



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
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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.
- (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.

The functions of the Committee 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.

Guide to the Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

Ministerial Correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest.

The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention".

The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the Digest contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Bill and correspondence appear.

APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS REPORTED ON

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Regulation and correspondence appear.

Conclusions

PART ONE - BILLS

1. APPROPRIATION BILL 2011; DUTIES AMENDMENT (FIRST HOME – NEW HOME) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out under section 8A(1) of the *Legislation Review Act 1987*.

2. PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (NOTIFICATION OF POLLUTION INCIDENTS) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out under section 8A(1) of the *Legislation Review Act 1987*.

PART TWO - REGULATIONS

1. CIVIL PROCEDURE AMENDMENT (FEES) REGULATION 2011

The Committee concludes that the introduction of these fees is reasonable and any increases are in keeping with the general movement of the Consumer Price Index and no further action is necessary.

2. DUST DISEASES TRIBUNAL AMENDMENT (FEES) REGULATION 2011

The Committee concludes that the introduction of these fees is reasonable and any increases are in keeping with the general movement of the Consumer Price Index and no further action is necessary.

Part One - Bills

1. Appropriation Bill 2011; Duties Amendment (First Home – New Home) Bill 2011

Date introduced	6 September 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasury

PURPOSE AND DESCRIPTION

Appropriation Bill 2011

1. The object of the *Appropriation Bill 2011* is to appropriate from the Consolidated Fund various sums of money required during the 2011 – 2012 financial year for the recurrent services and capital works and services of the Government.
2. This Bill also includes funding for the principal departments, the various independent statutory authorities and the Legislature.
3. The Bill relates to appropriations from the Consolidated Fund – the principal account of the Government – and largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.
4. The Bill for the 2011 – 2012 year contains an additional appropriation which allocates revenue raised in connection with gaming machine taxes to the Minister for Health for spending on health relates services.

Duties Amendment (First Home – New Home) Bill 2011

5. The object of this Bill is to amend the *Duties Act 1997* to remove the duty exemptions and concessions available to first home buyers of existing homes (other than substantially renovated homes) under the First Home Plus Scheme.
6. In addition, the Bill repeals certain obsolete provisions relating to duty discounts, the NSW Housing Construction Acceleration Plan and the Flood-prone housing scheme.

BACKGROUND

7. These Bills give legislative effect to the 2011 – 2012 Budget.
8. Although they will be separate Acts when they become operative, as the *Appropriations Bill 2011* is cognate with the *Duties Amendment (First Home – New Home) Bill 2011*, both Bills have therefore been considered in the one report.

OUTLINE OF PROVISIONS

Appropriation Bill 2011

9. Clause 1 sets out the name (also called the short title) of the proposed Act.
10. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
11. Clause 3 interprets a reference to the financial year to which the proposed Act relates and defines the term *Supply Act* for the purposes of the proposed Act.
12. Clause 4 is an interpretive provision relating to expenses and capital expenditure information included in the proposed Act.
13. Part 2 (clauses 5–18) provides for the appropriations for the recurrent services and capital works and services of the specified departments for the financial year of 2011–2012. The amounts appropriated are:
 - (a) \$52,739,005,000 for recurrent services, and
 - (b) \$6,522,200,000 for capital works and services.
14. Part 3 (clauses 19 and 20) makes an additional appropriation of \$246,000,000 to the Minister for Health and Minister for Medical Research, with this being part of the revenue raised from gaming machine taxes.
15. Part 4 (clauses 21–30) provides for the appropriations for the recurrent services and capital works and services of the specified offices for the financial year of 2011–2012. The total amounts appropriated are:
 - (a) \$285,001,000 for recurrent services, and
 - (b) \$14,202,000 for capital works and services.
16. Part 5 (clauses 31 and 32) provides for the appropriations for the recurrent services and capital works and services of the Legislature for the financial year of 2011–2012. The amounts appropriated are:
 - (a) \$116,599,000 for recurrent services, and
 - (b) \$8,636,000 for capital works and services.
17. Part 6 (clauses 33–36) provides for general matters related to the appropriations set out in Parts 2–5 of the proposed Act.
18. Clause 33 enables the Treasurer to authorise payment for a purpose, in excess of the sum appropriated for the purpose, in specified circumstances. Clause 34 allows this function to be delegated by the Treasurer.

19. Clause 35 allows the Treasurer to apply an appropriation differently in the event that responsibility for a service or function is transferred.
20. Clause 36 allows a Minister to table a Budget Paper in the Legislative Assembly by presenting it to the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting when the budget paper is sought to be tabled.

Duties Amendment (First Home – New Home) Bill 2011

21. Clause 1 sets out the name (also called the short title) of the proposed Act.
22. Clause 2 provides for the commencement of the proposed Act on 1 January 2012.
23. Schedule 1 [8] removes duty concessions and exemptions available to certain first home buyers under the First Home Plus scheme. Under that scheme, no duty is chargeable on an agreement to sell or transfer, or on a transfer of, a first home with a dutiable value of up to \$500,000 (or vacant land with a dutiable value of up to \$300,000). Concessions apply for an agreement to sell or transfer, and a transfer of, a first home with a dutiable value of more than \$500,000 but less than \$600,000 (or vacant land with a dutiable value of more than \$300,000 but less than \$450,000). The amendment provides that an agreement or transfer will no longer be eligible for the concession or exemption unless it is for the acquisition of a new home or vacant land intended to be used as the site of a new home.
24. Schedule 1 [1] renames the First Home Plus scheme the First Home—New Home scheme.
25. Schedule 1 [6] provides that the amendment will apply to agreements entered into, and transfers that occur, on or after 1 January 2012.
26. Schedule 1 [10] inserts definitions of *home*, *new home* and *substantially renovated home*. *Home* is defined as a building (affixed to land) that may lawfully be used as a place of residence and is, in the Chief Commissioner of State Revenue's opinion, a suitable building for use as a place of residence. *New home* is defined as a home that has not been previously occupied or sold as a place of residence, including a substantially renovated home. *Substantially renovated home* is defined as residential premises that have been created through substantial renovations and, as renovated, have not previously been occupied or sold as a place of residence. Substantial renovations are renovations in which all, or substantially all, of a building is removed or replaced. However, the renovations need not include removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.
27. Schedule 1 [4] is a consequential amendment.
28. Schedule 1 [5], [7], [9], [12], [13] and [14] omit obsolete provisions relating to duty discounts, the NSW Housing Construction Acceleration Plan and the Flood-prone housing scheme.
29. Schedule 1 [2], [3] and [10] are consequential amendments.
30. Schedule 1 [14] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

31. Schedule 1 [15] provides for transitional matters.

ISSUES CONSIDERED BY THE COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out under section 8A(1) of the *Legislation Review Act 1987*.

2. Protection of the Environment Operations Amendment (Notification of Pollution Incidents) Bill 2011

Date introduced	9 September 2011
House introduced	Legislative Council
Member responsible	The Hon. Cate Faehrmann MLC
	*Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to expedite the notification of pollution incidents that cause or threaten material harm to the environment.
2. At present, section 148 of the *Protection of the Environment Operations Act 1997* requires the appropriate regulatory authority to be notified of pollution incidents 'as soon as practicable' after persons associated with activity that has caused the incident become aware of it.
3. Section 149 of that Act enables the regulations to prescribe the manner or form of notifying those pollution incidents.
4. At present, the regulations require those pollution incidents to be notified verbally by contacting the EPA environment line, followed by written notification within seven days of the incident.
5. The object of this Bill is to amend that Act so as to require the 'immediate' notification of those pollution incidents.

BACKGROUND

6. This Bill has been introduced following concerns about the 8 August 2011 leak of a carcinogenic substance at an ammonium nitrate production plant near Newcastle. Specifically, concern has been raised about the time lapse – 16 hours – between the production plant being made aware of the leak and its notification of that leak to the relevant regulatory authorities.
7. In a recent media release, the Member with carriage of this Bill said:

'To make it absolutely clear what is expected of companies when such incidents occur, an amendment to the legislation is crucial...

...A delay of 16, 24 or 48 hours in notifying authorities and subsequently communities who may be affected by a hazardous incident could literally mean the difference between life and death.'

OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.
9. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
10. Clause 3 amends section 148 of the *Protection of the Environment Operations Act 1997* to give effect to the object set out above.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of the issues set out under section 8A(1) of the *Legislation Review Act 1987*.

Part Two - Regulations

1. Civil Procedure Amendment (Fees) Regulation 2011

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to increase certain fees payable in relation to civil proceedings generally and other fees that are payable to the Sheriff.
2. This Regulation is made under the Civil Procedure Act 2005, including section 18 (Fees).

ISSUES CONSIDERED BY THE COMMITTEE

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

3. The Committee notes that the introduction of certain fees may trespass on personal rights or liberties.
4. However, advice received from the Office of the Attorney General and Justice informed the Committee that increases in and introduction of court fees are necessary to ensure that there is parity in apportioning the costs of administering the civil court system between litigants and taxpayers.
5. The Attorney General considers the level of court fees for the coming financial year based upon projected estimates of the costs of administering the courts. Court fees need to be commensurate with increases in the cost of administering the justice system, which often exceed CPI.
6. These increases were based on an average of the ABS public sector Labour Price Index for the year to December 2010 and the NSW Treasury Forecast Wage Price Index.
7. The Committee also notes that certain fees did not increase under these Regulations.
8. This was due to changes in Supreme Court fees on 18 October 2010 due to a move to parity with equivalent Federal Court fees. These changes in fees were requested by the Commonwealth, and agreed at Ministerial level through the Standing Committee of Attorneys General to facilitate an increase in Commonwealth legal aid funding to the States and Territories.

PROPOSED COURSE OF ACTION

The Committee concludes that the introduction of these fees is reasonable and any increases are in keeping with the general movement of the Consumer Price Index and no further action is necessary.

2. Dust Diseases Tribunal Amendment (Fees) Regulation 2011

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to increase certain fees payable in respect of proceedings before the Dust Diseases Tribunal.
2. This Regulation is made under the *Dust Diseases Tribunal Act 1989*, including section 34 (Regulations: Tribunal fees).

ISSUES CONSIDERED BY THE COMMITTEE

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

3. The Committee notes that the introduction of certain fees may trespass on personal rights or liberties.
4. However, advice received from the Office of the Attorney General and Justice informed the Committee that increases in and introduction of court fees are necessary to ensure that there is parity in apportioning the costs of administering the civil court system between litigants and taxpayers.
5. The Attorney General considers the level of court fees for the coming financial year based upon projected estimates of the costs of administering the courts. Court fees need to be commensurate with increases in the cost of administering the justice system, which often exceed CPI.
6. These increases were based on an average of the ABS public sector Labour Price Index for the year to December 2010 and the NSW Treasury Forecast Wage Price Index.
7. The Committee also notes that certain fees did not increase under these Regulations.
8. This was due to changes in Supreme Court fees on 18 October 2010 due to a move to parity with equivalent Federal Court fees. These changes in fees were requested by the Commonwealth, and agreed at Ministerial level through the Standing Committee of Attorneys General to facilitate an increase in Commonwealth legal aid funding to the States and Territories.

PROPOSED COURSE OF ACTION

The Committee concludes that the introduction of these fees is reasonable and any increases are in keeping with the general movement of the Consumer Price Index and no further action is necessary.

Appendix One – Index of Ministerial correspondence on Bills

The Committee currently has no ministerial correspondence on Bills.

Appendix Two – Index of correspondence on Regulations on which the Committee has reported

The Committee currently has no correspondence in respect of Regulations on which it has reported.