



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No. 12/56 – 16 February 2016



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, 2015, 11p 30 cm

Chair: Mr Michael Johnsen MP

16 February 2016

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 12 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 12 of 56

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 Michael Johnsen MP, Member for Upper Hunter
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr Alister Henskens SC MP, Member for Ku-ring-gai Mr David Mehan MP, Member for The Entrance The Hon Shaoquett Moselmane MLC The Hon. Gregory Pearce MLC Mr David Shoebridge MLC
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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*.

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.

Conclusions

PART ONE - BILLS

1. WYONG SPECIAL AREA (PROTECTION) BILL 2015*

The Committee notes that cancelling planning approvals granted prior to the commencement of the Act may run counter to the rule of law. In some circumstances, the committee may regard this as an undue trespass on personal rights and liberties. However, the Committee also notes that individuals are unlikely to be affected parties under this legislation, and notes the objectives of the Act are to protect the water supply for residents of the Wyong special area. The Committee makes no further comment.

PART TWO - REGULATIONS

1. RAIL SAFETY (ADOPTION OF NATIONAL LAW) AMENDMENT (DRUG TESTING OF ORAL FLUID SAMPLES) REGULATION 2015

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

Retrospectivity

The amendment proposed to clause 13(6) of the *Rail Safety (Adoption of National Law) Regulation 2012* and the introduction of clause 52 will have some retrospective effect. Blood and urine analyses carried out before the amendments commence can be used as evidence for offences against section 128 of the *Rail Safety National Law*. However, the Committee notes the public safety aspect of the offences in question. The Committee also notes that evidence of this kind can only be given if the court is satisfied that the analysis was not arranged in contravention of the Regulation. The Committee therefore makes no further comments.

Part One - Bills

1. Wyong Special Area (Protection) Bill 2015*

Date introduced	19 November 2015
House introduced	Legislative Assembly
Member responsible	Mr David Harris MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to protect certain land at Wyong from mining and mining-related activities. This is achieved by prohibiting the granting, renewal or modification of licences, leases, claims and authorities, and the granting of planning approvals, that allow persons to prospect for, and mine, minerals and petroleum on that land. The land concerned is the site of the Wallarah 2 coal mine project.

BACKGROUND

2. This Bill seeks to protect specific area of land in the Wyong area from mining and mining related activities. In the Second Reading Speech, Mr David Harris MP stated:

Essentially, the Bill seeks to protect the Wyong catchment area from destructive mining, thereby protecting the important water supply that services more than 300,000 people.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

3. Clause 6 of the Bill cancels any approval for prospecting and mining in the Wyong special area granted before the commencement of the Act. The Bill is silent on whether there is any compensation for any such cancellation.

The Committee notes that cancelling planning approvals granted prior to the commencement of the Act may run counter to the rule of law. In some circumstances, the committee may regard this as an undue trespass on personal rights and liberties. However, the Committee also notes that individuals are unlikely to be affected parties under this legislation, and notes the objectives of the Act are to protect the water supply for residents of the Wyong special area. The Committee makes no further comment.

Part Two - Regulations

1. Rail Safety (Adoption of National Law) Amendment (Drug Testing of Oral Fluid Samples) Regulation 2015

PURPOSE AND DESCRIPTION

1. Under the *Rail Safety National Law (NSW)* the National Rail Safety Regulator may appoint persons as authorised persons. Those persons, along with police officers, may require oral fluid analysis of rail safety workers in certain circumstances. When New South Wales police officers deal with oral fluid samples, they do so in the same way as they do when enforcing New South Wales road transport legislation, which differs from the way that the National Rail Safety Regulator operates.
2. The objects of this Regulation are as follows:
 - (a) to make provision for the taking and transportation of oral fluids that are to be tested by the National Rail Safety Regulator by including aspects of procedures for specimen collecting for drug testing that are used by that body (by requiring an oral fluid sample taken by or handed to an authorised person who is not a police officer to be collected, transported and stored in accordance with a specified Australian Standard),
 - (b) to facilitate the testing of oral fluids by the National Rail Safety Regulator by requiring samples to be analysed in accordance with a specified Australian Standard and by including a laboratory, an oral fluid testing device and oral fluid analysing instruments used by that body in the list of laboratories, devices and instruments approved for drug testing,
 - (c) to provide that evidence may be given of or in relation to the presence of a drug or a concentration of a drug if the court is satisfied that the analysis was not arranged in contravention of the *Rail Safety (Adoption of National Law) Regulation 2012* (to achieve consistency with similar provisions in other legislation about drug testing of motor vehicle drivers),
 - (d) to omit an incorrect reference to a testing device in a definition about oral fluid analysis, which is in fact carried out by analysing instruments.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

3. Clause 13 of the *Rail Safety (Adoption of National Law) Regulation 2012* deals with situations where blood or urine samples are taken from a rail safety worker who is in hospital because they have been involved in an accident.
4. Clause 13(6) of the existing Regulation prevents evidence being given about the presence of a drug, or a particular concentration of a drug, in the blood or urine of a person charged with an offence under section 128 of the *Rail Safety National Law (NSW)*. These offences involve individuals who have prescribed concentrations of alcohol and/or drugs in their system while they are carrying out rail safety work. The maximum penalty is \$10,000.
5. The amending Regulation will change clause 13(6) so that evidence of this kind can be given but only if the court is satisfied that the blood or urine analysis was not arranged in contravention of the Regulation. While the updated provision will apply to evidence given after the amending Regulation commences, the blood or urine analysis can be from before the amending Regulation commences (see Schedule 1, item [3] of the amending Regulation which contains the amendments to clause 13 and Schedule 1, item [5], which introduces a new clause 52).

The amendment proposed to clause 13(6) of the *Rail Safety (Adoption of National Law) Regulation 2012* and the introduction of clause 52 will have some retrospective effect. Blood and urine analyses carried out before the amendments commence can be used as evidence for offences against section 128 of the *Rail Safety National Law*. However, the Committee notes the public safety aspect of the offences in question. The Committee also notes that evidence of this kind can only be given if the court is satisfied that the analysis was not arranged in contravention of the Regulation. The Committee therefore makes no further comments.

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.

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.