

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



Digest No. 6/58 – 17 October 2023

New South Wales Parliamentary Library cataloguing-in-publication data:



A catalogue record for this
book is available from the
National Library of Australia

ISSN: 1448-6954

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”.

Contents

Membership.....	4
Guide to the Digest.....	5
Digest Snapshot.....	12
Summary of Conclusions.....	14
 PART ONE – BILLS	 20
1. Building Legislation Amendment Bill 2023	21
2. Centennial Park and Moore Park Trust Amendment (Car Parking) Bill 2023	26
3. Climate Change (Net Zero Future) Bill 2023.....	28
4. Defamation Amendment Bill 2023	30
5. Emergency Services Legislation Amendment Bill 2023	37
6. Justice Legislation Amendment (Miscellaneous) Bill 2023	39
7. Revenue, Mining and Energy Legislation Amendment Bill 2023.....	43
8. Strata Legislation Amendment Bill 2023.....	45
9. Surveillance Devices Amendment (Public Interest Exemptions) Bill 2023*	48
10. Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Bill 2023.....	50
 APPENDICES.....	 52
Appendix One – Functions of the Committee.....	53
Appendix Two – Regulations without comment	55
Appendix Three – Unconfirmed extracts of minutes	56

Membership

Chair	Ms Lynda Voltz MP, Member for Auburn
Deputy Chair	Ms Maryanne Stuart MP, Member for Heathcote
Members	Ms Donna Davis MP, Member for Parramatta Mr Nathan Hagarty MP, Member for Leppington Ms Sue Higginson MLC Mr Dave Layzell MP, Member for Upper Hunter The Hon. Jacqui Munro MLC The Hon. Cameron Murphy MLC
Contact details	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
Telephone	(02) 9230 2144 / (02) 9230 2151
E-mail	Legislation.Review@parliament.nsw.gov.au
Website	www.parliament.nsw.gov.au/lrc

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) trespass 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

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

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.

A summary of the regulations that the Committee considers do not warrant comment are published as an appendix to the Digest.



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. Building Legislation Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Powers of authorised persons – right to privacy and property rights	No further comment
Continuing offences	Referred

[2. Centennial Park and Moore Park Trust Amendment \(Car Parking\) Bill 2023](#)

Issue identified	Conclusion of Committee
Matters deferred to regulations – commencement date of parking closures	No further comment

[3. Climate Change \(Net Zero Future\) Bill 2023](#)

No issues identified

[4. Defamation Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Right to protect reputation – lack of available remedies	Referred
Access to new defence	No further comment
Court order against non-party digital intermediaries	No further comment
Right to protect reputation – extension of absolute privilege to police officials	Noted

[5. Emergency Services Legislation Amendment Bill 2023](#)

No issues identified

[6. Justice Legislation Amendment \(Miscellaneous\) Bill 2023](#)

Issue identified	Conclusion of Committee
Uncertainty – term of detention	Referred
Matters deferred to regulations	No further comment

[7. Revenue, Mining and Energy Legislation Amendment Bill 2023](#)

No issues identified

[8. Strata Legislation Amendment Bill 2023](#)

Issue identified	Conclusion of Committee
Partial commencement by proclamation	No further comment

[9. Surveillance Devices Amendment \(Public Interest Exemptions\) Bill 2023*](#)

Issue identified	Conclusion of Committee
Privacy rights	Referred

**10. Waste Recycling and Processing Corporation (Authorised Transaction)
Amendment Bill 2023**

No issues identified

Summary of Conclusions

PART ONE – BILLS

1. Building Legislation Amendment Bill 2023

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

Powers of authorised persons – right to privacy and property rights

The Bill grants broad powers of search and entry to an authorised person under the Act. These include powers to examine or inspect a premises for ensuring compliance with the Act, the regulations, or for the purpose of carrying out the Secretary's or Authority's functions. The power of entry available to the authorised person is not limited to public areas and may include entry to residential premises without the permission of the occupier.

The powers of search, entry and investigation are broad and may impact on a person's right to property and privacy. The Committee notes the authorised person has the discretion to do anything in their opinion they deem necessary to ensure compliance. However, as the purpose of entry is to facilitate proper and extensive investigation of building works, the Committee makes no further comment.

Continuing offences

The Bill inserts a number of offences into the *Home Building Act 1989* and the *Building Product (Safety) Act 2017* that attract the 'continuing requirement provision'. This means that a person will continue to be liable for a certain offence for each day until the requirement is fulfilled, attracting a further penalty for each day that the offence continues.

The Committee notes that high and continuing penalties may undermine the protection of personal rights by disregarding principles such as proportionality, fair trial rights and equal treatment. Under the Bill's provisions, a person who contravenes a building product supply ban or building product use ban may incur a maximum penalty of 2 000 penalty units (\$220 000), or imprisonment for two years, or both. Under the continuing requirement provision, the person will incur a further penalty of 400 penalty units (\$44 000) for each day the offence continues.

The Committee acknowledges that the size of the penalties reflect the seriousness of the offences and their impact on human safety. It also recognises that these intend to deter noncompliance, particularly around the use of unsafe building products. Further, the Bill contains appeal provisions for affected persons, and includes information that the Secretary must consider before making orders.

The Committee also recognises that the Bill's provisions are likely to apply to developers in the course of their business, and that similar offences are found in other areas of building legislation including in the amended Acts. However, the Committee notes that striking a balance between effective deterrence and individual rights is crucial to ensure rights are respected and upheld within a legal system. In the circumstances, the Committee refers the matter to Parliament for its consideration.

2. Centennial Park and Moore Park Trust Amendment (Car Parking) Bill 2023

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

Matters deferred to regulations – commencement date of parking closures

The Bill amends the *Centennial Park and Moore Park Trust Act 1983* to remove the legislated dates for closing on-grass parking in the Moore Park precinct. It also allows the Minister to recommend regulations to prescribe new closure dates once alternative parking arrangements become available.

By allowing the regulations to prescribe the dates for closure of on-grass parking, the Bill may lead to uncertainty about when it becomes unlawful to park in these areas. The Committee notes that illegal parking can attract fines or penalty notices in NSW. The Committee generally prefers for such matters to be included in primary legislation rather than regulations, to ensure an appropriate level of parliamentary oversight.

However, the Committee acknowledges that allowing regulations to prescribe certain matters provide flexibility in the regulatory scheme, particularly in relation to matters that are more administrative in nature. It also notes that the Bill sets out the criteria under which the Minister should recommend making regulations to prescribe the parking closure dates. In the circumstances, the Committee makes no further comment.

3. Climate Change (Net Zero Future) Bill 2023

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

4. Defamation Amendment Bill 2023

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

Right to protect reputation – lack of available remedies

The Bill amends the *Defamation Act 2005* to introduce a conditional, statutory exemption from defamation liability for certain passive digital intermediaries. These include digital intermediaries that provide caching, conduit or storage services, as well as search engine providers.

The Committee notes that while the Bill sets out the specific criteria for an exemption, it does not require that the digital intermediary held knowledge of the defamatory nature of the digital matter. As a result, it is unclear whether the defence may be applied in circumstances beyond where the intermediary plays a passive role, or where the digital intermediary facilitated content with knowledge of its defamatory nature. The Committee notes that, in the circumstances, the Bill's provisions may add to the harm suffered by the complainant and infringe on the right to protect their reputation.

The Committee acknowledges that the Bill includes a safeguard by allowing the court to make orders against non-party digital intermediaries, even where they qualify for a statutory exemption from liability. However, the Committee notes that although the new court power in section 39A of the Bill may address some concerns, it can only be revoked during ongoing defamation proceedings, which requires the author of the original defamatory content to be identified. This

can be problematic when the complainant is unable to identify the originator or when they are located outside the jurisdiction of the court.

The Committee recognises that the new exemptions in the Bill aim to shift liability towards originators of defamatory content, rather than the passive conduits of information. However, given that departure from this principle may further infringe upon the complainant's right to protect their reputation and potentially deny access to remedies, the Committee refers the matter to Parliament for its consideration.

Access to new defence

The Bill amends the *Defamation Act 2005* to create a new defence for digital intermediaries who promptly take appropriate access prevention steps upon receiving a notice from the complainant. The Bill requires the defendant to take these steps within seven days after receiving a notice. In the absence of a complaints notice, digital intermediaries can access the defence without the need to take these steps, provided that they have an accessible complainant mechanism available.

The Committee notes that in the absence of a notice given by the complainant, the only option for the digital intermediary to avoid liability is to take reasonable access prevention steps. The Committee notes that the Bill is unclear as to what may amount to 'reasonable' steps and leaves it to the courts to determine the question. In the circumstances, the Committee notes that access to this defence may be difficult for smaller or individual digital intermediaries who may not have the benefit of obtaining legal advice to determine whether their actions will 'sufficiently protect' them from defamation claims. The Committee notes that as a result, the Bill may potentially infringe upon a person's freedom of speech and expression by encouraging taking steps to remove, block, disable, or otherwise prevent access to any matter that is potentially defamatory.

However, the Committee recognises that the drafting of the defence includes a broad range of circumstances to recognise that digital intermediaries should not be liable where they are merely a subordinate distributor. The Committee also recognises that despite its potential impact on freedom of speech and expression, the amendment has been made following extensive consultation by the Defamation Working Party, which comprised representatives from all jurisdictions. In the circumstances, the Committee makes no further comment.

Court order against non-party digital intermediaries

The Bill amends the *Defamation Act 2005* to introduce a specific power for courts to make non-party orders against digital intermediaries to prevent access to defamatory matter online. The courts can make orders about taking access prevention steps or any other steps necessary to prevent or limit the continued publication or republication of defamatory matter. The court can only make an order if they have granted an interim or final judgment for the plaintiff in an action for defamation.

While it is a requirement under the Bill that the non-party intermediary must be provided with an opportunity to make a submission, the Committee notes that this may be dispensed with in circumstances where the Court considers a temporary and expeditious order is necessary. The Committee also notes that an order under section 39A can be made regardless of whether the non-party digital intermediary is liable for the defamatory claim. In the circumstances, the Committee notes that the Bill may have the impact of limiting the freedom of speech and expression of the non-party digital intermediary.

However, the Committee acknowledges that the Bill seeks to protect the plaintiff's right to protect their reputation, and that the inclusion of the new power follows an extensive stakeholder consultation by the Defamation Working Party, and that the inclusion of the provision was an

approach supported by stakeholders. For these reasons, the Committee makes no further comment.

Right to protect reputation – extension of absolute privilege to police officials

The Bill proposes to expand the application of the defence of absolute privilege in the *Defamation Act 2005* to cover defamatory material that is published to a police officer or relevant police official. It amends the Act by inserting section 27(2)(b) that provides a defence for a defendant who has published defamatory material to the specified police officer or official.

The defence of absolute privilege provides a complete defence to defamation that a plaintiff cannot defeat. If established, this provides full protection from liability for a defendant in a defamation trial. A plaintiff who alleges they have been defamed by material is prevented from gaining a legal remedy. This prevents them from exercising their right to protect their reputation that could have been harmed by the defamatory material.

The Committee notes the policy rationale behind expanding absolute privilege to protect the privacy of certain vulnerable persons such as victim-survivors and remove a potential barrier for them coming forward to police. In this instance, a person's right to communicate certain information is balanced against another person's right to protect their reputation. For this reason the Committee notes the balancing of these competing rights for Parliament's consideration.

5. Emergency Services Legislation Amendment Bill 2023

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

6. Justice Legislation Amendment (Miscellaneous) Bill 2023

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

Uncertainty – term of detention

The Bill amends the *Terrorism (Police Powers) Act 2002* to extend the operation of the prevention detention scheme in Part 2A of the Act. This allows a preventative detention order or a prohibited contact order to remain in force for a further three years, until 16 December 2026.

The Committee acknowledges that this reform intends to act as a counterterrorism disruption mechanism and that avenues are available for revoking preventative detention orders. However, the Committee notes that, as a result of the Bill, a person under a preventative detention order or a prohibited contact order may remain in custody for longer than their initial term of detention, which will extend beyond 16 December 2023. It also notes that the person's term of detention may be further extended through an additional application.

The Committee therefore notes that the Bill may impact a person's right to liberty and freedom from prolonged and uncertain periods of detention. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Matters deferred to regulations

The Bill defers a number of matters to regulations for various amended Acts, including around prescribing an activity that a person may complete instead of paying a monetary amount in a penalty notice. The Bill also allows regulations to make parole orders at the time of sentencing a person. Regulations may also make provisions about the duties of independent third parties in the context of terrorism intelligence applications.

The Bill may therefore provide a wide delegation of legislative powers by deferring matters to the regulations instead of clearly setting them out in the primary Acts. The Committee generally prefers such matters be included in primary legislation rather than in the regulations to foster a greater level of parliamentary oversight and to provide clarity. However, the Committee acknowledges that allowing regulations to prescribe certain matters provides flexibility, particularly in relation to matters that are more administrative in nature. Given the regulation-making powers are more administrative in this instance and do not appear to limit individual rights or liberties, the Committee makes no further comment.

7. Revenue, Mining and Energy Legislation Amendment Bill 2023

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

8. Strata Legislation Amendment Bill 2023

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

Partial commencement by proclamation

The Bill amends section 237(8)(e) of the *Strata Schemes Management Act 2015* and inserts sections 129A and 130A into the *Community Land Management Act 2021* that are, according to Schedule 2 of the Bill, to commence on a day or days to be appointed by proclamation. The remaining schedules of the Bill commence on the date of assent.

The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide for certainty for affected persons. The Committee notes that the Bill contains amendments that are part of a tranche of changes to the relevant pieces of legislation to reflect reform and continuity in the strata and community land schemes and that a flexible start date may assist with the implementation of these changes.

The Committee notes the absence of an express statement in the second reading speech on the schedules that commence by proclamation, and that the provisions do not have a common or clear reason for flexibility apart from the potential involvement of the Civil and Administrative Tribunal. However, the Committee acknowledges that there may be practical reasons for imposing a flexible start date for these provisions to implement the regulatory framework. In the circumstances, the Committee makes no further comment.

9. Surveillance Devices Amendment (Public Interest Exemptions) Bill 2023*

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

Privacy rights

The Bill inserts subsections 11(2)(c) and 12(2)(c) into the *Surveillance Devices Act 2007* to exempt the communication, publication or possession of private conversations or recordings of activity if they are for use in the public interest. This would allow law enforcement agencies to communicate, publish or possess records of private conversations or activities obtained by surveillance devices.

The Committee notes that these exemptions have the potential to impact individuals' right to privacy, as it permits individuals such as journalists to publish personal information obtained by listening, optical, and tracking surveillance devices without consent and in some circumstances, unlawfully.

The Committee recognises that the Bill intends to allow persons to report on matters in the public interest without being subject to penalties. However, it notes that the Bill could allow lay persons to make private conversations or recordings of activities public, which could include sensitive information. The Committee also notes that there does not appear to be safeguards accompanying the exemptions under the Bill that limit or allow a challenge or review of information being published. For these reasons, the Committee refers the matter to Parliament for its consideration.

10. Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Bill 2023

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



Part One – Bills

1. Building Legislation Amendment Bill 2023

Date introduced	12 October 2023
House introduced	Legislative Council
Minister with carriage	The Hon. Penny Sharpe MLC
Portfolio	Better Regulation and Fair Trading Building

Purpose and description

- 1.1 The objects of this Bill are as follows:
- (a) to enable building defects in homes to be investigated before a complaint is made, including new powers to enter sites, order rectification, stop work and take action against licence holders
 - (b) to introduce duties on persons in the building products supply chain to ensure building products are safe and suitable for their intended use
 - (c) to amend legislation relating to strata schemes to enable the percentage of a contract price required to be provided by a strata developer as security to be prescribed by the regulations and to make provisions relating to decennial insurance
 - (d) to provide for immediate suspensions of registrations of building certifiers and practitioners in certain circumstances after a show cause notice has been issued
 - (e) to facilitate information sharing with government sector agencies under the *Building and Development Certifiers Act 2018* (the **Building and Development Certifiers Act**) and the *Home Building Act 1989* (the **Home Building Act**).
- 1.2 The Bill makes amendments to the following Acts:
- (a) the Home Building Act
 - (b) the *Building Products (Safety) Act 2017* (the **Building Safety Act**)
 - (c) the Building and Development Certifier Act
 - (d) the *Strata Schemes Management Act 2015* (the **Strata Management Act**)
 - (e) the *Design and Building Practitioners Act 2020* (the **Design and Building Act**).

Background

- 1.3 In her second reading speech, the Hon. Penny Sharpe MLC, Leader of the Government in the Legislative Council, stated that the Bill is part of the government's

ongoing commitment to reforming the oversight of the building industry in NSW. The Bill addresses 'serious impacts that unsafe building products and noncompliant buildings can have on people's lives' and seeks to improve the quality of buildings and restore public confidence.

- 1.4 The Bill proposes various amendments to a number of Acts, grouped into five Schedules according to the nature of the amendment.
- 1.5 Schedule 1 of the Bill amends the Home Building Act to expand proactive regulatory powers for class 1 buildings. The amendments in the Bill enhance the powers of the NSW Building Commissioner (the **Commissioner**), including by:
 - (a) extending powers to prevent individuals involved in insolvency or intentional 'phoenixing' from holding contractor licences or operating in the industry
 - (b) allowing rectification orders to be issued for defective work in buildings, including situations where the work has caused damage
 - (c) ordering stop work orders to prevent significant harm or loss in residential building work
 - (d) imposing penalties for non-compliance with certain directions including rectification orders.
- 1.6 The Minister described that Schedule 1 amendments will 'create a consistent approach across the industry' as it would extend the existing powers for class 2 apartment buildings 'to ensure the regulator can effectively oversee the construction of class 1 residential houses across New South Wales'.
- 1.7 Schedule 2 of the Bill includes amendments to the Building Safety Act that focus on ensuring building products are safe and compliant. The amendments:
 - (a) give the Secretary powers to identify, prevent and respond to building products with safety risks or nonconforming building products, as well as impose penalties for their continued use
 - (b) allow the Secretary to issue warnings and supply bans for noncompliant or unsafe products, including powers for a building product recall
 - (c) establish a chain of responsibility for compliance with building product supply and introduce duties and information obligations for parties in the chain of responsibility
 - (d) ensure products used in construction meet national standards and building codes, including the National Construction Code
 - (e) give the Secretary powers to remove 'dodgy' operators from the supply chain.
- 1.8 Schedule 3 amends the Strata Management Act to establish a framework for decennial insurance to operate as an alternative to the strata building bond.
- 1.9 Schedule 4 allows the Secretary to immediately suspend individuals or entities in the building process who pose a serious risk to public safety, consumers, or other businesses, by amending the Building and Development Certifiers Act and the Design and Building Act.

- 1.10 Schedule 5 makes amendments to allow for information sharing between the Secretary and NSW government agencies in carrying out functions related to the Building and Development Certifiers Act and the Home Building Act.

Issues considered by the Committee

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

Powers of authorised persons – right to privacy and property rights

- 1.11 The Bill amends the Home Building Act to extend and detail powers of entry for authorised investigators. Under section 126(3) of the Act, an authorised person could not enter a dwelling without:
- (a) the permission of the occupier of the dwelling, or
 - (b) authority conferred by a search warrant.
- 1.12 The Bill amends section 126(3) to limit the exception for entering premises used only for residential purposes. Amended section 126(3) states that it 'does not empower an authorised person to enter a part of a premises used only for residential purposes without the permission of the occupier or the authority of a search warrant'.
- 1.13 The Bill also amends section 126 to extend the list of things an authorised person may do upon gaining access to the premises, beyond the power to enter to carry out an examination or inspection in connection with the structure or work. Amended section 126(4) provides that the authorised person may do anything that is necessary 'in the authorised person's opinion' for this purpose.
- 1.14 The Bill sets out what an authorised person may do and extends the power of the authorised person under the Act to take, remove and seize items, including to :
- (a) take and remove samples of a thing (section 126(5)(b))
 - (b) use reasonable force to break open a thing, which can include a floor or wall containing a thing (section 126(6)).
- 1.15 Section 126(10) provides that an authorised person may exercise these powers in the absence of the consent of the owner of the thing.

The Bill grants broad powers of search and entry to an authorised person under the Act. These include powers to examine or inspect a premises for ensuring compliance with the Act, the regulations, or for the purpose of carrying out the Secretary's or Authority's functions. The power of entry available to the authorised person is not limited to public areas and may include entry to residential premises without the permission of the occupier.

The powers of search, entry and investigation are broad and may impact on a person's right to property and privacy. The Committee notes the authorised person has the discretion to do anything in their opinion they deem necessary to ensure compliance. However, as the purpose of entry is to facilitate proper and extensive investigation of building works, the Committee makes no further comment.

Continuing offences

- 1.16 The Bill inserts a number of offences into the Home Building Act and the Building Safety Act that would be subject to the 'continuing requirement provision'.
- 1.17 Under this provision, a person is considered guilty of an offence if they fail to comply with a requirement imposed by the Act. The person is obligated to comply with the requirement until it is fulfilled, even if a specified period has expired or time has passed. The person continues to be guilty of an offence for each day that the contravention continues.
- 1.18 The continuing requirement provision is inserted into the Home Building Act by proposed section 139A of the Bill. A person will be liable to pay 1 000 penalty units (\$110 000) and a further penalty of 100 penalty units (\$11 000) for each day that the following offence continues:
- (a) failure to comply with rectification order (section 49E)
 - (b) failure to comply with a stop work order (section 129).
- 1.19 Similarly, new offences inserted into the Building Safety Act will trigger the existing continuing requirement provision under section 62 of the Act. A person will be liable to pay 2 000 penalty units (\$220 000) or imprisonment for two years, or both, and a further penalty of 400 penalty units (\$44 000) for each day that the following offence continues:
- (a) contravening building product safety notice (section 15K)
 - (b) representation contravening building safety notice (section 15L).
- 1.20 In her second reading speech, the Minister stated that:
- These penalties will ensure that noncompliant players are held accountable. The New South Wales Government is aware of the impact these orders can have on industry. Provisions in the bill ensure those amendments are procedurally fair.
- 1.21 The Minister also highlighted that the Bill allows for a party to appeal against such orders 'preserving the party's right to natural justice and making sure the provisions are balanced'.

The Bill inserts a number of offences into the *Home Building Act 1989* and the *Building Product (Safety) Act 2017* that attract the 'continuing requirement provision'. This means that a person will continue to be liable for a certain offence for each day until the requirement is fulfilled, attracting a further penalty for each day that the offence continues.

The Committee notes that high and continuing penalties may undermine the protection of personal rights by disregarding principles such as proportionality, fair trial rights and equal treatment. Under the Bill's provisions, a person who contravenes a building product supply ban or building product use ban may incur a maximum penalty of 2 000 penalty units (\$220 000), or imprisonment for two years, or both. Under the continuing requirement provision, the person will incur a further penalty of 400 penalty units (\$44 000) for each day the offence continues.

The Committee acknowledges that the size of the penalties reflect the seriousness of the offences and their impact on human safety. It also recognises that these intend to deter noncompliance, particularly around the use of unsafe building products. Further, the Bill contains appeal provisions for affected persons, and includes information that the Secretary must consider before making orders.

The Committee also recognises that the Bill's provisions are likely to apply to developers in the course of their business, and that similar offences are found in other areas of building legislation including in the amended Acts. However, the Committee notes that striking a balance between effective deterrence and individual rights is crucial to ensure rights are respected and upheld within a legal system. In the circumstances, the Committee refers the matter to Parliament for its consideration.

2. Centennial Park and Moore Park Trust Amendment (Car Parking) Bill 2023

Date introduced	10 October 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

Purpose and description

- 2.1 The object of this Bill is to amend the *Centennial Park and Moore Park Trust Act 1983* (the **Act**) to extend car parking in certain areas in Moore Park East.

Background

- 2.2 The Bill seeks to amend the Act to permit continued use of on-grass car parking at Moore Park East, and allows regulations to prescribe a deadline to close parking in those areas at a future date.
- 2.3 Currently, the Act prescribes deadlines for the closure of on-grass parking near the Sydney Cricket Ground precinct, being:
- (a) 31 December 2023 for Carpark 2, Lower Kippax
 - (b) 31 December 2025 for other non-parking on-grass areas.
- 2.4 In his second reading speech, the Hon. Paul Scully MP, Minister for Planning and Public Spaces, explained that these 'deadlines were legislated without alternative parking arrangements being in place' and has 'created a shortfall of spaces'.
- 2.5 The Minister further described that keeping on-grass parking arrangements 'until the new multi-level car park is open' is critical as:

...it will ensure that those who have no alternative to driving can continue to access the precinct by parking on the grass in Moore Park for a little while longer while alternatives are put in place.

Issues considered by the Committee

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

Matters deferred to regulations – commencement date of parking closures

- 2.6 In his second reading speech, the Minister stated the effect of the Bill is as follows:

The bill amends section 20AA to amend two deadlines and allows the Minister for Planning and Public Spaces to make a regulation to close on-grass parking at a future time ... The bill will replace the current dates for

the closure of on-grass parking and allow the Minister to prescribe a date in future.

2.7 Proposed section 20AA(1A) sets out the conditions for when the Minister may recommend making regulations regarding closing on-grass parking, namely upon:

- (a) the construction of a new car park adjacent to the Sydney Football Stadium (proposed section 20AA(1A)(a))
- (b) satisfaction that on-grass parking is no longer necessary to meet parking demands for events at the Sydney Cricket Ground and Sydney Football Stadium (proposed section 20AA(1A)(b)).

The Bill amends the *Centennial Park and Moore Park Trust Act 1983* to remove the legislated dates for closing on-grass parking in the Moore Park precinct. It also allows the Minister to recommend regulations to prescribe new closure dates once alternative parking arrangements become available.

By allowing the regulations to prescribe the dates for closure of on-grass parking, the Bill may lead to uncertainty about when it becomes unlawful to park in these areas. The Committee notes that illegal parking can attract fines or penalty notices in NSW. The Committee generally prefers for such matters to be included in primary legislation rather than regulations, to ensure an appropriate level of parliamentary oversight.

However, the Committee acknowledges that allowing regulations to prescribe certain matters provide flexibility in the regulatory scheme, particularly in relation to matters that are more administrative in nature. It also notes that the Bill sets out the criteria under which the Minister should recommend making regulations to prescribe the parking closure dates. In the circumstances, the Committee makes no further comment.

3. Climate Change (Net Zero Future) Bill 2023

Date introduced	12 October 2023
House introduced	Legislative Council
Minister responsible	The Hon. Penny Sharpe MLC
Portfolio	Climate Change

Purpose and description

- 3.1 The objects of this Bill are as follows:
- (a) to establish guiding principles for action to address climate change
 - (b) to set targets for the reduction in net greenhouse gas emissions in New South Wales by 2030 and 2050
 - (c) to set an objective for New South Wales to be more resilient to a changing climate (the **adaptation objective**)
 - (d) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 targets, the adaptation objective and other matters
 - (e) to provide for other minor and consequential matters.

Background

- 3.2 The Bill proposes to introduce a legislative framework to address climate change, achieve net zero emissions by 2050 and establish a Net Zero Commission to report on climate change mitigation and adaptation objectives.

- 3.3 During her second reading speech, the Hon. Penny Sharpe MLC, Minister for Climate Change explained that:

This Bill commits the NSW government to effective action on climate change to ensure a sustainable and fair future for the people, economy and environment of NSW.

- 3.4 There are four parts to the Bill:
- (a) preliminary matters including the purpose of the Act
 - (b) setting emission reduction targets and guiding principles for climate change action
 - (c) establishing the Net Zero Commission
 - (d) miscellaneous matters including the review of the Act and regulation-making powers

- 3.5 Part two of the Bill outlines guiding principles for climate change action in NSW and sets emission reduction targets for 2030 and 2050. Subsections 8(2)-(9) set out the relevant principles. Subsections 9(1)(a) and (b) set the emissions targets for 2030 and 2050 respectively.
- 3.6 Part three of the Bill establishes the Net Zero Commission. The Bill provides for its constitution, membership and functions in sections 11, 12 and 14 respectively.
- 3.7 At the conclusion of the Minister's second reading speech, the Bill was referred to the Legislative Council's Portfolio Committee No. 7 Planning and Environment for inquiry and report. The Committee is due to report by 17 November 2023.¹

Issues considered by the Committee

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

¹ New South Wales Legislative Council, [Minutes](#), 12 October 2023, item 19, p 583 .

4. Defamation Amendment Bill 2023

Date introduced	11 October 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 4.1 The object of this Bill is to amend the *Defamation Act 2005* (the **Act**) to implement nationally agreed changes to the law of defamation.

Background

- 4.2 The Act establishes a regulatory framework for defamation law that aims to promote uniform national law, ensure defamation law does not unreasonably limit freedom of expression and provide effective ways to resolve defamation disputes.
- 4.3 The Bill proposes to make several substantial amendments to the Act as part of the broad reform of national defamation law.
- 4.4 In his second reading speech, the Hon. Michael Daley MP, Attorney General said that the Bill enacts substantial reforms to Australia's uniform defamation laws resulting from the Stage 2 Review of the *Model Defamation Provisions*.² The Attorney General explained that the Bill proposes amendments to the Act to address the two parts of this reform:
- (a) Part A, intermediary liability for the publication of third-party content
 - (b) Part B, absolute privilege extending to cover reports of conduct such as sexual harassment and sexual assault to police and other complaints-handling bodies.
- 4.5 The proposed amendments addressing **Part A** are intended to strike a greater balance of responsibility for defamatory content posted online, by introducing protections to digital intermediaries who 'play various roles in the publication process for user-generated or third-party content'. The amendments are informed by recent court cases including *Fairfax Media Publications Pty Ltd & Ors v Voller* [2021] HCA 27 and *Google LLC v Defteros* [2022] HCA 27.
- 4.6 The amendments broadly fall into six areas, as outlined by the Attorney General:
- (a) a conditional exemption from defamation liability for conduit, caching and storage services and search engines in relation to organic searches
 - (b) mandatory requirements for an offer to make amends for online publishers

² The Stage 2 Review of the *Model Defamation Provisions* was commenced in 2021 by the Model Defamation Law Working Party. Stage 2 comprised of Parts A and B. Part A, led by NSW and Victoria respectively. For more information, see [Explanatory note to the Defamation Amendment Bill 2023](#).

- (c) factors courts need to consider when making preliminary discovery orders against digital intermediaries
 - (d) creation of an innocent dissemination defence for digital intermediaries subject to a simple complaints process
 - (e) new powers for courts to order non-party digital intermediaries to prevent access to defamatory material
 - (f) expanded electronic methods of serving notices.
- 4.7 The Bill includes a definition of a 'digital intermediary', which, 'in relation to the publication of digital matter, means a person, other than an author, originator or poster of the matter, who provides or administers the online service by means of which the matter is published'. Among others, digital intermediaries range from internet service providers to internet content hosts, social media platforms, search engines and review websites.
- 4.8 The Attorney General stated that the term is 'intended to apply broadly' so that it can 'cover the full spectrum of functions'. He also stated that the broad definition:
- ...deliberately includes forum administrators. It is also intended to cover any new or emerging functions, given the pace at which technology in this area evolves.
- 4.9 The Bill seeks to create an exemption from liability for two types of digital intermediaries that publish defamatory material:
- (a) digital intermediaries that provide caching, conduit or storage services (section 10C)
 - (b) search engines that publish defamatory material through organic search results (section 10D).
- 4.10 The Bill then proposes to create a process for the early determination of defamation proceedings involving digital intermediaries. Proposed section 10E allows a judicial officer to determine that liability exemption applies to a digital intermediary before the trial begins. Subsection 10E(2)(a) provides criteria that a judicial officer must consider when deciding whether the exemption applies.
- 4.11 Another key proposal in the Bill is the creation of a defence to liability for digital intermediaries who publish defamatory material, through the insertion of section 31A. A digital intermediary must prove certain criteria set out in subsection 31A(1) to have a valid defence.
- 4.12 The Bill also proposes to create new powers for a court to order a party that is not involved in defamation proceedings to remove or prevent access to defamatory matter. Proposed section 39A grants this power to a court even where the digital intermediary is not liable to defamation or they have a valid defence.
- 4.13 **Part B** of the national reforms expands the defence of absolute privilege that already exists in the Act. The Attorney General explained that the 'original impetus behind Part B was a concern that the potential threat of defamation proceedings may deter victim-survivors from coming forward to police or other complaints-handling bodies about conduct such as sexual harassment and sexual assault.'

- 4.14 The Bill proposes to expand the scope of the absolute privilege to cover defamatory matter published to a police officer or official by inserting subsection 27(2)(b1). For the defence in subsection 27(1) to apply, a defendant in a defamation trial must prove that the defamatory matter was published in the circumstance of absolute privilege.
- 4.15 The Bill also seeks to make transitional amendments that address the application of the amendments to pre-commencement actions and post-commencement actions.

Issues considered by the Committee

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

Right to protect reputation – lack of available remedies

- 4.16 The Bill inserts a new section 10C to establish a conditional exemption from defamation liability for three specific digital intermediary functions, namely for:
- (a) a caching service
 - (b) a conduit service
 - (c) a storage service.
- 4.17 Subsection 10C(1)(c) provides for a set of preconditions to ensure that if an intermediary plays a more active role in publication, it would be ineligible to rely on the exemption provided in this section.
- 4.18 Section 10D provides a similar exemption from defamation liability to publications by search engine providers, where the search engine provider's role was limited to providing an automated process for the user to generate the results.
- 4.19 It is not a requirement for both exemptions in sections 10C and 10D that the digital intermediary or the search engine provider knew, or ought reasonably to have known, that the digital matter was defamatory.
- 4.20 In his second reading speech, the Attorney General indicated that the new defences work together with the new court powers introduced in section 39A of the Bill. The effect of this is that 'even if a digital intermediary is exempt from liability, it will still be possible for orders to be made that the digital intermediary remove access to defamatory material in some circumstances'.
- 4.21 The Attorney General also described the policy rationale for the new defences as recognising:

...the passive role that these digital intermediaries play in the publication process. This does not substantially change the law. These digital intermediaries are generally not the subject of defamation claims and are unlikely to be considered publishers under the Commonwealth test.

The Bill amends the *Defamation Act 2005* to introduce a conditional, statutory exemption from defamation liability for certain passive digital intermediaries. These include digital intermediaries that provide caching, conduit or storage services, as well as search engine providers.

The Committee notes that while the Bill sets out the specific criteria for an exemption, it does not require that the digital intermediary held

knowledge of the defamatory nature of the digital matter. As a result, it is unclear whether the defence may be applied in circumstances beyond where the intermediary plays a passive role, or where the digital intermediary facilitated content with knowledge of its defamatory nature. The Committee notes that, in the circumstances, the Bill's provisions may add to the harm suffered by the complainant and infringe on the right to protect their reputation.

The Committee acknowledges that the Bill includes a safeguard by allowing the court to make orders against non-party digital intermediaries, even where they qualify for a statutory exemption from liability. However, the Committee notes that although the new court power in section 39A of the Bill may address some concerns, it can only be revoked during ongoing defamation proceedings, which requires the author of the original defamatory content to be identified. This can be problematic when the complainant is unable to identify the originator or when they are located outside the jurisdiction of the court.

The Committee recognises that the new exemptions in the Bill aim to shift liability towards originators of defamatory content, rather than the passive conduits of information. However, given that departure from this principle may further infringe upon the complainant's right to protect their reputation and potentially deny access to remedies, the Committee refers the matter to Parliament for its consideration.

Access to new defence

- 4.22 The Bill inserts section 31A into the Act to provide for a new defence for digital intermediaries who promptly take appropriate access prevention steps upon receiving a notice from the complainant.
- 4.23 Section 31A(1) sets out that in order to access the defence, the defendant must:
- (a) establish that they are a digital intermediary in relation to the publication
 - (b) at the time of the publication, have had an 'accessible complaints mechanism' for the plaintiff to use
 - (c) prove that reasonable access prevention steps have been taken within seven days of the plaintiff's written complaint, such as to remove, block, or prevent access.
- 4.24 The explanatory note to section 31A(1) clarifies that in the circumstances the plaintiff does not give the defendant a written complaint, the defence would apply without the need to take reasonable access prevention steps.
- 4.25 Subsection 31A(2) provides that access prevention steps taken in relation to the publication of a digital matter is 'reasonable' if:
- (a) they were reasonable for the defendant to take in the circumstances, if taken by the defendant; or
 - (b) it was reasonable for the defendant not to take steps because of the steps already taken by another person.

- 4.26 Subsection 31A(4) provides that the defence is defeated if the defendant was motivated by malice in establishing or providing the online service by which the digital matter was published.

The Bill amends the *Defamation Act 2005* to create a new defence for digital intermediaries who promptly take appropriate access prevention steps upon receiving a notice from the complainant. The Bill requires the defendant to take these steps within seven days after receiving a notice. In the absence of a complaints notice, digital intermediaries can access the defence without the need to take these steps, provided that they have an accessible complaints mechanism available.

The Committee notes that in the absence of a notice given by the complainant, the only option for the digital intermediary to avoid liability is to take reasonable access prevention steps. The Committee notes that the Bill is unclear as to what may amount to 'reasonable' steps and leaves it to the courts to determine the question. In the circumstances, the Committee notes that access to this defence may be difficult for smaller or individual digital intermediaries who may not have the benefit of obtaining legal advice to determine whether their actions will 'sufficiently protect' them from defamation claims. The Committee notes that as a result, the Bill may potentially infringe upon a person's freedom of speech and expression by encouraging taking steps to remove, block, disable, or otherwise prevent access to any matter that is potentially defamatory.

However, the Committee recognises that the drafting of the defence includes a broad range of circumstances to recognise that digital intermediaries should not be liable where they are merely a subordinate distributor. The Committee also recognises that despite its potential impact on freedom of speech and expression, the amendment has been made following extensive consultation by the Defamation Working Party, which comprised representatives from all jurisdictions. In the circumstances, the Committee makes no further comment.

Court order against non-party digital intermediaries

- 4.27 The Bill inserts section 39A into the Act, which provides the court with the power to make an order against a non-party to a defamation proceedings.
- 4.28 The court may order the non-party to remove or disable access to defamatory matter in certain circumstances:
- (a) to prevent or limit the continued publication or republication of the matter, or
 - (b) to comply with, or otherwise give effect to, the judgment, injunction or other order in the Act.
- 4.29 Under subsection 39A(1), such an order can only be made if the plaintiff has obtained a judgment for defamation, or the court has granted a temporary or final injunction preventing the defendant from continuing to publish or republish certain material.
- 4.30 Subsection 39A(4) provides that such an order cannot be made unless the digital intermediary has been given an opportunity to be heard about whether it is appropriate for the court to make such order. However, subsection 39A(5) allows for

the court to make a temporary order without providing this opportunity if the court considers it necessary for the order to be made expeditiously.

- 4.31 Subsection 39A(6) allows the order to be made under this section even if the non-party digital intermediary is not, or may not be, liable for defamation.

The Bill amends the *Defamation Act 2005* to introduce a specific power for courts to make non-party orders against digital intermediaries to prevent access to defamatory matter online. The courts can make orders about taking access prevention steps or any other steps necessary to prevent or limit the continued publication or republication of defamatory matter. The court can only make an order if they have granted an interim or final judgment for the plaintiff in an action for defamation.

While it is a requirement under the Bill that the non-party intermediary must be provided with an opportunity to make a submission, the Committee notes that this may be dispensed with in circumstances where the Court considers a temporary and expeditious order is necessary. The Committee also notes that an order under section 39A can be made regardless of whether the non-party digital intermediary is liable for the defamatory claim. In the circumstances, the Committee notes that the Bill may have the impact of limiting the freedom of speech and expression of the non-party digital intermediary.

However, the Committee acknowledges that the Bill seeks to protect the plaintiff's right to protect their reputation, and that the inclusion of the new power follows an extensive stakeholder consultation by the Defamation Working Party, and that the inclusion of the provision was an approach supported by stakeholders. For these reasons, the Committee makes no further comment.

Right to protect reputation – extension of absolute privilege to police officials

- 4.32 The Bill proposes to expand the circumstances where absolute privilege is available as a defence to a defendant in defamation proceedings. Proposed subsection 27(2)(b1) provides that a published matter is subject to absolute privilege if:

- (a) the matter is published to a person who, at the time of the publication, is an official of a police force or service of an Australian jurisdiction and it is published to the official while the official is acting in an official capacity.

- 4.33 The Bill seeks to define 'official' by inserting a definition into section 27(3) which provides that an official of a police force or service is:

- (a) an officer, employee or member of staff of the police force or service
- (b) another person engaged to act for or on behalf of the police force or service.

The Bill proposes to expand the application of the defence of absolute privilege in the *Defamation Act 2005* to cover defamatory material that is published to a police officer or relevant police official. It amends the Act by inserting section 27(2)(b) that provides a defence for a defendant who has published defamatory material to the specified police officer or official.

The defence of absolute privilege provides a complete defence to defamation that a plaintiff cannot defeat. If established, this provides full protection from liability for a defendant in a defamation trial. A plaintiff who alleges they have been defamed by material is prevented from gaining a legal remedy. This prevents them from exercising their right to protect their reputation that could have been harmed by the defamatory material.

The Committee notes the policy rationale behind expanding absolute privilege to protect the privacy of certain vulnerable persons such as victim-survivors and remove a potential barrier for them coming forward to police. In this instance, a person's right to communicate certain information is balanced against another person's right to protect their reputation. For this reason the Committee notes the balancing of these competing rights for Parliament's consideration.

5. Emergency Services Legislation Amendment Bill 2023

Date introduced	11 October 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Jihad Dib MP
Portfolio	Emergency Services

Purpose and description

- 5.1 The object of this Bill is to make miscellaneous amendments to emergency services legislation.

Background

- 5.2 The Bill proposes various amendments to Acts concerning emergency services in NSW. During his second reading speech, the Hon. Jihad Dib MP, Minister for Emergency Services explained that ‘the Bill contains a range of proposals to amend the States’ key emergency management legislation’.
- 5.3 The Bill amends four Acts and one Regulation:
- (a) the *Fire and Rescue Act 1989*
 - (b) the *NSW Reconstruction Authority Act 2022*
 - (c) the *NSW Reconstruction Authority Regulation 2023*
 - (d) the *Rural Fires Act 1997*
 - (e) the *State Emergency and Rescue Management Act 1989*.
- 5.4 The amendments are grouped into schedules, which the Minister outlined as follows:
- (a) Schedule 1 proposes amendments to the *Fire and Rescue Act 1989* to provide that the Commissioner of Fire and Rescue NSW is subject to the control and direction of the Minister when exercising the Commissioner's functions
 - (b) Schedule 2 proposes amendments to the *NSW Reconstruction Authority Act 2022* to clarify that a direction given to a relevant entity to take certain actions in the exercise of that entity's functions as prescribed by the regulations may also be given to a local council or planning authority
 - (c) Schedule 3 proposes amendments to the *NSW Reconstruction Authority Regulation 2023*, made as a result of the amendments to the *Reconstruction Authority Act 2022*
 - (d) Schedule 4 proposes amendments to the *Rural Fires Act 1997* to provide that the Commissioner of the NSW Rural Fire Service is the local authority for the Act for land within the Western Division. The Commissioner can delegate

functions of the local authority to a member of the Rural Fire Service, provided that the Rural Fire Service only requires permission from Transport for NSW to close roads or public spaces. The Bill also requires bushfire management plans to be published on the Rural Fire Service webpage or another NSW government website. Applicants for fire permits must also confirm they have obtained environmental approvals before an authority may issue a fire permit to them

- (e) Schedule 5 amends the *State Emergency and Rescue Management Act 1989* to expand the definition of 'functional area', to allow the Minister to appoint a representative of an organisation to be on a Local Emergency Management Committee. The amendments also prevent the Act from limiting the establishment, operation and accreditation of multi-agency rescue units. Schedule 5 also allows the Minister to issue a volunteer employment protection order and other consequential amendments.

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. Justice Legislation Amendment (Miscellaneous) Bill 2023

Date introduced	10 October 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

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

- (a) the *Bail Act 2013* (the **Bail Act**)
- (b) the *Children (Criminal Proceedings) Act 1987* (the **Children (Criminal Proceedings) Act**)
- (c) the *Children (Criminal Proceedings) Regulation 2021*
- (d) the *Children (Detention Centres) Act 1987*
- (e) the *Children (Detention Centres) Regulation 2015*
- (f) the *Children's Guardian Act 2019* (the **Children's Guardian Act**)
- (g) the *Civil Procedure Act 2005*
- (h) the *Civil Procedure Regulation 2017*
- (i) the *Crimes (Forensic Procedures) Act 2000*
- (j) the *Crimes (Forensic Procedures) Regulation 2014*
- (k) the *Crimes (High Risk Offenders) Act 2006* (the **Crimes (High Risk Offenders) Act**)
- (l) the *Criminal Procedure Act 1986*
- (m) the *Criminal Procedure Regulation 2017*
- (n) the *Dormant Funds Act 1942*
- (o) the *Drug Misuse and Trafficking Act 1985*
- (p) the *Fines Act 1996* (the **Fines Act**)
- (q) the *NSW Trustee and Guardian Act 2009*

- (r) the *Terrorism (High Risk Offenders) Act 2017* (the **Terrorism (High Risk Offenders) Act**)
- (s) the *Terrorism (Police Powers) Act 2002* (the **Terrorism (Police Powers) Act**).

Background

- 6.2 In his second reading speech, the Hon. Michael Daley MP, Attorney General, noted that the Bill would introduce several miscellaneous amendments to address developments in case law, close gaps, provide clarity, and support operational improvements. He also indicated that 'more significant amendments can and do progress in miscellaneous bills where appropriate and required'.
- 6.3 The Bill proposes various amendments to a number of Acts. These amendments are grouped into Schedules, which the Minister outlined as follows:
- (a) Schedule 1 proposes amendments to the Bail Act to address case law developments and resolve an operational issue relating to accompaniment requirements
 - (b) Schedule 2 proposes amendments to the Children's Guardian Act to remove the requirement for the Children's Guardian to be under the age of 65 years
 - (c) Schedule 3 proposes amendments to the Fines Act to allow the completion of certain activities to be treated as payment of a penalty notice as part of a pre-court diversion scheme for personal drug use and small-quantity drug possession offences
 - (d) Schedule 4 proposes amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* to remove a sunset clause to continue to allow non-urgent warrant applications to be made by email
 - (e) Schedule 5 proposes amendments to the Terrorism (Police Powers) Act to implement recommendations of the statutory review of the Act
 - (f) Schedule 6 clarifies regulation-making powers across 10 Acts to provide more specificity.

Issues considered by the Committee

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

Uncertainty – term of detention

- 6.4 Schedule 5 of the Bill amends section 26ZS of the Terrorism (Police Powers) Act to extend the operation of Part 2A of the Act relating to preventative detention orders for an additional three years.
- 6.5 Under amended section 26ZS(1), a preventative detention order or a prohibited contact order would remain in force until 16 December 2026, instead of expiring on 16 December 2023.
- 6.6 Under amended section 26ZS(1), an application for a preventative detention order or a prohibited contact order can also be made up to 16 December 2026.

- 6.7 In his second reading the speech, the Attorney General explained that the Bill intends to implement recommendations made by the statutory review of the Act, which recommended extending the prevention detention scheme in Part 2A of the Act for a further three years.³ The Attorney General noted that these powers have not been operationally tested yet and that repealing Part 2A would be 'inconsistent with the national legislative framework for using preventative detention as a tool to prevent and respond to terrorism'.

The Bill amends the *Terrorism (Police Powers) Act 2002* to extend the operation of the prevention detention scheme in Part 2A of the Act. This allows a preventative detention order or a prohibited contact order to remain in force for a further three years, until 16 December 2026.

The Committee acknowledges that this reform intends to act as a counterterrorism disruption mechanism and that avenues are available for revoking preventative detention orders. However, the Committee notes that, as a result of the Bill, a person under a preventative detention order or a prohibited contact order may remain in custody for longer than their initial term of detention, which will extend beyond 16 December 2023. It also notes that the person's term of detention may be further extended through an additional application.

The Committee therefore notes that the Bill may impact a person's right to liberty and freedom from prolonged and uncertain periods of detention. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Matters deferred to regulations

- 6.8 The Bill defers a number of matters to regulations for various amended Acts. This includes regulation-making powers to:
- (a) prescribe an activity and any additional requirements that a person may complete instead of paying a monetary amount specified in a penalty notice (section 23B of the Fines Act)
 - (b) make parole orders at the time of sentencing a person, including conditions imposed on a parole order (section 51(1)(c) of the Children (Criminal Proceedings) Act)
 - (c) make provisions about the duties of independent third parties, which act as representatives for eligible offenders in respect of a terrorism intelligence application (section 59B(5) of the Terrorism (High Risk Offenders) Act).

The Bill defers a number of matters to regulations for various amended Acts, including around prescribing an activity that a person may complete instead of paying a monetary amount in a penalty notice. The Bill also allows regulations to make parole orders at the time of sentencing a person. Regulations may also make provisions about the

³ [Statutory Review Report](#), *Terrorism (Police Powers) Act 2002*, May 2023.

duties of independent third parties in the context of terrorism intelligence applications.

The Bill may therefore provide a wide delegation of legislative powers by deferring matters to the regulations instead of clearly setting them out in the primary Acts. The Committee generally prefers such matters be included in primary legislation rather than in the regulations to foster a greater level of parliamentary oversight and to provide clarity. However, the Committee acknowledges that allowing regulations to prescribe certain matters provides flexibility, particularly in relation to matters that are more administrative in nature. Given the regulation-making powers are more administrative in this instance and do not appear to limit individual rights or liberties, the Committee makes no further comment.

7. Revenue, Mining and Energy Legislation Amendment Bill 2023

Date introduced	11 October 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

7.1 The objects of this Bill are:

- (a) to amend the *Duties Act 1997* (the **Duties Act**) to provide that the transfer of dutiable property to particular employer or employee organisations, or their trustee, is exempt from duty if the transfer is a consequence of an employee or employee organisation from the amalgamation of 2 or more employer or employee organisations
- (b) to amend the *Coal Industry Act 2001* (the **Coal Industry Act**), the *Electricity Infrastructure Investment Act 2020* (the **Electricity Infrastructure Investment Act**), and the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (the **WHS (Mines and Petroleum Sites) Act**) and the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* (the **WHS (Mines and Petroleum Sites Regulation)**) to replace references to the Construction, Forestry, Maritime, Mining and Energy Union (the **CFMMEU**) or the Construction Forestry Mining and Energy Union (the **CFMEU**) to the Mining and Energy Union (the **MEU**) as a consequence of the withdrawal of the MEU from the CFMMEU.

Background

7.2 During his second reading speech, the Hon. Michael Daley MP, Attorney General explained that the Bill proposes to amend several Acts and regulations to update references to the MEU and amend a duty exemption. He said that:

The Bill will address an anomaly in one of the duty exemption provisions and ensure that the Mining and Energy Union can continue to exercise functions under various Acts.

7.3 The Bill proposes to replace references to the CFMMEU with a reference to the MEU across various Acts. The Attorney General noted that this is where the Acts 'assign functions to the CFMMEU but it is the Mining and Energy Division which in practice performs these functions'. The Bill amends:

- (a) the Coal Industry Act
- (b) the Electricity Infrastructure Investment Act
- (c) the WHS (Mines and Petroleum Sites) Act

- (d) the WHS (Mines and Petroleum Sites) Regulation.

7.4 The Bill also amends the Duties Act by:

- (a) extending the existing exemption for property transfers associated with the amalgamation of employee or employer associations to also apply to the withdrawal of those associations from an amalgamation
- (b) extending the application of the exemption to trusts holding property on behalf of employee or employer associations.

Issues considered by the Committee

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

8. Strata Legislation Amendment Bill 2023

Date introduced	12 October 2023
House introduced	Legislative Council
Member introducing	The Hon. Mark Buttigieg MLC
Minister with carriage	The Hon. Penny Sharpe MLC
Portfolio	Customer Service and Digital Government Building Better Regulation and Fair Trading

Purpose and description

- 8.1 The objects of this Bill are to:
- (a) amend the *Strata Schemes Development Act 2015* (the **SSDA**) and the *Strata Schemes Management Act 2015* (the **SSMA**) to implement some of the recommendations made in the Report on the statutory review of both Acts tabled in Parliament on 29 November 2021
 - (b) make related amendments to the *Community Land Development Act 2021* (the **CLDA**), the *Community Land Management Act 2021* (the **CLMA**) and the regulations made under the SSMA and the CLMA.
- 8.2 The Bill also makes other minor and consequential amendments to other Acts and regulations.

Background

- 8.3 The Bill seeks to amend several Acts and Regulations reflecting various review recommendations made in a report by the Department of Customer Service on the statutory review of the SSDA and the SSMA in November 2021 (the **Report**).⁴
- 8.4 The Hon. Mark Buttigieg MLC introduced the Bill on behalf of the Honourable Penny Sharpe MLC. In the second reading speech, Mr Buttigieg stated that the Bill implements 31 recommendations from the Report.
- 8.5 Mr Buttigieg explained that the strata scheme legislation (which includes the SSDA and SSMA) aims to provide a regulatory framework to create, terminate and manage strata schemes for community living in places. These range from apartments to townhouses. Similarly, the community land schemes legislation (which includes the CLDA and the CLMA) aims to provide the same framework for community land schemes which include rural subdivisions and large residential communities with private roads and recreational facilities.

⁴ NSW Government, Department of Customer Service, ['Statutory Review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015'](#), November 2021.

8.6 The amendments are grouped into schedules, which Mr Buttigieg outlined as follows:

- (a) Schedule 1 would amend the SSDA to clarify the meaning of a conflict of interest and a pecuniary interest in relation to what a member of a strata committee, a strata renewal committee, or a person nominated for election as a member of a strata committee must disclose. The Bill would insert a definition of 'relevant interest' into the Act at section 154A which includes a 'direct or indirect pecuniary interest or other interest in the proposed collective sale or redevelopment of a strata scheme'. Proposed section 165(3) of the SSDA would prescribe that a person or member has a conflict of interest if:
 - (i) they have a relevant interest, and
 - (ii) the interest appears to raise a conflict with the proper performance of the strata renewal committee's function
- (b) Schedule 2 seeks to amend the CLDA to clarify the process for publicly notifying details to terminate a scheme
- (c) Schedule 3 seeks to amend the SSMA to create voting limits and restrictions on the use of proxy votes, power of attorney or company nominees to eradicate perceived abuse of the process
- (d) Schedule 4 seeks to amend the CLMA to make corresponding amendments made to the SSMA and to create provisions around management associations
- (e) Schedule 5 seeks to make minor miscellaneous amendments to the *Strata Schemes Management Regulation 2016* and the *Community Land Management Regulation 2021*.

Issues considered by the Committee

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

Partial commencement by proclamation

8.7 In his second reading speech, the Mr Buttigieg explained that the Bill 'delivers the first tranche of reforms to implement the review recommendations' and that 'the remaining reforms recommended by the review Report will be included in a draft bill for consultation in 2024'.

8.8 Clause 2 of the Bill provides that some provisions will commence on a day or days to be appointed by proclamation. The proclamation provision relates to:

- (a) the amendments to section 237(8)(e) of the SSMA
- (b) the insertion of section 129A into the CLMA
- (c) the insertion of section 130A into the CLMA.

8.9 The other parts of the Bill commence on the date of assent.

8.10 The amendments to section 237(8) in particular reflect Recommendation 71 of the Report, which is to permit NSW Fair Trading to 'apply to the Tribunal to seek the appointment of a compulsory managing agent'. Currently, the class of persons who

may apply to the Civil and Administrative Tribunal to appoint a strata managing agent include persons ordered to do so, and interested person, or a judgment creditor. New section 237(8)(e) will enable the Secretary to make an application.

- 8.11 The insertion of section 129A into the CLMA clarifies that a by-law cannot prohibit the keeping of an animal in the scheme unless it would unreasonably interfere with another occupant's use and enjoyment of their own lot or property.
- 8.12 The insertion of section 130A into the CLMA provides for the keeping of assistance animals.

The Bill amends section 237(8)(e) of the *Strata Schemes Management Act 2015* and inserts sections 129A and 130A into the *Community Land Management Act 2021* that are, according to Schedule 2 of the Bill, to commence on a day or days to be appointed by proclamation. The remaining schedules of the Bill commence on the date of assent.

The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide for certainty for affected persons. The Committee notes that the Bill contains amendments that are part of a tranche of changes to the relevant pieces of legislation to reflect reform and continuity in the strata and community land schemes and that a flexible start date may assist with the implementation of these changes.

The Committee notes the absence of an express statement in the second reading speech on the schedules that commence by proclamation, and that the provisions do not have a common or clear reason for flexibility apart from the potential involvement of the Civil and Administrative Tribunal. However, the Committee acknowledges that there may be practical reasons for imposing a flexible start date for these provisions to implement the regulatory framework. In the circumstances, the Committee makes no further comment.

9. Surveillance Devices Amendment (Public Interest Exemptions) Bill 2023*

Date introduced	11 October 2023
House introduced	Legislative Council
Member responsible	The Hon. Emma Hurst MLC
*Private Members Bill	

Purpose and description

- 9.1 The object of this Bill is to provide an exemption for the following offences under the *Surveillance Devices Act 2007* (the **Act**):
- (a) the unlawful communication or publication of a private conversation or recording of an activity obtained by the use of an unlawful surveillance device, if the communication or publication is in the public interest
 - (b) the unlawful possession of a record of a private conversation or activity obtained by the use of an unlawful surveillance device, if the record is in a person's possession for the purposes of making a communication or publication in the public interest.

Background

- 9.2 In introducing the Bill, the Hon. Emma Hurst MLC, explained that the Act regulates the installation, use, maintenance and retrieval of undercover surveillance devices in NSW. She further remarked that the Act currently does not contain a public interest exemption for the use of such devices, which include audio and video recording devices.
- 9.3 Ms Hurst outlined that the Bill would create a public interest exemption for both sections 11 and 12 of the Act. The amendments would enable members of the public to pass on recordings of private conversations and activities that document illegal conduct to authorities, without risk of being punished. In her second reading speech, Ms Hurst stated that:
- ...there are certain times when, even though information has been unlawfully obtained, it is still in the public interest for that information to be made public via the media or passed on to the authority like police.
- 9.4 Ms Hurst went on to highlight that the Bill does not intend to change 'existing offences for illegally taking undercover footage'.

Issues considered by the Committee

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

Privacy rights

- 9.5 Subsection 11(1) of the Act prohibits the communication or publication of private conversations or recordings of activities obtained by surveillance devices. Subsection 11(2) contains a number of exemptions to that prohibition. The Bill inserts subsection 11(2)(c) into the Act, which allows private conversation or recordings of activities to be communicated or published if it is made in the public interest.
- 9.6 Subsection 12(1) of the Act prohibits the possession of a record of a private conversation or activity obtained by surveillance devices. Subsection 12(2) contains a number of exemptions to that prohibition. The Bill inserts subsection 12(2)(c), which allows a person to possess a record of a private conversation or activity for the purposes of making a communication or publication in the public interest.
- 9.7 Ms Hurst emphasised that the 'exemptions are very narrow and will only be enlivened if the publication or communication can legally be established to be in the public interest'.

The Bill inserts subsections 11(2)(c) and 12(2)(c) into the *Surveillance Devices Act 2007* to exempt the communication, publication or possession of private conversations or recordings of activity if they are for use in the public interest. This would allow law enforcement agencies to communicate, publish or possess records of private conversations or activities obtained by surveillance devices.

The Committee notes that these exemptions have the potential to impact individuals' right to privacy, as it permits individuals such as journalists to publish personal information obtained by listening, optical, and tracking surveillance devices without consent and in some circumstances, unlawfully.

The Committee recognises that the Bill intends to allow persons to report on matters in the public interest without being subject to penalties. However, it notes that the Bill could allow lay persons to make private conversations or recordings of activities public, which could include sensitive information. The Committee also notes that there does not appear to be safeguards accompanying the exemptions under the Bill that limit or allow a challenge or review of information being published. For these reasons, the Committee refers the matter to Parliament for its consideration.

10. Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Bill 2023

Date introduced	11 October 2023
House introduced	Legislative Assembly
Minister responsible	The Hon. Stephen Kamper MP
Portfolio	Lands and Property

Purpose and description

- 10.1 The object of this Bill is to enable the Waste Assets Management Corporation (**WAMC**) to:
- (a) manage legacy sites containing hazardous and contaminated materials, such as heavy metals, radioactive materials, poly-fluoroalkyl substances (PFAS) and asbestos
 - (b) mitigate risks to the environment and the public.

Background

- 10.2 In introducing the Bill, the Hon. Stephen Kamper MP, Minister for Lands and Property, stated that the Bill establishes the WAMC as a 'centralised government entity' that will 'undertake safe and efficient remediation and rehabilitation programs' across sites in NSW that are in need of remediation.
- 10.3 The Minister noted that the WAMC will 'hold and manage legacy contaminated land and provide specialist contracting and consulting services to other agencies', highlighting the expertise of the WAMC team in landfill and contaminated land management.
- 10.4 The Bill inserts Part 1A into the Act to provide for the WAMC's functions and powers in relation to its dealings with contaminated land, including:
- (a) Section 3B, which sets out the functions of the WAMC that includes acquiring, controlling and managing contaminated land if it presents a risk of harm to human health or the environment. The WAMC would also be able to carry out activities for the remediation, use or development of the land.
 - (b) Section 3E, which would allow the Minister to transfer contaminated land from the State, government agency, or a council to the WAMC if both parties consent to the transfer and if the Treasurer approves the transfer. The Minister emphasised in his second reading speech that it is not the intention that agencies will dispose of contaminated land to the WAMC without a 'suitable funding source identified and agreed to' with the WAMC.

- (c) Section 3F, allowing the transfer of land owned or managed by the WAMC back to the State, government agency or council if the land no longer poses risks to human health or the environment.
 - (d) Section 3H, which confers the power to sell or exchange land, with the consent of the Minister.
- 10.5 Section 1 of the Bill proposes to update the name of the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010* to the *Waste Assets Management Corporation Act 2010*. The Bill would also make consequential amendments to four other Acts to reflect this name change.
- 10.6 New Schedule 6 provides for savings and transitional provisions.

Issues considered by the Committee

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



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 – Regulations without comment

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

1. Environmental Planning and Assessment Amendment (Estimated Development Cost) Regulation 2023

The object of this regulation is to amend the *Environmental Planning and Assessment Regulation 2021* in relation to the cost of development, also known as the capital investment value, for various purposes, including for the determination of fees for development applications.

This regulation makes consequential amendments to the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

This regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12, 4.28, 5.10, 6.10, 6.33, 7.44 and 10.13, the general regulation-making power.

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

2. Environmental Planning and Assessment Amendment (Exceptions to Development Standards) Regulation 2023

The objects of this regulation are:

- (a) to require a development application that proposes to contravene a development standard to be accompanied by a document setting out the grounds to justify the contraventions, and
- (b) to require notice to be given to the Secretary of the Department of Planning and Environment in relation to the approving or refusing of a contravention of a development standard.

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

Appendix Three – Unconfirmed extracts of minutes

Meeting no. 6

TIME & DATE: 3.05PM, 16 OCTOBER 2023

LOCATION: ROOM 1136 AND WEBEX

MEMBERS PRESENT

Lynda Voltz (**Chair**), Donna Davis (**by Webex**), Nathan Hagarty, Sue Higginson, Cameron Murphy, and Dave Layzell.

APOLOGIES

Jacqui Munro, Maryanne Stuart.

OFFICERS PRESENT

Sam Griffith, Ashley Kim, Kayaneh Mouradian, Kate McCorquodale, Nicolle Gill, Alex Read and Caitlin Bailey.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 9 October 2023 be confirmed.

2. Correspondence

...

3. Consideration of Bills with comment for Legislation Review Digest 6/58

Resolved, on the motion of Mr Murphy, seconded by Mr Layzell: That the Committee adopts the following draft bill reports *in globa*:

- a. *Building Legislation Amendment Bill 2023*
- b. *Centennial Park and Moore Park Trust Amendment (Car Parking) Bill 2023*
- c. *Defamation Amendment Bill 2023*
- d. *Justice Legislation (Miscellaneous) Amendment Bill 2023*
- e. *Strata Legislation Amendment Bill 2023*
- f. *Surveillance Devices Amendment (Public Interest Exemptions) Bill 2023.*

4. Consideration of Bills without comment for Legislation Review Digest 6/58

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

- a. *Climate Change (Net Zero Future) Bill 2023*
- b. *Emergency Services Legislation Amendment Bill 2023*
- c. *Revenue, Mining and Energy Legislation Amendment Bill 2023*

- d. *Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Bill 2023.*

5. Legislative Assembly private members' bills

The Committee noted that given the large number of government bills introduced during the sitting week and the short turnaround to produce the Digest, the following private members' bills introduced in the Legislation Assembly on Thursday 12 October 2023 will be reported on in Digest 7/58:

- *Water Management Amendment (Water Access Licence Register) Bill 2023*
- *Independent Commission Against Corruption Amendment (Ministerial Diary Disclosure) Bill 2023.*

6. Regulations without comment for Legislation Review Digest 6/58 (Appendix Two)

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Appendix Two to Digest 6/58.

7. Legislation Review Digest 6/58

Resolved, on the motion of Mr Hagarty:

- That appropriate minute extracts of this meeting be published as Appendix Three to the Digest.
- That the Committee adopts the Legislation Review Digest 6/58 and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

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

9. General business

...

10. Next Meeting

The meeting adjourned at 3:09pm until 20 November 2023 at 3.00pm.