



Legislation Review Committee

LEGISLATION REVIEW DIGEST

Digest 3/55 – 6 September 2011



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

New South Wales. Parliament. Legislative Assembly. Legislation Review Committee

Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2011, vii 16p

Chair: Mr Stephen Bromhead MP

9 September 2011

ISSN 1448-6954

1. Legislation Review Committee – New South Wales
2. Legislation Review Digest No. 3/55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 3/55

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	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
PART ONE - BILLS	1
1. COURTS AND OTHER LEGISLATION FURTHER AMENDMENT BILL 2011	1
2. IDENTIFICATION LEGISLATION AMENDMENT BILL 2011	4
3. TRANSPORT LEGISLATION AMENDMENT BILL 2011	9
4. VETERINARY PRACTICE AMENDMENT (INTERSTATE VETERINARY PRACTITIONERS) BILL 2011	12
PART TWO - REGULATIONS	14
5. PROPOSED POSTPONEMENT OF THE REPEAL OF THE COMMUNITY SERVICES (COMPLAINTS, REVIEWS AND MONITORING) REGULATION 2004	14
APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	15
APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	16

Membership

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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. COURTS AND OTHER LEGISLATION FURTHER AMENDMENT BILL 2011

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

Commencement by Proclamation

Given that the amendments foreshadowed by Schedules 1 and 4 do not infringe upon individual rights and liberties, and because the Committee has not identified any other issues with this Bill, the Committee does not consider the commencement by proclamation of Schedule 4, together with the possible commencement by proclamation of provisions in Schedule 1, to be an inappropriate delegation of legislative power in these instances.

2. IDENTIFICATION LEGISLATION AMENDMENT BILL 2011

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

The Committee notes that powers conferred by provisions in this Bill that require an individual to remove a face covering may trespass on personal rights and liberties.

The Committee also notes that various provisions in this Bill provide for certain safeguards to limit the impacts on a person when required to remove a face covering.

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

Commencement by Proclamation

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.

3. TRANSPORT LEGISLATION AMENDMENT BILL 2011

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

Commencement by Proclamation

Considering the various transitional and administrative arrangements that need to take place before this Bill can commence operation, the Committee does not regard the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

4. VETERINARY PRACTICE AMENDMENT (INTERSTATE VETERINARY PRACTITIONERS) BILL 2011

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

PART TWO - REGULATIONS

5. PROPOSED POSTPONEMENT OF THE REPEAL OF THE COMMUNITY SERVICES (COMPLAINTS, REVIEWS AND MONITORING) REGULATION 2004

That the Committee writes to the Minister for Ageing and Disability Services to advise that it does not have any concerns with the postponement of the repeal of the regulation.

Part One - Bills

1. Courts and Other Legislation Further Amendment Bill 2011

Date introduced	26 August 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney-General and Justice

PURPOSE AND DESCRIPTION

1. The *Courts and Other Legislation Further Amendment Bill 2011* proposes to make miscellaneous amendments to legislation affecting the operation of courts in New South Wales and to other legislation administered by the Attorney-General and the Minister for Justice.
2. The object of the Bill is fourfold:
 - (a) To amend the *Civil Procedure Act 2005* to defer the application of Part 2A of that Act that relate to the early resolution of civil disputes;
 - (b) To amend the *Guardianship Act 1987* to allow for the delegation of the Attorney-General's power to approve the place in which a person may be placed in the care of the Director-General under that Act;
 - (c) To amend the *Land and Environment Court Act 1979* to confirm that certain appeals brought by Aboriginal Land Councils are within Class 3 of the Land and Environment Court's jurisdiction; and
 - (d) To limit the types of conviction in respect of which a victims compensation levy is payable under the *Victims Support and Rehabilitation Act 1996*.

BACKGROUND

3. Schedule 1 relates to the deferral of Part 2A of the *Civil Procedure Act 2005* by up to 18 months. Part 2A was inserted in the *Civil Procedure Act 2005* in late 2010 and includes measures to encourage the early resolution of civil disputes, including a requirement that parties take 'reasonable steps' to resolve the dispute by agreement or to narrow the issues in dispute before commencing court action.
4. According to the Attorney-General in his Agreement in Principle speech:

'...a number of stakeholders have expressed mixed views about Part 2A. Whilst the policy intention underpinning the provisions has received general support, concerns have been raised about its practical implementation. In particular, senior members of the judiciary, the legal profession and industry groups have expressed concerns

that Part 2A, as currently drafted, could lead to increased costs and delays in resolving disputes for litigants and the courts.'

5. In particular, stakeholders have raised concerns about what constitutes 'reasonable steps' and that this ambiguity could give rise to increased satellite litigation.
6. In March 2011, the Commonwealth parliament passed similar provisions to Part 2A in its equivalent legislation which commenced operation on 1 August 2011. It is proposed that application of Part 2A be postponed to allow the relative success and shortcomings of these equivalent Commonwealth provisions time to be evaluated. It is expected that this process will take between 12 and 18 months.
7. The Bill is specifically drafted to either enable Part 2A to commence operation in 18 months without requiring further legislative activity or to commence operation at a sooner date by proclamation if deemed suitable by the Government.
8. Schedule 2 is a machinery amendment to enable the Attorney-General the appropriate power of delegation as the Minister responsible for the *Guardianship Act 1987*. Previously, the Minister for Disability Services was the Minister responsible for discharging duties under that Act and was provided with appropriate powers of delegation. Schedule 2 completes the transfer of responsibility from the Minister of Disability Services to the Attorney-General on guardianship matters.
9. Schedule 3 contains an amendment to the *Land and Environment Court Act 1979* to clarify that appeals by an Aboriginal Land Council against a refusal of a land claim made by Council can be heard by the Land and Environment Court, as has been longstanding practice.
10. Schedule 4 provides that certain individuals charged with offences can be exempt from paying an otherwise mandatory levy into the Victims Compensation Fund. Under the proposed amendment, the levy will not apply where a court finds a person guilty of an offence but, because of extenuating circumstances such as a good criminal or driving record, directs that the charge be dismissed.

OUTLINE OF PROVISIONS

11. Clause 1 sets out the name (also called the short title) of the proposed Act.
12. Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of *Civil Procedure Act 2005* No 28

13. Schedule 1 provides for the newly inserted Part 2A (Steps to be taken before the commencement of proceedings) of the *Civil Procedure Act 2005* to apply only to civil proceedings commenced on or after the day that is 18 months after the date of assent to the proposed Act or such earlier day as the Governor may appoint by proclamation.

Schedule 2 Amendment of *Guardianship Act 1987* No 257

14. Schedule 2 allows the Attorney General to delegate to the Director-General within the meaning of the *Guardianship Act 1987* or to any other person the exercise of the Attorney General's function under that Act to approve the place at which a person may

be put in the care of the Director-General following the removal of that person from premises pursuant to a guardianship order or a search warrant. If the power is delegated to the Director-General, the Director-General may also delegate the exercise of that function to any other person.

Schedule 3 Amendment of *Land and Environment Court Act 1979* No 204

15. Schedule 3 confirms that any appeals made under section 36 (7) of the *Aboriginal Land Rights Act 1983* (being appeals arising out of claims made by an Aboriginal Land Council with respect to Crown land) fall within Class 3 of the Court's jurisdiction.

Schedule 4 Amendment of *Victims Support and Rehabilitation Act 1996* No 115

16. Schedule 4 [1] ensures that the provisions relating to the payment of a compensation levy under the *Victims Support and Rehabilitation Act 1996* do not apply to orders made under the *Crimes (Sentencing Procedure) Act 1999* which direct the charge for an offence to be dismissed if the offence to which the order relates is not punishable by imprisonment (whether or not the offence is also punishable by some other penalty).
17. Schedule 4 [3] makes it clear that the amendment made by Schedule 4 [1] applies to a person convicted of an offence after the commencement of the amendment, even if the offence was committed prior to that commencement. Schedule 4 [2] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY THE COMMITTEE

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

Commencement by Proclamation

18. The Bill provides that Schedule 4 of the Act is to commence on a day or days to be appointed by proclamation.
19. In addition, Schedule 1 provides that certain proposed amendments to the *Civil Procedure Act 2005* may commence operation if proclaimed by the Government earlier than the designated application date in 18 months time. These amendments concern the deferral of early dispute resolution procedures. The Committee understands that the Government may choose to commence these provisions at an earlier date if similar provisions in equivalent Commonwealth legislation that are currently operative are determined to be successful.

Given that the amendments foreshadowed by Schedules 1 and 4 do not infringe upon individual rights and liberties, and because the Committee has not identified any other issues with this Bill, the Committee does not consider the commencement by proclamation of Schedule 4, together with the possible commencement by proclamation of provisions in Schedule 1, to be an inappropriate delegation of legislative power in these instances.

2. Identification Legislation Amendment Bill 2011

Date introduced	25 August 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney-General and Justice

PURPOSE AND DESCRIPTION

1. The objects of the Bill are to amend certain legislation to enable police officers and other authorised officials to require the removal of face coverings for identification persons and to provide for identification procedures relating to individuals subject to a move on direction, or for individuals in relation to the making or receiving of statutory declarations and affidavits.
2. The Bill proposes to achieve these aims through amendments to the following Acts:
 - (a) The *Law Enforcement (Powers and Responsibility) Act 2002* to allow a police officer to require a person to remove a face covering for identification purposes and enable a police officer to request that a person disclose their identity if the individual is to be subject to a move on direction.
 - (b) The *Court Security Act 2005*, to allow a court security officer to require a person to remove face covering if the person is seeking to enter court premises for identification purposes;
 - (c) The *Crimes (Administration of Sentences) Act 1999* and the *Crimes (Administration of Sentences) Regulation 2008* to allow an authorised officer to require a visitor to a correctional facility to remove a face covering for identification purposes;
 - (d) The *Children (Detention Centres) Act 1987* and the *Children (Detention Centres) regulation 2010* to allow an authorised officer to require a visitor to a detention centre to remove a face covering for identification purposes;
 - (e) The *Oaths Act 1900* to provide for identification procedures to be followed by persons taking or receiving statutory declarations or affidavits.

BACKGROUND

3. In November 2010, a woman was convicted for falsely accusing a police officer of forcibly removing her face covering after she was pulled over for allegedly driving without having her P plates displayed.
4. In June 2011 her conviction was quashed after the appellate court found that there was no evidence to confirm that the woman convicted of the offence was the same woman who made false allegations against the police officer, because the woman who made the

allegations was wearing a face covering at the time. As such, the woman could not be positively identified.

5. Following discussions with the Police Commissioner, and prompted by concerns of repeat occurrences, the Government has introduced this Bill.
6. In his Agreement in Principle Speech to Parliament, the Attorney-General noted:

'...the Government recognises that there are members of our community who wear face coverings for religious, cultural or personal reasons, and the Government is committed to working with these groups and the broader community to ensure that people understand not only their obligations but also the extent to which safeguards can reasonably be expected to apply.'
7. The Attorney-General also advised that the Government has consulted with members of the Muslim community on the content of this Bill and pledged ongoing work on this matter with the Community Relations Commission.

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 a day or days to be appointed by proclamation.
10. The amendments to legislation made by the proposed Act rely on the definitions of **face**, **face covering** and **special justification** to be inserted in the *Law Enforcement (Powers and Responsibilities) Act 2002* by Schedule 1 to the proposed Act.
11. The term **face** will be defined to mean a person's face:
 - (a) from the top of the forehead to the bottom of the chin, and
 - (b) between (but not including) the ears.
12. The term **face covering** will be defined to mean an item of clothing, helmet, mask or any other thing that is worn by a person and prevents the person's face from being seen (whether wholly or partly). This definition is limited to items or things that are worn (and therefore removable) by a person. However, it does not include any thing that is naturally growing (such as a beard). A person will have a **special justification** for not removing a face covering if (and only if):
 - (a) the person has a legitimate medical reason for not removing the face covering, or
 - (b) the person has any other excuse for not removing the face covering that is an excuse of a kind prescribed by regulations made under the *Law Enforcement (Powers and Responsibilities) Act 2002*.
13. **Schedule 1 [1]** inserts the definitions of **face** and **face covering** set out above.
14. **Schedule 1 [4]** inserts a provision to allow a police officer to request that a person disclose the person's identity to the officer where the officer proposes to give the person a direction under the *Law Enforcement (Powers and Responsibilities) Act 2002* to

leave a place. A failure or refusal by a person (without a reasonable excuse) to disclose his or her identity on such a request will be an offence, as will providing false or misleading information about the person's identity. The maximum penalty for each of these offences will be 2 penalty units (currently, \$220).

15. **Schedule 1 [2] and [3]** make consequential amendments.
16. **Schedule 1 [5]** inserts the following:
 - (a) provisions that allow a police officer to require a person to remove any face covering worn by the person so as to enable the officer or another police officer to see the person's face if:
 - i* the person has been lawfully required (whether under the *Law Enforcement (Powers and Responsibilities) Act 2002* or any other Act or a statutory instrument) by the officer requiring the removal of the covering to provide photographic identification, or
 - ii* the person has otherwise been lawfully required (whether under that or any other Act or a statutory instrument) by the officer requiring the removal of the covering to identify himself or herself or provide other identification particulars,
 - (b) provisions that make it an offence for a person to fail or refuse to comply with such a requirement without a special justification and provide for a maximum penalty of 50 penalty units or 12 months imprisonment, or both (in the case of a person who is required to remove a face covering following a request made to the person under section 14 of that Act) or 2 penalty units (in any other case).
17. **Schedule 1 [6]** makes an amendment that is consequential on the amendment made by Schedule 1 [5].
18. **Schedule 1 [7]** will require the Ombudsman to monitor the exercise by police officers of their new powers to require the removal of face coverings for a period of 12 months and to provide a report to the Minister following the end of that period for tabling in Parliament.
19. **Schedule 1 [8]** enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
20. **Schedule 2.1** enables the regulations under the *Children (Detention Centres) Act 1987* to provide for the identification of visitors to detention centres (including requiring the removal of face coverings for that purpose).
21. **Schedule 2.2** inserts provisions to allow a juvenile justice officer to require a visitor to a detention centre to remove a face covering so as to enable the visitor's face to be seen for identification purposes by the officer and certain persons assisting the officer. A visitor who does not comply with the requirement may be refused a visit to the detention centre unless the visitor has a special justification for not removing the face covering.

22. **Schedule 2.3 [3]** inserts provisions to allow a court security officer to require a person who is wearing a face covering to remove the covering so as to enable the officer and certain persons assisting the officer to see the face of the person if:

- (a) the person is seeking to enter court premises, or
- (b) the officer arrests, or has grounds for arresting, the person under the *Court Security Act 2005*.

A person who fails or refuses to comply with a requirement to remove a face covering, if it is repeated, may be guilty of an offence with a maximum penalty of 5 penalty units (currently, \$550). However, a security officer will not be able to require a person to remove a face covering if the person establishes to the officer's satisfaction that the person has a special justification for not removing the face covering.

23. **Schedule 2.3 [1], [2], [4] and [5]** make consequential amendments.

24. **Schedule 2.4** enables the regulations under the *Crimes (Administration of Sentences) Act 1999* to provide for the identification of visitors to correctional centres (including requiring the removal of face coverings for that purpose).

25. **Schedule 2.5** inserts provisions to allow an authorised officer to require a visitor to a correctional centre to remove a face covering to enable the visitor's face to be seen for identification purposes by the officer and certain persons assisting the officer. A visitor who does not comply with the requirement may be refused a visit to the correctional centre unless the visitor has a special justification for not removing the face covering.

26. **Schedule 2.6** inserts a new Part which provides that a person who takes and receives a statutory declaration or affidavit in this State (an **authorised witness**):

- (a) must see the face of the person making the declaration or affidavit, and
- (b) must know the person who makes the declaration or affidavit or confirm the person's identity in accordance with the regulations, and
- (c) must certify on the declaration or affidavit in accordance with the regulations that the new requirements have been complied with. The regulation-making powers under the new Part will enable procedures for confirming the identity of a person to be developed that conform with the procedures for witnessing other documents set out in legislation such as the *Real Property Act 1900*.

ISSUES CONSIDERED BY THE COMMITTEE

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

27. The Committee notes that the powers conferred by provisions in this bill that require an individual to remove a face covering may trespass on personal rights and liberties.

28. However, the Committee also notes that various provisions in this Bill provide for certain safeguards to limit the impacts on a person when required to remove a face covering.

29. These safeguards include:

- (a) Limiting the requirement of removing a face covering to the extent that it only reveals the face but excludes the hair, neck and ears;
 - (b) Requiring that a viewing of the person's face be conducted in a way that provides 'reasonable privacy' upon request by the person, such as away from other members of the public;
 - (c) Requiring that a viewing of the person's face be conducted 'as quickly as is reasonably practicable';
 - (d) Allowing the viewing a person's face to be conducted by an authorised official of the same gender upon the person's request. (However, this provision does not apply to requests made by police officers); and
 - (e) Providing the Ombudsman with the authority to monitor the operation of powers conferred to police and to report on this matter to Parliament.
30. The Bill also provides for certain exemptions to the removal of face coverings, such as for medical reasons or other exemptions deemed appropriate in the regulations.
31. These safeguards appear to go to some length in allaying concerns that may be raised about the personal impacts of this Bill.

The Committee notes that powers conferred by provisions in this Bill that require an individual to remove a face covering may trespass on personal rights and liberties.

The Committee also notes that various provisions in this Bill provide for certain safeguards to limit the impacts on a person when required to remove a face covering.

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

Commencement by Proclamation

32. The Bill provides that the Act is to commence on a day or days to be appointed by proclamation. The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.

3. Transport Legislation Amendment Bill 2011

Date introduced	23 August 2011
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads and Ports

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Transport Administration Act 1988* and other transport legislation to establish new arrangements for the administration of the NSW transport sector. These new arrangements provide for:
 - (a) The establishment of a statutory corporation to be called Transport for NSW (TfNSW) which is to have the central role in the governance of the delivery of transport services and infrastructure by public transport agencies,
 - (b) The establishment of a staff employment entity to be called the Transport Service of NSW in which staff are employed to enable TfNSW to exercise its functions,
 - (c) The establishment of a statutory corporation to be called Roads and Maritime Services (RMS) and the transfer to the new corporation for the functions, assets, rights and liabilities of the Roads and Traffic Authority and the Maritime Authority of NSW,
 - (d) The abolition of the Roads and Traffic Authority, the Maritime Authority of NSW, the Transport Construction Authority and the Country Rail Infrastructure Authority.

BACKGROUND

2. This Bill gives legislative effect to election commitments made by the Liberal/National Parties before the 2011 Election to establish an integrated transport authority – Transport for New South Wales.
3. TfNSW will be responsible for the coordinated delivery of services across all modes of transport, bringing together the coordination, procurement, policy and non-service delivery planning of functions currently performed by a series of existing Government Departments. This includes the Department of Transport, RailCorp, the Roads and Traffic Authority, the State Transit Authority, Sydney Ferries, the Maritime Authority of New South Wales, the Transport Construction Authority and the Country Rail Infrastructure Authority.
4. The Minister for Roads and Ports, the Hon. Duncan Gay MLC said in his Second Reading Speech to Parliament that this is required to:

'... break down the silos that exist in the administration of the entire transport sector'.

5. The Minister further added:

'... these changes are designed to abolish a dysfunctional structure and avoid the duplication and poor communications and replace it with a streamlined agency which plans and delivers to all transport modes.'

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
8. Schedule 1 amends the TAA to:
 - (a) establish and confer functions on TfNSW, and
 - (b) establish the Transport Service of NSW, and
 - (c) establish and confer functions on Roads and Maritime Services, and
 - (d) transfer assets, rights, liabilities and authorisations as a consequence of the restructuring, and
 - (e) establish the common objectives of public transport agencies and enable the
 - (f) Director-General to establish the Government's expectations for service delivery by public transport agencies, and
 - (g) alter existing provisions for the transfer of staff between public transport agencies so that transfers will be on a "no net detriment" basis (in place of the current arrangements for a transfer to be on the basis of the existing terms and conditions of employment), and
 - (h) make it clear that the obligation of a railway network controller to give priority to railway passenger services is an obligation to give *reasonable* priority to those services, and priority that is consistent with arrangements for Commonwealth funding of freight rail infrastructure.
9. Schedule 2 amends the *Ports and Maritime Administration Act 1995* as follows:
 - (a) the Maritime Authority will be abolished and its functions, assets, rights and liabilities transferred to the new Roads and Maritime Services,
 - (b) consequential amendments (including amendments to provisions for the Waterways Fund),
 - (c) the Minister will be authorised to transfer commercial port facilities that are vested in the Maritime Authority (currently the ports of Eden and Yamba), together with the staff employed at those ports, to a Ports Corporation,

(d) provision is made for the establishment by the Minister of a Maritime Advisory Council to advise the Minister on matters concerning the marine legislation, maritime safety and expenditure priorities for maritime infrastructure and research.

10. Schedule 3 amends the *Transport Administration Act 1988* and other legislation to:

- (a) abolish the Transport Construction Authority, and
- (b) transfer the assets, rights and liabilities of the abolished Authority to TfNSW, and
- (c) make consequential amendments.

The functions of the abolished Authority will become functions of TfNSW as a result of the amendments made by Schedule 1.

11. Schedule 4 makes similar amendments in relation to the Country Rail Infrastructure Authority as those made by Schedule 3 in relation to the Transport Construction Authority.

12. Schedule 5 makes amendments to various laws that are consequential on the abolition of the Roads and Traffic Authority and the Maritime Authority of NSW and the establishment of Roads and Maritime Services. Schedule 5 also includes amendments to various laws that are consequential on the transfer of functions to TfNSW and other amendments made by the Bill. Other minor amendments are made to transport legislation, including law revision amendments.

ISSUES CONSIDERED BY THE COMMITTEE

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

Commencement by Proclamation

- 13. The Bill provides that the Act is to commence on a day or days to be appointed by proclamation. The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature.
- 14. However, the Committee also appreciates that this Bill proposes a substantial restructure of Government agencies and that many transitional and administrative arrangements may need to be completed before the Bill can commence operation. This includes the drafting of regulations, the establishing of advisory panels and finalising of arrangements to facilitate the transfer of employees under the new structure.
- 15. Given these considerations, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of power in this instance.

Considering the various transitional and administrative arrangements that need to take place before this Bill can commence operation, the Committee does not regard the commencement by proclamation provision to be an inappropriate delegation of power in this instance.

4. Veterinary Practice Amendment (Interstate Veterinary Practitioners) Bill 2011

Date introduced	24 August 2011
House introduced	Legislative Assembly
Minister responsible	Hon Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Veterinary Practice Act 2003* (the principal Act) to enable veterinary practitioners registered in other States or Territories to practise in New South Wales without having to register separately in New South Wales.
2. The Bill gives effect to the National Recognition of Veterinary Registration model, which was endorsed by the Primary Industries Ministerial Council. Under the agreed model, other States and Territories will recognise veterinary practitioners registered in New South Wales.

BACKGROUND

3. In the Agreement in Principle speech the Minister stated:

...that the Bill will simplify requirements for the registration of interstate vets in New South Wales and it has the potential to attract more of the estimated 6000 vets who currently are not registered here by offering a reduction in costs and red tape.¹
4. The Minister went on to further state that current arrangements for the registration of interstate vets are an administrative burden for governments and create additional costs. There is also the potential for delays in responding to animal disease emergencies. In 2007 the Primary Industries Ministerial Council endorsed the National Recognition of Veterinary Registration model to overcome these problems.
5. With the passage of this Bill through parliament, New South Wales will become the second state, after Victoria, to introduce the national recognition of veterinary registration model.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

¹ Hon K Hodgkinson MP, Minister for Primary Industries, Legislative Assembly *Hansard*, 24 August 2011.

Schedule 1 Amendment of *Veterinary Practice Act 2003*

8. Schedule 1 [2] inserts into the principal Act new provisions dealing with the recognition in New South Wales of veterinary practitioners registered in other States or Territories. A person who practises as a veterinary practitioner in New South Wales is taken to be registered as a veterinary practitioner under the principal Act (referred to as *deemed registration*) if:
 - (a) the person's principal place of residence is another jurisdiction, and
 - (b) the person is registered as a veterinary practitioner in that jurisdiction, and
 - (c) the person is not registered as a veterinary practitioner in New South Wales.
9. A person who has deemed registration is taken to be a veterinary practitioner for the purposes of the principal Act and the laws of this State. Provisions in the principal Act relating to complaints and disciplinary action against veterinary practitioners will apply to a person who has deemed registration.
10. If a person has specialist registration in a branch of veterinary science in another jurisdiction, the person's deemed registration is taken to be specialist registration in that branch and if a person's registration as a veterinary practitioner in another jurisdiction is subject to a condition or a limitation, the person's deemed registration is taken to be subject to the same condition or limitation. The Veterinary Practitioners Board (the *Board*) may also waive, vary or impose a condition on a person's deemed registration in certain circumstances.
11. If a person's registration as a veterinary practitioner in another jurisdiction (including deemed registration however described) is suspended or cancelled, the person's deemed registration in New South Wales may, without further investigation or hearing, be suspended or cancelled by the Board (as the case requires) on the grounds on which the registration in that other jurisdiction was suspended or cancelled.
12. The Board may enter into arrangements with interstate registration authorities for the purposes of establishing a national register of veterinary practitioners and for other purposes related to the recognition of veterinary practitioners registered in other jurisdictions.
13. Schedule 1 [6] requires the Board to notify each interstate registration authority of any disciplinary action taken against a veterinary practitioner, including a veterinary practitioner who has deemed registration.
14. Schedule 1 [1], [3]–[5] and [7] are consequential amendments.
15. Schedule 1 [8] enables savings and transitional regulations to be made as a consequence of the proposed Act.

ISSUES CONSIDERED BY THE COMMITTEE

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

Part Two - Regulations

5. Proposed Postponement of the Repeal of the Community Services (Complaints, Reviews and Monitoring) Regulation 2004

BACKGROUND

1. By correspondence received 23 August 2011, the Minister for Ageing and Disability Services advised the Committee of the intention to postpone the repeal of the above regulation.

COMMENT

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The Minister advised that the postponement was sought due to a statutory review of the primary legislation taking place in the Spring Session 2011. This will lead to a review of the above regulation.

CONCLUSION

That the Committee writes to the Minister for Ageing and Disability Services to advise that it does not have any concerns with the postponement of the repeal of the regulation.

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.