Minister for Transport, stated:
- Across New South Wales, we are seeing a rapid rise in new forms of mobility, particularly e-bikes and other devices. ... However, what we are increasingly seeing are devices that are not e-bikes in any meaningful sense. ... They are not just bending the rules; they are outside the rules altogether. They cannot be registered, they do not meet safety standards, and we have no assurances they are safe...
- 6.4 The Minister explained that the Bill ' ... provides clear powers, defined safeguards and an efficient process to permanently remove illegal and unsafe vehicles from roads and public spaces in New South Wales.'
- 6.5 On 26 March 2026, immediately after its introduction, the Minister declared the Bill to be an urgent bill. The question was put and negatived, and, accordingly, debate on the Bill was adjourned for five calendar days.

Issues considered by the Committee

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

Power to seize and impound impacting property rights

- 6.6 Proposed subsection 79A(1) would allow police officers or other authorised officers to seize a motor vehicle if the officer has a reasonable suspicion that it is a non-registrable motor vehicle and that a person used the motor vehicle on a road or public place within the last 28 days.
- 6.7 Proposed subsection 79A(4) would allow the seized motor vehicle to be impounded, and proposed subsection 79B(8)(7)(b) would allow the impounding authority to dispose of the motor vehicle within 15 days of seizure.
- 6.8 A 'non-registrable motor vehicle' is defined under proposed section 4 as a motor vehicle that:
- does not have a vehicle identification number clearly visible
 - does not comply with the vehicle standards prescribed by the statutory rules for any motor vehicle and is, consequently, incapable of being registered.

The Bill proposes to insert section 79A into the *Road Transport Act 2013*, which would give police officers and other authorised officers the power to seize and impound motor vehicles, where the officer has a reasonable suspicion that the vehicle is non-registrable and that a person used the vehicle on a road or public place within the last 28 days. A 'non-registrable motor vehicle' is defined under proposed section 4 as a vehicle that cannot be registered because it does not comply with existing vehicle standards prescribed by the statutory rules.

The Committee considers that the power to seize and impound a vehicle on the basis of 'reasonable suspicion' may impact an individual's property rights. The Committee acknowledges that the seizure powers may be intended to streamline the process of reducing the number of non-registrable motor vehicles on roads and public spaces. However, the ownership of non-registrable motor vehicles is not, in itself, an offence. The Bill may therefore result in individuals having their legal property seized due to an officer's reasonable suspicion of public use. For this reason, the Committee refers the matter to Parliament for consideration.

Procedural fairness and reverse onus of proof for return of seized and surrendered motor vehicles

- 6.9 Under proposed subsections 79B(1)-(2), a person (the **applicant**) may apply for the return of an impounded non-registrable motor vehicle within 14 days, but must prove that:
- (a) the applicant is the owner of the motor vehicle
 - (b) the applicant or a member of their immediate family is not the person whose suspected use caused the seizure of the motor vehicle

- (c) the suspected unlawful use of the motor vehicle occurred without the applicant's knowledge or consent.

6.10 Proposed subsection 79B(11) defines 'immediate family' as including spouses and de facto partners, parents, step-parents or guardians, grandparents or step-grandparents, children, step-children or other children under the guardianship of the applicant, grandchildren or step-grandchildren, and siblings, half-siblings or step-siblings.

Proposed subsections 79B(1)-(2) would allow a person to apply for the return of a motor vehicle that has been seized or surrendered under other provisions of the Bill within 14 days. To be successful, the applicant would have to prove that they were the owner of the vehicle, that they, or a member of their immediate family, was not the rider of the vehicle, and that the suspected unlawful use of the vehicle occurred without the applicant's knowledge or consent. This would place the onus on the applicant to prove that they did not commit an offence. This may, therefore, undermine an individual's right to be presumed innocent until proven guilty, as enshrined in Article 14 of the International Covenant on Civil and Political Rights.³

The Committee acknowledges that these subsections may be intended to ensure that non-registrable motor vehicles are not released back to individuals who have used them illegally. However, noting that the threshold for seizure or surrender notices is 'reasonable suspicion', it is possible that property could be impounded even if it has not been used illegally. This, then, would require applicants to prove that a crime has not occurred in order to retrieve the property. For these reasons, the Committee refers the matter to Parliament for consideration.

Exclusion of liability impacting an individual's right to procedural fairness

6.11 Proposed section 255C protects the Crown, the Minister, the Commissioner of Police, Transport for NSW, a police officer or another authorised officer from liability where a motor vehicle seized, impounded or surrendered has been damaged or stolen.

The Bill seeks to insert section 255C, which would protect certain government employees and agencies from liability if a surrendered or seized vehicle is damaged or stolen while impounded. This may undermine an individual's right to procedural fairness by preventing them from being able to seek a legal remedy for property damage or loss caused by the Government. Without a specific policy rationale for the exclusion of liability in these circumstances, the Committee considers this an undue impact on individual rights and liberties. In the circumstances, the Committee refers the matter to Parliament for consideration.

³ United Nations, Office of the High Commissioner for Human Rights, International Covenant on Civil and Political Rights, 1966.

Penalty notices issued to minors

- 6.12 Proposed section 255A would allow a police officer or another authorised officer to direct a person to surrender a motor vehicle if the officer has a reasonable suspicion that it is a non-registrable motor vehicle, and that a person has used the motor vehicle on a road or public place within the last 28 days.
- 6.13 Under proposed subsections 255A(1)-(2), surrender notices may be issued to a person less than 16 years of age if no parent or guardian can be reasonably located.
- 6.14 Non-compliance with a surrender notice is an offence attracting a maximum penalty of a \$3,300 fine (30 penalty units), under proposed subsection 255A(5). The Bill also inserts proposed Schedule 2 into the Road Transport (General) Regulation 2021, which sets an alternate penalty notice amount of \$1,688.

The Bill would insert a new penalty notice offence into the *Road Transport Act 2013* (the Road Transport Act). The offence relates to non-compliance with a police officer or another authorised officer's direction to surrender a non-registrable motor vehicle, under proposed subsection 255A(5). The maximum penalty for this offence is a \$3,300 fine (30 penalty units) or, alternatively, a penalty notice amount of \$1,688.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount, rather than appearing before a court to have their matter heard. This may impact a person's right to a fair trial, specifically, the automatic right to have their matter heard by an impartial decision maker. The Committee acknowledges that an individual would retain the right to elect to have their matter heard and decided by a court. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of a penalty notice, including reducing the costs and time associated with the administration of justice.

However, under proposed subsections 255A(1)-(2), surrender notices may be issued to a person less than 16 years of age. Consequently, a minor may be liable for the non-compliance offence. Minors are a particularly vulnerable group for penalty notice offences because they may not understand that they have the option of accepting a penalty notice offence, or choosing to challenge the offence in court. For this reason, the Committee refers the matter to Parliament for consideration.

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

Substantive matters deferred to regulations

- 6.15 Proposed section 79B(9) would allow regulations to determine the internal review process for unsuccessful applications to have a seized or surrendered non-registrable motor vehicle returned.
- 6.16 Proposed section 255D(1) would allow the regulations to prescribe fees in relation to the seizure and disposal of non-registrable motor vehicles, including the persons responsible for payment of those fees.

The Bill would insert section 79B(9) into the *Road Transport Act 2013*, which delegates the creation of an internal review process to the

regulations. The Bill would also insert section 255D(1), which delegates the prescription of fees to the regulations, including the persons responsible for paying the fees. This may amount to an inappropriate delegation of legislative powers to regulations. The Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

The Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, in both instances, certain rights and liberties of individuals may be impacted, including the right to procedural fairness. For this reason, the Committee refers the matter to Parliament for consideration.

Commencement by proclamation

6.17 The Bill would commence on a day or days to be appointed by proclamation.

The Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations. Noting the number of issues that the Committee has raised in relation to the Bill, the Committee refers the matter to Parliament for consideration.

Power of Minister to amend the Tweed River Entrance Sand Bypassing Act by written order

6.18 The Bill seeks to amend the *Tweed River Entrance Sand Bypassing Act 1995* (the **Tweed River Bypassing Act**) to change the process for updating the Act to include further agreements between a Queensland Minister and a NSW Minister.

6.19 Section 6(4) of the *Tweed River Bypassing Act* currently states that Schedule 3 may be amended by proclamation to insert a copy of each further agreement made under the Act.

6.20 Schedule 4 of the *Interpretation Act 1987* defines proclamation as '... a proclamation of the Governor published in the Gazette or on the NSW legislation website.'

6.21 The Bill would amend section 6(4) to instead allow the Minister to amend Schedule 3 to insert the name and date of each further agreement, by order published on the NSW legislation website.

The Bill would amend section 6(4) of the *Tweed River Entrance Sand Bypassing Act 1995* to change the process for updating the Act to include further agreements between a Queensland Minister and a NSW Minister. Currently, the Act may be amended by a proclamation of the Governor to include a complete copy of each further agreement. However, the proposed amendments to section 6(4) would allow the Act to be amended by Ministerial order instead. This provision may therefore operate like a Henry VIII provision, by allowing the Executive to amend the operation of the parent Act without reference to Parliament. The Committee generally considers Henry VIII provisions to be an inappropriate delegation of legislative power, as instruments such as Ministerial orders are not

subject to the same level of parliamentary scrutiny as primary legislation. In this case, a Ministerial order is also subject to less scrutiny than a proclamation by the Governor, which is guided by Cabinet.

The Committee acknowledges that the agreements being inserted into the Act are still valid regardless of whether they are referenced in the Act. However, by removing the requirement for the full version of the agreement to be included in the Act, and instead requiring only the name and date of each agreement to be included, this may reduce transparency. For these reasons, the Committee refers the matter to Parliament for consideration.

Part Two – Regulations without comment

Regulations without comment

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

1. Fisheries Management (Possession Limit) (Estuary Cockles) Order 2026

The object of the Order is to limit the number of cockles a person can be in possession of to 20. The possession limit does not apply to fish in the possession of a commercial fisher for sale.

The Order is made under the *Fisheries Management Act 1994*. It commenced on 30 January 2026 and remains in force for five years. It does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

2. Residential Tenancies Amendment (Fees and Payment Methods) Regulation 2026

The object of the Regulation is to amend the Residential Tenancies Regulation 2019:

- (a) to permit landlords and agents of landlords to impose fees for the cost recovery of certain electronic transactions costs incurred in the payment of rent
- (b) to exempt a social housing provider from offering Centrepay operated by the Commonwealth as a payment method for rent if the social housing provider instead offers the Rent Deduction Scheme operated by the Commonwealth.

Clause 24A is made under a Henry VIII provision that enables the making of regulations to amend the application of the Act.

The Regulation is made under the *Residential Tenancies Act 2010* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

3. Environmental Planning and Assessment Amendment (Development Levies) Regulation 2026

The object of the Regulation is to set the maximum percentage of development levy a consent authority may require an applicant to pay as a condition of development consent for development on certain land at St Marys.

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

4. Mental Health Amendment (Forms) Regulation 2026

The object of the Regulation is to update the form of a report about the mental state of a detained person that must be completed after the examination of the detained person under the *Mental Health Act 2007*, section 27 or 27A.

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

5. Product Lifecycle Responsibility Regulation 2026

The object of the Regulation is to prescribe product stewardship requirements, including requirements for record keeping and reporting, for commonly used and discarded batteries to encourage the collection and recycling of those batteries and battery components.

The Regulation is made under the *Product Lifecycle Responsibility Act 2025* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

6. [Erratum - Report and determination pursuant to section 14\(2\) of the Statutory and Other Offices Remuneration Act 1975](#)

The object of the notice is make minor corrections to the Report and determination pursuant to section 14(2) of the *Statutory and Other Offices Remuneration Act 1975* – Deputy Chief Judge of the District Court of New South Wales. The original notice was published in the NSW Government Gazette No 32 – Other of 30 January 2026, number NSWGG-2026-32-3.

The notice is made under the *Statutory and Other offices Remuneration Act 1975* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

7. [Children \(Criminal Proceedings\) Amendment \(Savings and Transitional\) Regulation 2026](#)

The object of the Regulation is to insert a transitional provision consequent on the enactment of the *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025*, Schedule 1[1].

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

8. [Children \(Education and Care Services\) NSW and Other Legislation Amendment Regulation 2026](#)

The objects of the Regulation are as follows:

- (a) to insert additional and substituted NSW provisions into the Children (Education and Care Services) NSW Regulation 2025 to:
 - (i) amend the matters that must be considered by an approved provider of a family day care service as part of an assessment of each residence and venue of the service
 - (ii) set out additional matters that must be included in the record of an education and care service's compliance
 - (iii) prescribe the matters that form a quality and compliance history, which must be displayed and published by an approved provider of an education and care service or family day care service
 - (iv) set out additional matters the National Authority and the Regulatory Authority may publish about approved providers, approved education and care services and nominated supervisors

- (v) make other amendments consequent on the commencement of the *Children (Education and Care Services National Law Application) Amendment Act 2025*
- (b) to apply certain amendments to the Education and Care Services National Law, set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria, made by the *Early Childhood Legislation Amendment (Child Safety) Act 2025* of Victoria as amendments to the Children (Education and Care Services) National Law (NSW)
- (c) to amend the Children (Education and Care Services) Supplementary Provisions Regulation 2024 to make an amendment consequent on amendments to the Education and Care Services National Law.

The Regulation is made under the *Children (Education and Care Services National Law Application) Act 2010* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

9. [Childcare and Economic Opportunity Fund Amendment \(Childcare and Economic Opportunity Fund Board\) Regulation 2026](#)

The object of the Regulation is to prescribe the experience or expertise required for appointment as a member of the NSW Childcare and Economic Opportunity Fund Board.

This Regulation is made under the *Childcare and Economic Opportunity Fund Act 2022*, sections 10(1)(a) and 27, the general regulation-making power. It does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

10. [Human Tissue Amendment \(Blood Donor Certificate\) Regulation 2026](#)

The object of the Regulation is to amend the Human Tissue Regulation 2020 to allow more people to donate blood by removing:

- (a) gender-based sexual activity restrictions
- (b) certain other restrictions.

The Regulation is made under the *Human Tissue Act 1983* and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

11. [Transport Administration \(General\) Amendment \(Public Transport Accident Compensation\) Regulation 2026](#)

The object of the Regulation is to:

- (a) apply the *Motor Accident Injuries Act 2017*, Part 4 to the award of damages for a public transport accident caused by or arising out of the use of a form of public transport that is a motor vehicle
- (b) exclude the application of the *Motor Accidents Compensation Act 1999*, Chapter 5 in relation to the award of damages in connection with a public transport accident caused by or arising out of the use of a form of public transport that is a motor vehicle.

The Regulation is made under the *Transport Administration Act 1988* and 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.

TIME & DATE: 3:03PM, 4 MAY 2026

LOCATION: ROOM 1136 AND
VIDEOCONFERENCE

MEMBERS PRESENT

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

APOLOGIES

Ms Davis, Mr Layzell and Ms Munro.

OFFICERS PRESENT

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

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 23 March 2026 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 44/58

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

- a) Crimes Amendment (Breaking and Entering Offences) Bill 2026
- b) Emergency Services Legislation Amendment Bill 2026
- c) Environmental Legislation Amendment (Plastic Reduction and Container Recycling) Bill 2026
- d) Road Transport Amendment (Non-registrable Motor Vehicles) Bill 2026.

4. Consideration of bills without comment for Legislation Review Digest 44/58

Resolved, on the motion of Ms Stuart: That the Committee adopts the following draft reports without comment *in globo*:

- a) Health Services Amendment (Right to Primary Health Care) Bill 2026
- b) Motor Vehicles Taxation Amendment (Rural Vehicles) Bill 2026.

5. Regulations without comment for Legislation Review Digest 44/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Part Two to Digest No. 44/58.

6. Legislation Review Digest 44/58

Resolved, on the motion of Ms Higginson:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 44/58 and that it be signed by the Chair and presented to the House.

7. Regulations to be reviewed

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

Resolved, on the motion of Mr Murphy: That the Committee consider all regulations and statutory instruments that are currently subject to disallowance (tabled 17 March 2026), even if the relevant regulations have been disallowed by the time the next Digest is adopted.

8. Next meeting

The Committee adjourned at 3:05pm until Monday 11 May 2026.