

Standing Committee on Law and Justice

# **Legacy report 56th Parliament**

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## Committee details

### Current committee members

<b>The Hon Natalie Ward MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Lynda Voltz MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon David Clarke MLC</b>	Liberal Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Daniel Mookhey MLC</b>	Australian Labor Party	
<b>Mr David Shoebridge MLC</b>	The Greens	

### Members of the Law and Justice Committee during the 56<sup>th</sup> Parliament

<b>The Hon Natasha Maclaren-Jones MLC</b>	Liberal Party
<b>The Hon Shayne Mallard MLC</b>	Liberal Party
<b>The Hon Adam Searle MLC</b>	Australian Labor Party
<b>The Hon Bronnie Taylor MLC</b>	The Nationals

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# Chapter 1 The committee

This chapter provides a brief overview of the committee and discusses the work of the committee in the current parliament. The chapter also outlines the purpose of this legacy report.

## Committee overview

- 1.1 The NSW Legislative Council's Standing Committee on Law and Justice was first established on 24 May 1995.<sup>1</sup> The committee was reappointed in each of the subsequent parliaments, most recently on 6 May 2015, during the 56<sup>th</sup> Parliament.<sup>2</sup>
- 1.2 The committee conducts inquiries into matters concerned with law and justice in New South Wales, including legal and constitutional issues, law reform, parliamentary matters, criminal law, administrative law and the justice system, and matters concerned with industrial relations and fair trading.<sup>3</sup>
- 1.3 In accordance with section 27 of the *State Insurance and Care Governance Act 2015*, the Standing Committee on Law and Justice is the designated committee that has supervision over the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, including the Workers Compensation Scheme, Workers Compensation (Dust Diseases) Scheme, Motor Accidents Scheme, Motor Accidents (Lifetime Care and Support) Scheme. The committee must report to the House at least once every two years in relation to each scheme.<sup>4</sup>
- 1.4 The committee consists of six members, comprising three government members, two opposition members, and one cross bench member.<sup>5</sup> The membership of the committee throughout the 56<sup>th</sup> Parliament can be found on p iii.

## Inquiries in the 56<sup>th</sup> Parliament

- 1.5 During the 56<sup>th</sup> Parliament, the committee conducted 14 inquiries. Of these, eight related to the oversight role the committee has in relation to the Workers Compensation Scheme, Compulsory Third Party insurance scheme, Lifetime Care and Support scheme, and Dust Diseases scheme. See Appendix 1 for key statistics on the work of the committee during the 56<sup>th</sup> Parliament.
- 1.6 The committee was also referred two inquiries into bills on recommendation from the Selection of Bills Committee:
  - Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018
  - Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018.

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<sup>1</sup> *Minutes*, Legislative Council, 24 May 1995, pp 36-42.

<sup>2</sup> *Minutes*, Legislative Council, 6 May 2015, pp 62-65.

<sup>3</sup> *Minutes*, Legislative Council, 6 May 2015, pp 62-65.

<sup>4</sup> *Minutes*, Legislative Council, 6 May 2015, pp 62-65.

<sup>5</sup> *Minutes*, Legislative Council, 6 May 2015, pp 62-65.

- 1.7** The committee's other inquiries included:
- Adequacy and scope of special care offences
  - Security classification and management of inmates sentenced to life imprisonment
  - Remedies for the serious invasion of privacy in New South Wales
  - Statutory review of the State Insurance and Care Governance Act 2015.
- 1.8** The next chapter of this legacy report details the key findings and recommendations made by the committee for each of these reports, along with the government's response to recommendations.
- 1.9** Copies of the committee's reports and government responses to those reports are available on the committee's website [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice).

### **The purpose of a legacy report**

- 1.10** The purpose of this legacy report is to provide a summary of the committee's work during the 56<sup>th</sup> Parliament in order to inform any successor committee in the 57<sup>th</sup> Parliament of the committee's accomplishments and suggestions for future activity.

## Chapter 2      Inquiries

This chapter comprises a short summary of each inquiry undertaken during the 56th Parliament, including the manner in which the inquiry was referred, a summary of key issues and recommendations made by the committee.

### Statutory oversight reviews

- 2.1** In accordance with s 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Workers Compensation Scheme, Compulsory Third Party scheme, Lifetime Care and Support scheme and Dust Diseases scheme are required to be supervised by a committee of the Legislative Council. The Standing Committee on Law and Justice has been designated as the committee to perform this oversight role.
- 2.2** The resolution appointing the committee requires the committee to report to the Legislative Council in relation to each scheme at least once every two years.<sup>6</sup> Effectively, this meant that the committee conducted a review of each of these schemes twice in the 56<sup>th</sup> Parliament.

### Reviews of the workers compensation scheme

- 2.3** In 2016, the committee undertook the 'First review of the workers compensation scheme', being the first review of the scheme since the 2015 workers compensation reforms were implemented. These reforms led to the dissolution of the WorkCover Authority and the reconstruction of its functions into three new discrete organisations: the State Insurance Regulatory Authority (SIRA) for workers compensation regulation; Insurance and Care NSW (icare) for workers compensation insurance; and SafeWork NSW for work health and safety regulation.
- 2.4** The second review, which commenced late 2018, is referred to as the '2018 review of the workers compensation scheme'. The outcomes of each of these reviews are outlined below.

#### *First review of the workers compensation scheme*

- 2.5** The committee commenced this review on 12 August 2016. The committee received 84 submissions and 4 supplementary submissions. The committee held two public hearings. Prior to the hearings, the committee forwarded written questions on notice to the SIRA and icare and requested an update on the government's response to the recommendations in its 2014 report.
- 2.6** The final report for the review was tabled on 9 March 2017. The key issues the report addressed included:
- the expansion of medical and other benefits, and how to improve access to entitlements
  - the calculation of pre-injury average weekly earnings
  - matters that could be included in the deed with scheme agents, for example, penalties for scheme agents who exert undue pressure on nominated treating doctors, and how the deed should comply with the NSW Government's *Model Litigant Policy for Civil Litigation*

<sup>6</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

- the bifurcated nature of the dispute resolution system, and consideration of the merits of a single jurisdiction 'one stop shop' to determine workers compensation disputes
- accessibility of notices of workers compensation disputes
- the use of surveillance by scheme agents.

**2.7** The committee made 26 recommendations. Among these was a recommendation that the NSW Government to establish a 'one stop shop' forum for the resolution of workers compensation disputes. The committee also recommended that the NSW Government consider the benefits of developing a more comprehensive specialised personal injury jurisdiction in New South Wales.

**2.8** The government response was received on 3 October 2017. The government fully supported nine recommendations and supported in principle the balance of 17 recommendations. Significantly, the committee was advised that the government had commenced a review of dispute resolution arrangements for workers compensation matters.

### ***2018 review of the workers compensation scheme***

**2.9** The committee commenced this review in May 2018, and following on from recommendations of the First Review, resolved to focus on the feasibility of a consolidated personal injury tribunal for workers compensation and compulsory third party matters.

**2.10** The committee received 21 submissions and held three public hearings during which the committee heard stakeholders' views about the proposal for a consolidated tribunal for workers compensation and CTP disputes, including views about a preferred model and location.

**2.11** After considering the evidence, the committee recommended the NSW Government proceed to consolidate the dispute resolution systems for workers compensation and CTP into a single personal injury tribunal, by expanding the jurisdiction of the Workers Compensation Commission, but retaining two streams of expertise. The committee supported this proposal to not only address concerns regarding the complexity of each system but to also generate efficiencies, where similarities between the systems exist.

**2.12** Other issues considered during this review included the calculation of pre-injury average weekly earnings, cessation of weekly benefits after five years, back pay following resumption of weekly payments and the assessment of permanent impairment. The review also considered the financial independence of the Workers Compensation Independent Review Office, and the regulation of insurer conduct and performance by the State Insurance Regulatory Authority.

**2.13** The final report was tabled on 12 February 2019 and made 5 recommendations. The government response is due 12 August 2019.



***Committee reflections***

The committee may be interested to examine the following issues in its next statutory review of the worker's compensation scheme:

- the scheme's financial performance
- progress towards consolidation of the dispute resolution systems for workers compensation and CTP matters
- the calculation of pre-injury average weekly earnings
- the use of surveillance by scheme agents
- the allocation of benefits from the scheme.

**Reviews of the Compulsory Third Party insurance scheme**

**2.14** There were two separate reviews of the Compulsory Third Party insurance scheme in the 56<sup>th</sup> Parliament, the first completed in August 2016, and the latter in February 2019.

***First review of the Compulsory Third Party insurance scheme***

**2.15** This review commenced on 4 April 2016. The committee received 12 submissions and held one public hearing.

**2.16** Prior to the hearing, the committee forwarded written questions on notice to the State Insurance Regulatory Authority based on the Motor Accidents Authority annual reports for the 2013/14 and 2014/15 financial years, scheme performance reports and issues raised by stakeholders in their submissions. The committee also requested an update on the government's response to the recommendations made by the committee in its report on the Twelfth review of the exercise of the functions of the Motor Accidents Authority.

**2.17** The key issues considered in this review included:

- scheme performance, including the affordability of premiums, scheme efficiency, insurer profitability and frequency of claims
- fraudulent and exaggerated claims, including the establishment of a CTP fraud task force, and claims harvesting
- cost of premiums for certain classes, including motorcyclists
- implications of ride sharing operations on the CTP scheme, and whether the scheme should be extended for non-motorised vehicles and dirt bikes
- injury prevention and management

- journey claims.

**2.18** The report included eight recommendations to the NSW Government. The response to a number of these recommendations focused on the NSW Government's plans to reform the CTP scheme.

**2.19** In June 2016, following a consultation process, Minister for Finance and Property, the Hon Victor Dominello MP, announced that the CTP scheme would be further reformed to create a no-fault scheme with defined benefits for less severe injuries and lump sum compensation for the most seriously injured. This led to the introduction of the *Motor Accident Injuries Act 2017*, which took effect on 1 December 2017. According to the State Insurance Regulatory Authority, the key objectives of reforms to the scheme were to reduce the time taken to resolve claims, increase the proportion of benefits provided to the most seriously injured road users, reduce the cost of Green Slip premiums and reduce the opportunities for claims fraud and exaggeration.

#### ***2018 Review of the Compulsory Third Party insurance scheme***

**2.20** This was the first review of the scheme undertaken by the committee since changes were implemented via the *Motor Accident Injuries Act 2017*. The review commenced on 1 May 2018.

**2.21** The committee received 12 submissions and held two hearings.

**2.22** The review focused on the impact of the reforms and their effectiveness including:

- the effectiveness of the new CTP scheme, whether there was an increase in the proportion of benefits for the most seriously injured, whether claims were being resolved faster and whether green slip premium cost had been reduced
- the reduction in claims frequency
- insurer profits, and the role of the new Risk Equalisation and Profit Normalisation Mechanisms
- return to work and recovery outcomes of the new Statutory Benefits scheme
- reporting obligations of insurers.

**2.23** Other issues that arose during the review included claims farming, surveillance, and whether the CTP scheme should be extended to cover foreign tourists injured in motor vehicle accidents in New South Wales.

**2.24** The final report was tabled on 12 February 2019 and made 6 recommendations.

**2.25** The government response is due 12 August 2019.

***Committee reflections***

The committee may be interested to examine these issues during its next statutory review of the Compulsory Third Party insurance scheme:

- the performance of the CTP scheme, including the proportion of benefits allocated to the most seriously injured, timeliness in resolving claims and reduction in cost of green slip premiums
- insurer profits and the effectiveness of the Risk Equalisation Mechanism and Profit Normalisation Mechanisms
- the effectiveness of CTP Assist and the Dispute Resolution Service
- the impact of changes to the definition of 'minor injury'.

**Reviews of the Lifetime Care and Support scheme**

**2.26** The Lifetime Care and Support (LTCS) scheme provides support for people severely injured in a motor vehicle accident in New South Wales, regardless of fault. The scheme commenced operation on 1 October 2006 for children and on 1 October 2007 for adults. The scheme is funded through the Medical Care and Injury Services (MCIS) levy which is paid by motorists when they purchase a Compulsory Third Party green slip insurance policy.<sup>7</sup>

**2.27** There were two reviews of the Lifetime Care and Support scheme in the 56<sup>th</sup> Parliament – one in 2017 and the most recent concluding in February 2019.

***First Review of the Lifetime Care and Support scheme***

**2.28** Although this review was referred to as the first review, the committee has been monitoring and reviewing the scheme since 2007, initially under the auspices of the *Motor Accidents (Lifetime Care and Support) Act 2006*,<sup>8</sup> then under the *Safety, Return to Work and Support Board Act 2012*.<sup>9</sup>

**2.29** The committee commenced this review on 13 March 2017. The committee received 11 submissions and held two public hearings. Prior to the hearings, the committee forwarded written questions on notice to the State Insurance and Regulatory Authority (SIRA) and Insurance and Care NSW (icare) and requested an update on the government's response to the recommendations it made as a result of its last examination of the scheme in 2014.

**2.30** The review canvassed these issues:

- administration of the scheme by icare, through its service delivery line, Lifetime Care

<sup>7</sup> icare, *Insurance and Care Annual report 2015-16*, 2016, p 70.

<sup>8</sup> *Motor Accidents (Lifetime Care and Support) Act 2006*, s 68.

<sup>9</sup> *Safety, Return to Work and Support Board Act 2012*, s 11.

- the review of the Lifetime Care and Support Guidelines, to facilitate person-centred decision making
- how the application process can be improved to ensure eligible accidents victims are not missing out on scheme benefits
- the need for icare to liaise with both regional and cross border hospitals to promote a better understanding of the scheme and its availability to patients who have been catastrophically injured in a motor vehicle accident
- insurer conduct
- the need for the dispute resolution process to be improved, particularly in terms of appeal assessment times.

**2.31** The final report for the review was tabled on 24 August 2017 and made five recommendations. The government response was received on 27 February 2018. The government supported all of the recommendations, either fully or in principle.

***2018 Review of the Lifetime Care and Support scheme***

**2.32** Submissions for this review closed in early November 2018, with three submissions received. The committee held one public hearing. Prior to the hearing, the committee forwarded written questions on notice to SIRA and icare and requested an update on the government's response to the recommendations it made as a result of its last examination of the scheme.

**2.33** The issues raised in evidence included:

- maintaining service standards in the context of the National Disability Insurance Scheme (NDIS)
- icare's fee structure for service providers
- preparations for the CTP Care Program that will provide treatment and care for CTP claimants who have long term needs beyond five years but who are not catastrophically injured
- improving customer experience
- a proposal to enable claims against road authorities as a means of improving road surfaces.

**2.34** The final report for the review was tabled on 26 February 2019 and made one recommendation.

**2.35** The government response is due 26 August 2019.

***Committee reflections***

The LTCS Scheme is functioning effectively and a limited range of issues were raised in respect of it during the 2018 review. The committee may continue to be interested in:

- the impact of the NDIS on the operating environment for LTCS care providers, along with icare's work to maintain high service standards for its participants
- icare's progress in promoting and supporting participants' self-management of care, including the uptake of this option and its success
- the implementation of the CTP Care Program under the *Motor Accident Injuries Act 2017*, once participants enter from 2020, and SIRA and icare's role in preventing cost shifting by insurers into the program.

**Reviews of the Dust Diseases scheme**

- 2.36** The Workers Compensation (Dust Diseases) scheme is a no-fault workers compensation scheme for people who have developed a compensable dust disease from occupational exposure to dust as a worker in New South Wales, and their dependents.
- 2.37** The Standing Committee on Law and Justice first examined the Dust Diseases scheme in 2014, during its review of the exercise of the functions of the Workers' Compensation (Dust Diseases) Board.
- 2.38** There were two reviews of the Dust Diseases scheme in the 56<sup>th</sup> Parliament— one in 2017, and the most recent review report tabling in February 2019.

***First Review of the Dust Diseases scheme***

- 2.39** This was the committee's first review of the scheme since the reforms. The review commenced on 13 March 2017. The committee received six submissions and held two public hearings.
- 2.40** The committee sent pre-hearing questions to SIRA and icare as the two authorities responsible for the administration of the scheme.
- 2.41** The committee found that the scheme was performing well and was financially viable. The time taken to process claims was reduced by 50 per cent since the last review. This improvement was attributed to improvements in administrative processes and a new statutory timeframe for claim determination.<sup>10</sup>

<sup>10</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 1.

- 2.42** icare had also worked to improve the application process, implementing a new two page application form in place of the previous eight page form. Work had also commenced to ultimately provide for phone applications.<sup>11</sup>
- 2.43** The committee considered several key proposals to improve the efficiency and operation of the scheme during this review, relating to:
- improving the role of Dust Diseases Care in education, prevention and as a repository for data
  - enhancing information for potential claimants and access to entitlements
  - providing an external and independent process to review decisions made by Dust Diseases Care.
- 2.44** The committee tabled its final report on 24 August 2017 and made five recommendations.
- 2.45** The government response was received on 27 February 2018. The government:
- supported four recommendations, which included recommendations to improve safety standards in the manufactured stone industry and develop an online application process that provides 24-hour access to lodge Dust Diseases scheme applications
  - supported in principle one recommendation regarding consideration of the establishment of a statutory internal appeals panel to review decisions about scheme eligibility.

### *2018 Review of the Dust Diseases scheme*

- 2.46** Submissions for this review closed early November 2018, with 11 submissions received. Prior to the hearings, the committee forwarded written questions on notice to SIRA and icare and requested an update on the government's response to the recommendations it made as a result of its last examination of the scheme.
- 2.47** Issues raised in evidence included:
- concerns regarding silicosis, particularly in the manufactured stone industry
  - the importance of establishing either a national or New South Wales dust diseases register
  - concerns regarding the operation and appointment process of the Medical Assessment Panel
  - that benefits for funeral expenses were too low (currently capped at \$9,000).
- 2.48** The final report for the review was tabled on 26 February 2019 and made eight recommendations.
- 2.49** The government response is due 26 August 2019.

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<sup>11</sup> Answers to pre-hearing questions, Mr Vivek Bhatia, Chief Executive Officer, icare, 30 June 2017, p 9.

***Committee reflection***

The Dust Diseases Scheme is performing well with mostly minor concerns raised with the committee during the two reviews.

The most recent review highlighted concerns from stakeholders regarding the emerging issue of silicosis in the manufactured stone industry.

The committee commends the NSW Government for establishing a taskforce to consider this matter following the committee's previous review. Given continued concerns raised by stakeholders, it is recommended that the committee, in performing its oversight role in the next Parliament, give priority to conducting a review of the Dust Diseases scheme.

**Inquiries into Bills**

- 2.50** The Selection of Bills Committee was established by the Legislative Council on 23 November 2017. This committee was given the power to report to the House on whether a bill should be referred to one of the subject standing committees, such as the Standing Committee on Law and Justice.
- 2.51** On recommendation of the Selection of Bills Committee, two bills were referred to the Standing Committee on Law and Justice during the 56<sup>th</sup> Parliament, both discussed below.

**Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018**

- 2.52** The Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 was the second bill to be referred from the Legislative Council's trial Selection of Bills Committee. It was referred to the committee on 19 September 2018, with a reporting date of 25 September 2018.
- 2.53** The bill amended the *Road Transport Act 2013*, *Roads Act 1993* and other road transport legislation to reflect the New South Wales Government's Road Safety Plan 2021. The amendments:
- introduced licence suspension and penalty notices for low range alcohol and drug driving first offences
  - expanded the mandatory alcohol interlock program to include more offences
  - provided for the imposition of vehicle sanctions for certain repeat drink-driving offences
  - contain provisions requiring drink and drug driving offenders to complete an education course.
- 2.54** The Minister for Roads, Maritime and Freight, the Hon Melinda Pavey MP, noted in her second reading speech that the main purpose of the bill was to address drink and drug driving behaviour

by strengthening penalties and sanctions and enhancing enforcement in road transport legislation.<sup>12</sup>

- 2.55** The committee received 3 submissions and held one public hearing. During the inquiry, the committee considered concerns raised by stakeholders and noted that there were differing views of inquiry participants on a number of the provisions of the bill.
- 2.56** The committee recommended that the Legislative Council proceed to consider the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 and consider amendments in the committee stage that address stakeholder concerns.
- 2.57** The committee tabled its report on 25 September 2018, and amendments to the bill were debated in the Legislative Council on that day. The bill passed Parliament on 27 September 2018 and received Assent on 5 October 2018.

### **Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018**

- 2.58** This inquiry was referred to the committee by the Legislative Council on 23 October 2018, with a reporting date of 14 November 2018. The bill sought to amend the Road Transport Act 2013 to authorise Roads and Maritime Services and certain other government agencies to collect, keep, use and release identity information in accordance with an Intergovernmental Agreement which was agreed to in October 2017 at a Special Meeting of the Council of Australian Governments on Counter-Terrorism. Under the agreement, agencies in all Australian jurisdictions would be able to use new identity-matching services to access passport, visa, citizenship and driver licence images for counter-terrorism purposes.
- 2.59** There were seven submissions to the inquiry and one public hearing. During the short inquiry, the committee considered a number of concerns that were raised by stakeholders regarding both the Road Transport Amendment (National Facial Biometric Matching Capability) Bill and the Commonwealth's Identity-matching Services Bill 2018. The Commonwealth legislation provided the overarching framework for the new biometric face-matching services.
- 2.60** Concerns raised by some stakeholders included whether there were appropriate privacy safeguards in both the NSW and Commonwealth bills.
- 2.61** The committee recommended that when the Legislative Council was due to consider the Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018, that stakeholder concerns raised in this inquiry be addressed by the government during debate on the bill in the Legislative Council.
- 2.62** The committee's report was tabled on 14 November 2018. When debating the bill in the Legislative Council, various members referred to the issues that had been canvassed in the inquiry.
- 2.63** The bill passed Parliament on 21 November 2018 and was assented to on 28 November 2018.

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<sup>12</sup> The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 1-2.



## Other inquiries

**2.64** The Standing Committee on Law and Justice also conducted several other inquiries during the 56<sup>th</sup> Parliament, all of which are discussed briefly below.

### Adequacy and scope of special care offences

**2.65** Following a referral by the Hon Mark Speakman MP, Attorney General, on 13 February 2018, the Standing Committee on Law and Justice was requested to inquire and report on the adequacy and scope of special care offences under section 73 of the Crimes Act 1900.

**2.66** Under section 73 of the *Crimes Act 1900* it is an offence to have sexual intercourse with a person aged 16 or 17 years under special care. This is based on the presumption that although the age of consent is 16 years, nonetheless a child aged 16 or 17 years cannot provide consent to sexual intercourse with an adult where a special care relationship exists with that adult.

**2.67** Under section 73 (3) of the *Crimes Act*, there are categories of special care relationships, where a young person (the victim) is under the special care of another person (the offender) if the offender:

- is the step-parent, guardian or authorised carer of the victim or the de facto partner of a parent, guardian or authorised carer of the victim
- is a member of the teaching staff of the school at which the victim is a student
- has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim
- is a custodial officer of an institution where the victim is an inmate
- is a health professional and the victim is a patient of the health professional.

**2.68** This inquiry was established by the committee on 15 February 2018, with the terms of reference requiring the committee to report on the following aspects:

- the adequacy of the scope of the special care offences in ensuring the safety of school students, in relation to their application to teachers and other school workers
- whether the offences should apply to where a school worker is a volunteer or a recent ex-student of the school or no longer works at the student's school
- whether the offences should apply where a special care relationship existed but is no longer in effect
- whether youth workers and workers in youth residential care settings, including but not limited to homelessness services, should be recognised as having special care of any 16 or 17 year old young people to whom they provide services
- whether the offences should be expanded to recognise adoptive parents and adopted children as a special care relationship
- whether any additional safeguards, including but not limited to Director of Public Prosecutions sanction of prosecutions, are required

- whether the incest offence in section 78A of the *Crimes Act 1900* should be expanded to include adoptive relationships.

**2.69** The committee received 17 submissions and held one public hearing. There was a wide array of views and concerns presented by stakeholders in relation to whether the wording of the offence was adequate in protecting young people from being abused by someone in a position of authority.

**2.70** The report was tabled on the 22 November 2018. Overall, the committee recommended that the offence be amended to provide greater clarity and certainty as to which relationships are captured as criminal conduct. This stemmed from concerns that the offence had the potential to capture innocent relationships not intended to be deemed as criminal conduct.

**2.71** While reflecting on the complexity of the issues, the committee ultimately made five recommendations:

- that section 73 of the Crimes Act should be amended to clarify that the offender is in a position of authority in the relationship
- that, relevant to school settings, the offence be clarified to ensure that the offender is in a position of care of authority and that volunteers are captured
- that youth residential care settings and homelessness services should be included within the scope of the special care offence
- that the NSW Government consider including employment relationships as a category within in the special care offence, given that while there is regulation around sexual misconduct in employment settings, there is currently no criminalisation of this conduct
- that the offence be amended to include adoptive parents and de facto partners of adoptive parents in section 73(3)(a).

**2.72** The government response is due on 22 April 2019.

### **Security classification and management of inmates sentenced to life imprisonment**

**2.73** In July 2015 media attention focused on the issue of a number of inmates who had been sentenced to life imprisonment in New South Wales who had been reclassified to serve time in a medium or minimum security level in prison. This became a prominent story in the media following an outcry from the public and victims' families. The Commissioner of Corrective Services subsequently reclassified these inmates from their lower security classifications to maximum security.

**2.74** The inquiry was referred by the Hon David Elliott MP, Minister for Corrections, on 20 August 2015 to consider how 'lifers' should be classified and whether they should have access to rehabilitation programs.

**2.75** The committee received a total of 33 submissions and five pro forma responses to the inquiry. It held one public hearing and conducted a site visit to the Long Bay Correctional Facility. The final report was tabled on 4 April 2016 containing nine recommendations.

- 2.76** The committee's main recommendation was to establish a new security classification for 'lifera' who have little or no prospect of release from custody. Inmates subject to the new classification would never be reclassified, and instead would be managed by the Serious Offenders Review Council which would make recommendations to the Commissioner regarding placement within the correctional system. Decisions would be based on the risk the inmates posed to the community, preserving the good order of correctional facilities and ensuring the safe and effective management of inmates.
- 2.77** In making this recommendation, the committee noted the considerable community unrest regarding the reclassification of 'lifera' and the submission of Corrective Services NSW, which considered that the current security classification system was not appropriate for this cohort of inmates.
- 2.78** The committee also:
- supported existing Corrective Services NSW practice that rehabilitation programs not be made available to 'lifera' unless there is an imminent risk of them harming correctional officers and/or other inmates
  - recommended that Corrective Services implement a comprehensive communication strategy to educate the public on the operation of the correctional system and that it introduce a range of measures to improve communication with victims of 'lifera'.
- 2.79** The government's response was received on 20 September 2016. The government supported the committee's main recommendation to establish a new 'lifer' classification and advised that the necessary legislative changes would be pursued. It also recognised the need to better educate the public about the correctional system and to improve the communication and support available to victims.
- 2.80** The government did not support the recommendations to trial an 'opt-out' Victim's Register due to privacy and logistical concerns. The Minister indicated that instead of this approach, Corrective Services would endeavour to improve the level of awareness about the Victims Register.
- 2.81** In addition, the government did not support a recommendation that the Commissioner of Corrective Services must provide reasons where recommendations of the Serious Offenders Review Council are not adopted. It acknowledged that it was good practice to provide reasons but argued that as the correctional system is a complex and high risk environment and decisions are sometimes informed by highly confidential intelligence, it would not be appropriate to make reference to such information.
- 2.82** On 6 April 2018 the Crimes (Administration of Sentences) Amendment (Classification of Inmates) Regulation 2018 was published on the NSW Legislation Website. The regulation amended the Crimes (Administration of Sentences) Regulation 2014 to create a new security classification (Category Life) for all inmates serving a sentence of imprisonment for life.

### **Remedies for the serious invasion of privacy in New South Wales**

- 2.83** The inquiry into remedies for the serious invasion of privacy in New South Wales was referred to the committee by the House on 24 June 2015. The terms of reference required the committee to consider, in particular:
- the adequacy of existing remedies for serious invasions of privacy, including the equitable action of breach of confidence
  - whether a statutory cause of action for serious invasions of privacy should be introduced, and
  - any other related matter.
- 2.84** The inquiry was established amidst increasing community concern about the use of technology, including social media and surveillance technology, in ways which intrude upon and negatively impact people's day-to-day lives. Of particular concern in the lead up to the inquiry was the so-called 'revenge pornography' phenomenon, involving the distribution or threatened distribution of intimate images without the subject's consent.
- 2.85** The inquiry followed a number of comprehensive law reform commissions reports on the matter conducted over the past decade, all of which supported a statutory cause of action for serious invasions of privacy.
- 2.86** The committee received 33 submissions and held two public hearings at Parliament House.
- 2.87** The committee determined that existing civil remedies failed to offer adequate remedy to people who had suffered from a serious invasion of privacy. In particular, the committee considered that the equitable action of breach of confidence was inaccessible and offered a 'poor fit' in respect of privacy invasions.
- 2.88** The committee also noted issues raised by some stakeholders relating to technology facilitated abuse and harassment, and acknowledged that this was of particular concern in family violence type contexts. The committee recommended that:
- the scope of the NSW Privacy Commissioner's jurisdiction be expanded to enable the Commissioner to hear complaints between individuals relating to alleged serious invasions of privacy, and to make determinations for non-financial forms of redress
  - NSW Police take steps to ensure its officers receive appropriate training and education about the harms of technology-facilitated stalking, abuse and harassment and on the use of existing offences and apprehended violence orders in respect of this type of conduct.
- 2.89** The introduction of new criminal offences was beyond the committee's remit for the inquiry; however, the committee suggested that it would be appropriate for the government to consider the recommendations of the Senate Legal and Constitutional Affairs Reference Committee in its February 2016 report, *Phenomenon colloquially referred to as 'revenge porn'* regarding the introduction of such offences to address the non-consensual sharing of intimate images.
- 2.90** The final report was tabled on 3 March 2016 and contained seven recommendations, including that New South Wales enact a statutory cause of action based on the model detailed in the

Australian Law Reform Commission's 2014 report 'Serious Invasions of Privacy in the Digital Era.'

- 2.91** The government response was received on 5 September 2016.<sup>13</sup> The government supported two recommendations and noted five recommendations. The government acknowledged the evidence regarding the severe impact that non-consensual sharing of intimate images can have on victims, particularly in the context of domestic violence and abuse. It considered that the most effective way to address such harm was by reviewing and amending the criminal law to deter the offensive behaviour.
- 2.92** The government confirmed that it would consult with stakeholders on the terms of new criminal offences and how they might be framed to ensure New South Wales criminal law adequately protects people from the harm caused by the non-consensual sharing of intimate images.
- 2.93** It further confirmed that it would explore the proposal for a statutory cause of action for serious invasions of privacy with other Australian jurisdictions.
- 2.94** Since the report, the government has criminalised the distribution of intimate or sexually explicit images without consent through the *Crimes Amendment (Intimate Images) Act 2017*. It is now a crime to share or record intimate images or videos without consent, with penalties of up to three years' jail and fines of up to \$11,000.

### **Statutory review of the State Insurance and Care Governance Act 2015**

- 2.95** The *State Insurance and Care Governance Act 2015* provided for a one-off statutory review to be undertaken by a Legislative Council committee two years after the commencement of the Act:

#### **12 Review by Parliamentary Committee**

- (1) As soon as practicable after the second anniversary of the commencement of this clause, a committee of the Legislative Council is to be designated by resolution of the Legislative Council to review this Act (including the amendments made by this Act) to determine whether the policy objectives of the Act or those amendments remain valid and whether the terms of the Act (or of the Acts so amended) remain appropriate for securing those objectives.
  - (2) The review is to be undertaken as soon as possible after the committee is appointed.
  - (3) A report on the outcome of the review is to be tabled in each House of Parliament.<sup>14</sup>
- 2.96** The Standing Committee on Law and Justice was designated as the committee to undertake this role.<sup>15</sup> This was the first time a Legislative Council committee conducted a statutory review of an Act of Parliament.

<sup>13</sup> See: <https://www.parliament.nsw.gov.au/lcdocs/inquiries/1877/160905%20Government%20response.pdf>

<sup>14</sup> *State Insurance and Care Governance Act 2015*, Sch 4, cl 12.

<sup>15</sup> *Minutes*, NSW Legislative Council, 19 November 2015, p 623.

- 2.97** Unlike the committee's regular reviews supervising the operation of the insurance and compensation schemes established under the state's workers compensation and motor accidents legislation, the focus of the statutory review was on the operation of the *State Insurance and Care Governance Act* itself, examining two specific questions:
1. Do the policy objectives of the Act remain valid?
  2. Do the terms of the Act remain appropriate for securing those objectives?
- 2.98** Overall, the committee was of the view that the policy objectives of the Act, particularly the structural separation of the organisations responsible for operating and regulating the relevant schemes and for regulating workplace safety, remain very much valid. The committee also acknowledged that much had been achieved by icare, SIRA and SafeWork NSW in their first two years of operation, bearing in mind the volume, scale and complex nature of their work.
- 2.99** A number of review participants argued that there are areas for improvement in icare and SIRA's organisational transparency. The first was in relation to icare governance documentation, where the committee recommended icare publish minutes and communiques of its board meetings and the statement of business intent prepared in accordance with s 11 of the *State Insurance and Care Governance Act*.
- 2.100** In relation to publication of workers compensation scheme data, a key area of concern for stakeholders, the committee recommended that SIRA ensure the timely publication of workers compensation statistical bulletins, within six months of the end of the financial year to which they refer. The committee also recommended that SIRA commence work on developing comprehensive real-time data for workers compensation claims, including visualisation tools such as a dashboard, and that the NSW Government introduce legislative amendments to give SIRA statutory information collection and sharing powers in the area of workers compensation, modelled on the equivalent provisions for compulsory third party insurance.
- 2.101** The committee also encouraged SIRA to expand its publication of 'notable' workers compensation Merit Review Service decisions, expressing the view that icare could be more proactive in providing employers with premium calculation information.
- 2.102** The committee noted the concerns expressed by review participants around:
- the interaction between icare and SIRA, both in terms of operational communication and coordination, and in terms of having a clear delineation between their respective roles
  - SIRA and SafeWork NSW's effectiveness in carrying out their enforcement and compliance functions.
- 2.103** The committee recommended that the NSW Government keep a watching brief on these issues for consideration as part of the five-year statutory review of the Act. The committee also noted that the organisational reforms contained in the *State Insurance and Care Governance Act* had succeeded in removing the potential conflicts of interests that were inherent within the former WorkCover governance structure.
- 2.104** The government response was received on 20 June 2018. All of the recommendations were supported.

**2.105** In addition to the recommendations within the committee's report, the committee also proposed to keep a watching brief on the following issues:

- SIRA's publication of 'notable' workers compensation Merit Review Service decisions
- icare's provision of premium calculation information to employers.





## Appendix 1 At a glance

This appendix provides key statistics on the work of the committee during the 56th Parliament.

**Table 1 Remedies for the serious invasion of privacy in New South Wales**

No of submissions	33
No. of supplementary submissions	-
No. of hearings	2
No. of site visits	-
Tabling date	3 March 2016

**Table 2 Security classification and management of inmates sentenced to life imprisonment**

No of submissions	33
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	1
Tabling date	4 April 2016

**Table 3 First review of the workers compensation scheme**

No of submissions	84
No. of supplementary submissions	2
No. of hearings	2
No. of site visits	-
Tabling date	9 March 2017

**Table 4 First review of the Compulsory Third Party insurance scheme**

No of submissions	12
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	19 August 2016

**Table 5 First review of the Lifetime Care and Support scheme**

No of submissions	11
No. of supplementary submissions	-
No. of hearings	2
No. of site visits	-
Tabling date	24 August 2017

**Table 6 First review of the Dust Diseases scheme**

No of submissions	6
No. of supplementary submissions	-
No. of hearings	2
No. of site visits	-
Tabling date	24 August 2017

**Table 7 Statutory review of the State Insurance and Care Governance Act 2015**

No of submissions	16
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	15 December 2017

**Table 8 Adequacy and scope of special care offences**

No of submissions	17
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	22 November 2018

**Table 9 2018 review of the Dust Diseases scheme**

No of submissions	11
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	

**Table 10 2018 review of the Lifetime Care and Support scheme**

No of submissions	3
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	

**Table 11 2018 review of the Compulsory Third Party insurance scheme**

No of submissions	12
No. of supplementary submissions	-
No. of hearings	2
No. of site visits	-
Tabling date	12 February 2019

**Table 12 2018 review of the workers compensation scheme**

No of submissions	21
No. of supplementary submissions	-
No. of hearings	3
No. of site visits	-
Tabling date	12 February 2019

**Table 13 Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018**

No of submissions	3
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	25 September 2018

**Table 14 Road Transport Amendment (National Facial Biometric Matching Capability) Bill 2018**

No of submissions	7
No. of supplementary submissions	-
No. of hearings	1
No. of site visits	-
Tabling date	14 November 2018

## Appendix 2

### Draft minutes no. 40

Thursday 21 February 2019

Standing Committee on Law and Justice

McKell Room, Parliament House, Sydney at 1.37pm

#### 1. Members present

Mrs Ward, *Chair*

Mr Amato (substituting for Mr Clarke)

Mr Khan

Mr Mookhey

Mr Shoebridge

#### 2. Apologies

Mr Clarke

Ms Voltz

3. \*\*\*

4. \*\*\*

5. \*\*\*

6. \*\*\*

#### 7. Legacy Report

The Chair submitted her draft report entitled *Law and Justice Legacy Report 56<sup>th</sup> Parliament*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Shoebridge: That the following dot point be inserted at the end of the committee reflections text box after paragraph 2.13:

- 'the allocation of benefits from the scheme'.

Resolved, on the motion of Mr Shoebridge: That:

- the draft report, as amended, be the report of the committee and that it be published on the committee's website
- upon receipt of government responses to committee's inquiry reports that the secretariat be authorised to update the legacy report where necessary.

#### 8. Adjournment

The committee adjourned at 2.20 pm, *Sine die*.

Stephanie Galbraith

**Committee Clerk**