

c2017-111A  
OPP--OPPOSITION

## LEGISLATIVE ASSEMBLY

### Natural Resources Access Regulator Bill 2017

First print

#### Proposed amendments

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No. 1 **Parliamentary Joint Committee on the Regulator**

Page 5. Insert after line 20:

### **Part 3 Parliamentary Joint Committee**

#### **14 Constitution of Committee**

- (1) On the commencement of this Part and as soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Natural Resources Access Regulator (the *Parliamentary Joint Committee*), is to be appointed.
- (2) The Parliamentary Joint Committee has the functions conferred or imposed on it by or under this Act or any other Act.

#### **15 Functions of Committee**

- (1) The Parliamentary Joint Committee has the following functions under this Act:
  - (a) to monitor and review the exercise by the Regulator of the Regulator's functions,
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Regulator or connected with the exercise of the Regulator's functions to which, in the opinion of the Committee, the attention of Parliament should be directed,
  - (c) to examine each annual or other report of the Regulator and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
  - (d) to inquire into any question in connection with the Regulator's functions which is referred to it by both Houses of Parliament and report to both Houses on that question.
- (2) Nothing in this Part authorises the Parliamentary Joint Committee to investigate a matter relating to specific matter that is being considered or determined by the Regulator.

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## 16 Membership of Committee

- (1) The Parliamentary Joint Committee is to consist of 7 members, of whom:
  - (a) 3 are to be members of, and appointed by, the Legislative Council, and
  - (b) 4 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Parliamentary Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with respect to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Parliamentary Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.
- (4) Schedule 2 contains provisions relating to the Parliamentary Joint Committee.

### No. 2 Parliamentary Joint Committee on the Regulator

Page 12. Insert after line 14:

## Schedule 2 Parliamentary Joint Committee

(Section 16 (4))

### 1 Definition

In this Schedule, *Committee* means the Parliamentary Joint Committee constituted under section 14.

### 2 Vacancies

- (1) A member of the Committee ceases to hold office:
  - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or
  - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
  - (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or
  - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or
  - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
  - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

### 3 Chair and Deputy Chair

- (1) There is to be a Chair and a Deputy Chair of the Committee, who are to be elected by and from the members of the Committee.
- (2) A member of the Committee ceases to hold office as Chair or Deputy Chair of the Committee if:
  - (a) the member ceases to be a member of the Committee, or
  - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
  - (c) the member is discharged from office by the Committee.

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- (3) At any time when the Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair under this Act or under the *Parliamentary Evidence Act 1901*.

#### **4 Procedure**

- (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly is to call the first meeting of the Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) Subclause (2) does not apply to the Committee as first constituted under this Act.
- (4) At a meeting of the Committee, 4 members constitute a quorum, but the Committee must meet as a joint committee at all times.
- (5) The Chair or, in the absence of the Chair, the Deputy Chair (or, in the absence of both the Chair and the Deputy Chair, a member of the Committee elected to chair the meeting by the members present) is to preside at a meeting of the Committee.
- (6) The Deputy Chair or other member presiding at a meeting of the Committee has, in relation to the meeting, all the functions of the Chair.
- (7) The Chair, Deputy Chair or other member presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (8) A question arising at a meeting of the Committee is to be determined by a majority of the votes of the members present and voting.
- (9) The Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (10) The Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

#### **5 Reporting when Parliament not in session**

- (1) If a House of Parliament is not sitting when the Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report:
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

#### **6 Evidence**

- (1) The Committee has power to send for persons, papers and records.
- (2) Subject to clause 7, the Committee must take all evidence in public.
- (3) If the Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether

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during the same or another Parliament, may consider that evidence as if it had taken the evidence.

- (4) The production of documents to the Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

## **7 Confidentiality**

- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must:
- (a) take the evidence in private, or
  - (b) direct that the document, or the part of the document, be treated as confidential.
- (2) If a direction under subclause (1) applies to a document or part of a document produced to the Committee:
- (a) the contents of the document or part are, for the purposes of this clause, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and
  - (b) the person producing the document or part is, for the purposes of this clause, to be regarded as a witness.
- (3) If, at the request of a witness, evidence is taken by the Committee in private:
- (a) the Committee must not, without the consent in writing of the witness, and
  - (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subclause (5),
- disclose or publish the whole or a part of that evidence.  
Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (4) If evidence is taken by the Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subclause (5), disclose or publish the whole or part of that evidence.  
Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (5) The Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chair, authorise the disclosure or publication of evidence taken in private by the Committee, but this subclause does not operate so as to affect the necessity for the consent of a witness under subclause (3).
- (6) Nothing in this clause prohibits:
- (a) the disclosure or publication of evidence that has already been lawfully published, or
  - (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Committee.
- (7) This clause has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (8) If evidence taken by the Committee in private is disclosed or published in accordance with this clause, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

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**Note.** The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this clause.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

## **8 Application of certain Acts**

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Committee is to be regarded as having originated in the Legislative Assembly.

## **9 Validity of certain acts or proceedings**

Any act or proceeding of the Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

# **Schedule 3 Amendment of Defamation Act 2005 No 77**

## **[1] Schedule 2 Additional kinds of public documents**

Insert after clause 8 (g):

- (h) a document (or part of a document) produced to the Committee on the Natural Resources Access Regulator in proceedings conducted in private, but only if the document (or part of the document) has been disclosed or published in accordance with clause 7 of Schedule 2 to the *Natural Resources Access Regulator Act 2017*.

## **[3] Schedule 3 Additional proceedings of public concern**

Insert after clause 17 (g):

- (h) proceedings of the Committee on the Natural Resources Access Regulator constituted under the *Natural Resources Access Regulator Act 2017* conducted in private, but only to the extent that those proceedings relate to the taking of evidence that is disclosed or published in accordance with clause 7 of Schedule 2 to that Act.