



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

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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. DATA SHARING (GOVERNMENT SECTOR) BILL 2015

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

Privacy

Allowing for the sharing of data between government agencies may lead to personal or sensitive information to be inadvertently disclosed contrary to NSW privacy legislation. Any such disclosure would trespass on an individual's right to privacy. However, the Committee notes the Bills objectives specifically state that the protection of privacy is integral to the operation of the Act and the Bill includes data sharing safeguards which outline the procedures to be taken in the event privacy legislation is contravened.

In addition, the Bill provides for a review of the Act in 5 years and a report to be tabled in Parliament. The Committee considers this will provide an opportunity for any concerns about the operation of the Act to be raised. The Committee makes no further comment.

2. FIREARMS AND WEAPONS PROHIBITION LEGISLATION AMENDMENT BILL 2015; SECURITY INDUSTRY AMENDMENT (REGULATION OF TRAINING ORGANISATIONS) BILL 2015

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

Unjust penalty

The Committee notes the Bill enables the Commissioner of Police to refer to past offences that have become spent when considering whether to grant a firearm licence or permit. Allowing this exception may defeat the purpose of the spent conviction scheme. However, the Committee acknowledges the aim of the Bill is to improve public safety and considers the amendments will assist the Commissioner of Police in determining whether a person is fit and proper to be granted a licence or permit. The Committee makes no further comment.

Excessive punishment

The Committee notes the significant increase in the maximum penalty for the offence of defacing and altering a firearm or firearm parts. Significant increases in maximum penalties, without justification, will always be of concern to the Committee. In this case however, the Committee refers to the aims of the Bill which include ensuring consistency between firearm offences and penalties and promoting public safety. As such, the Committee considers the increase justified and makes no further comment.

3. GAMING AND LIQUOR ADMINISTRATION AMENDMENT BILL 2015

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

Commencement by proclamation

The Committee would prefer Acts to commence on assent or a fixed date. However, this Bill involves significant changes to the regulatory framework of the liquor and gaming industry. As such, the Committee accepts its commencement may need to be flexible.

4. STATE REVENUE LEGISLATION AMENDMENT BILL 2015

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

Excessive punishment

The Committee notes the significant increase in the maximum penalty and will always be concerned where penalties are increased without justification. The Committee refers to the Second Reading Speech where the Minister indicated that the penalties have been doubled in recognition of the seriousness of attempting to avoid liability for such offences, especially where these offences also incur driver licence demerit points. The Committee makes no further comment.

PART TWO - REGULATIONS

1. ROAD TRANSPORT LEGISLATION AMENDMENT (RELEASE OF STORED PHOTOGRAPHS) REGULATION 2015

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

Privacy

The release of photographs and other matter contained in the database of such photographs trespasses against an individual's right to privacy. The Committee notes though the public interest in the aforementioned agencies being able to thoroughly investigate and prosecute serious criminal and terrorist activity. The Committee makes no further comment.

Part One - Bills

1. Data Sharing (Government Sector) Bill 2015

Date introduced	28 October 2015
House introduced	Legislative Council
Minister responsible	The Hon John Ajaka MLC
Portfolio	Ageing, Disability Services and Multiculturalism

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to enable government sector agencies to agree to share government sector data with the Data Analytics Centre (the DAC) in the Department of Finance, Services and Innovation (the Department) or other government sector agencies for certain purposes, and
 - (b) to enable the Minister to give directions in certain circumstances to require government sector agencies to share government sector data with the DAC, and
 - (c) to enable the Minister to obtain information for the DAC from government sector agencies about the kinds of data sets that they control, and
 - (d) to specify safeguards (including in relation to the collection, use, disclosure, protection, keeping, retention or disposal of health information or personal information of individuals) to be complied with by the DAC and other government sector agencies in connection with data sharing under the proposed Act.

BACKGROUND

2. This Bill seeks to facilitate the sharing of government sector data within government, including with the newly established NSW Government Data Analytics Centre (DAC). In the Second Reading Speech, the Hon John Ajaka MLC stated that data is collected across the Government sector however there is no requirement to share data between departments and agencies that will inform more efficient decision-making.
3. The establishment of the DAC and the sharing of government sector data is supported by a number of key stakeholders including the NSW Chief Scientist and Engineer, the Customer Service Commissioner, the Privacy Commissioner and the Information Commissioner.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

4. This Bill allows for government agencies to share data with other government agencies and for the Minister to direct agencies to share data with the NSW Data Analytics Centre.

Allowing for the sharing of data between government agencies may lead to personal or sensitive information to be inadvertently disclosed contrary to NSW privacy legislation. Any such disclosure would trespass on an individual's right to privacy. However, the Committee notes the Bills objectives specifically state that the protection of privacy is integral to the operation of the Act and the Bill includes data sharing safeguards which outline the procedures to be taken in the event privacy legislation is contravened.

In addition, the Bill provides for a review of the Act in 5 years and a report to be tabled in Parliament. The Committee considers this will provide an opportunity for any concerns about the operation of the Act to be raised. The Committee makes no further comment.

2. Firearms and Weapons Prohibition Legislation Amendment Bill 2015; Security Industry Amendment (Regulation of Training Organisations) Bill 2015

Date introduced	27 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Troy Grant MP
Portfolio	Justice and Police

PURPOSE AND DESCRIPTION

Firearms and Weapons Prohibition Legislation Amendment Bill 2015

1. The object of this Bill is to amend the *Firearms Act 1996* (the Firearms Act) as follows:
 - (a) to enable the Commissioner of Police to consider spent convictions when dealing with applications for firearms licences and permits,
 - (b) to increase the maximum penalty for certain offences concerning pistols, prohibited firearms, shortened firearms or converted firearms from 10 years' imprisonment to 14 years' imprisonment,
 - (c) to increase the maximum penalty for the offence of defacing or altering numbers, letters or identification marks on a firearm or firearm barrel, or possessing such a defaced or altered firearm or firearm barrel, from 5 years' imprisonment to 14 years' imprisonment,
 - (d) to extend the operation of the offence of defacing or altering numbers, letters or identification marks on firearm barrels, or possessing such a defaced or altered firearm barrel, to other firearm parts,
 - (e) to create a new offence of using, supplying or acquiring such defaced firearms (or defaced firearm parts) or giving possession of them to another person and an offence of supplying, acquiring or possessing defaced firearm parts or giving possession of such parts to another person,
 - (f) to create a new offence of possessing digital blueprints for the manufacture of firearms on 3D printers or electronic milling machines,
 - (g) to create a new offence of using, supplying, acquiring or possessing a stolen firearm or firearm part or giving possession of a stolen firearm or firearm part to another person.

2. This Bill also:
 - (a) amends the *Weapons Prohibition Act 1998* to create a new offence of possessing digital blueprints for the manufacture of prohibited weapons on 3D printers or electronic milling machines, and
 - (b) makes consequential amendments to the *Criminal Procedure Act 1986*.

Security Industry Amendment (Regulation of Training Organisations) Bill 2015

3. The object of this Bill is to amend the *Security Industry Act 1997* to preserve the operation of State security industry training organisation provisions. Section 6A of that Act (which was enacted in 2012) declared that State security industry regulation provisions were an excluded matter for the purposes of section 10 of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth (the Commonwealth Act). That declaration did not extend to certain Commonwealth national registration provisions, which may result in the State provisions in the same area being inconsistent and therefore not operative under section 109 of the Australian Constitution. Pursuant to a power conferred by section 11 of the Commonwealth Act, this Bill displaces the Commonwealth Act to the extent that it would render inoperative State security industry training organisation provisions that are inconsistent with the Commonwealth Act.

BACKGROUND

4. As stated in the Second Reading Speech, the *Firearms and Weapons Prohibition Legislation Amendment Bill 2015* amends the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to give effect to the recommendations of the joint Commonwealth and New South Wales Martin Place Siege review report. The Bill aims to strengthen the laws relating to illegal firearms by providing a more consistent approach to offences and penalties including the introduction of a new offence for the possession of a stolen firearm.
5. The *Security Industry Amendment (Regulation of Training Organisations) Bill 2015* aims to clarify the powers of the NSW Police Force to regulate and audit registered training organisations.

ISSUES CONSIDERED BY COMMITTEE

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

Unjust penalty

6. Schedule 1, clauses 1 and 2 amend the *Firearms Act 1996* to provide that the Commissioner of Police may refer to the spent convictions of applicants for firearm licences and permits when considering if the applications are to be accepted.
7. In particular, the amendments provide that section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for a firearms licence or permit. Section 12 of the *Criminal Records Act 1991* states:
 - a) a person is not required to disclose to any other person for any purpose information concerning a spent conviction, and

FIREARMS AND WEAPONS PROHIBITION LEGISLATION AMENDMENT BILL 2015; SECURITY INDUSTRY AMENDMENT (REGULATION OF TRAINING ORGANISATIONS) BILL 2015

- b) a question concerning the person's criminal history is taken to refer only to any convictions of the person which are not spent, and
- c) in the application to the person of a provision of an Act or statutory instrument:
 - i. a reference in the provision to a conviction is taken to be a reference only to any convictions of the person which are not spent, and
 - ii. a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of spent convictions.

The Committee notes the Bill enables the Commissioner of Police to refer to past offences that have become spent when considering whether to grant a firearm licence or permit. Allowing this exception may defeat the purpose of the spent conviction scheme. However, the Committee acknowledges the aim of the Bill is to improve public safety and considers the amendments will assist the Commissioner of Police in determining whether a person is fit and proper to be granted a licence or permit. The Committee makes no further comment.

Excessive punishment

8. Schedule 1 clause 11 of the Bill increases the maximum penalty for the offence of defacing or altering firearms or firearm parts from 5 years to 14 years.

The Committee notes the significant increase in the maximum penalty for the offence of defacing and altering a firearm or firearm parts. Significant increases in maximum penalties, without justification, will always be of concern to the Committee. In this case however, the Committee refers to the aims of the Bill which include ensuring consistency between firearm offences and penalties and promoting public safety. As such, the Committee considers the increase justified and makes no further comment.

3. Gaming and Liquor Administration Amendment Bill 2015

Date introduced	27 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Troy Grant MP
Portfolio	Racing

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to clarify that the Independent Liquor and Gaming Authority (the Authority) does not employ staff (being precluded by section 47A of the Constitution Act 1902 from doing so) but that Public Service employees may be employed to enable the Authority to exercise its functions,
 - (b) to abolish the position of Chief Executive of the Authority,
 - (c) to make provision with respect to the Minister's control over the Authority,
 - (d) to provide for the administrative review of certain decisions of the Authority by the Civil and Administrative Tribunal of New South Wales (NCAT),
 - (e) to provide for review by the Authority of decisions made under a delegation given by the Authority,
 - (f) to allow the Secretary of the Department of Justice (the Secretary) to make certain submissions to the Authority and provide that the Authority is to take those submissions into consideration,
 - (g) to remove certain functions that the Authority has under the Casino Control Act 1992 and to make other miscellaneous amendments to that Act.

BACKGROUND

2. This Bill implements structural reforms to the liquor and gaming regulatory framework. As stated in the Second Reading Speech, concerns from industry and community stakeholders about the current regulatory arrangements have prompted the reforms. The concerns included: delays in dealing with routine and complex matters; inconsistency in decision-making; regulatory overlap between the functions of the Independent Liquor and Gaming Authority and the Office of Liquor, Gaming and Racing; inefficient processes adopted for licence application transactions; the risk of regulatory capture of inspectors based at the casino; and a lack of transparency in decision-making.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

3. The Bill states the Act will commence on a day or days to be appointed by proclamation.

The Committee would prefer Acts to commence on assent or a fixed date. However, this Bill involves significant changes to the regulatory framework of the liquor and gaming industry. As such, the Committee accepts its commencement may need to be flexible.

4. State Revenue Legislation Amendment Bill 2015

Date introduced	Tuesday 27 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Dominic Perrottet MP
Portfolio	Finance, Services and Property

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to extend existing exemptions from duty for transactions relating to amalgamations of registered clubs to de-amalgamations of registered clubs and related transfers of club premises and car parks,
 - (b) to update references to stock exchanges so that concessions applicable to other stock exchanges will apply in the case of entities or securities listed or quoted on the London Stock Exchange (including AIM) and the New York Stock Exchange,
 - (c) to modernise procedures for nomination of persons in charge of vehicles or vessels who have committed offences by persons who would otherwise be responsible for the offences and to make other amendments relating to nominations,
 - (d) to enable refunds, in cases of hardship, of payments under garnishee orders issued against fine defaulters,
 - (e) to clarify the status of calculations of self-assessed tax liability by the Chief Commissioner of State Revenue.

BACKGROUND

2. The *State Revenue Legislation Amendment Bill 2015* introduces reforms to the administration of fines and taxes by the Office of State Revenue. As stated in the Second Reading Speech, the Bill is part of an ongoing process of reform of fines and revenue legislation.

ISSUES CONSIDERED BY COMMITTEE

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

3. The Bill amends the *Road Transport Act 2013* to double the maximum penalty for individuals and corporations who make false nominations in relation to who was in charge of a vehicle when a camera recorded traffic offence or parking offence was committed. The penalty has been increased from \$11 000 to \$22 000 for corporations and \$5 500 to \$ 11 000 for individuals.

The Committee notes the significant increase in the maximum penalty and will always be concerned where penalties are increased without justification. The Committee refers to the Second Reading Speech where the Minister indicated that the penalties have been doubled in recognition of the seriousness of attempting to avoid liability for such offences, especially where these offences also incur driver licence demerit points. The Committee makes no further comment.

Part Two - Regulations

1. Road Transport Legislation Amendment (Release of Stored Photographs) Regulation 2015

PURPOSE AND DESCRIPTION

1. The objects of this Regulation are:
 - (a) to provide that all photographs to which Part 3.5 of the *Road Transport Act 2013* (which provides for the protection of stored photographs, including photographs taken or provided in relation to applications for the issue or renewal of certain licences) applies can be released by Roads and Maritime Services to the New South Wales Crime Commission or the Australian Security Intelligence Organisation (rather than only driver licence photographs, as at present), and
 - (b) to provide that a photograph taken for the purposes of the issue of a mobility parking scheme authority may be released, in accordance with the rules in Part 3.5 of the Road Transport Act 2013, to:
 - i the NSW Police Force and certain other bodies referred to in section 57 of the Act, and
 - ii the bodies referred to in clause 107 of the Road Transport (Driver Licensing) Regulation 2008 (as amended by this Regulation), namely the New South Wales Crime Commission, the Australian Security Intelligence Organisation and the Identity Security Strike Team (Sydney), hosted by the Australian Federal Police.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

2. The Regulation permits Roads and Maritime Services to release photographs taken or provide in relation to applications for certain licences to the following agencies:
 - the NSW Crime Commission
 - the Australian Security Intelligence Organisation
 - the Identity Security Strike Team (Sydney)
3. The Regulation also permits other matter contained in the database of such photographs to be released. Currently only driver licence photographs may be released to the above agencies.

4. The Regulation specifies the purposes for which the photographs are to be released which include the investigation and prosecution of criminal and terrorist activity and serious identity-related crime.

The release of photographs and other matter contained in the database of such photographs trespasses against an individual's right to privacy. The Committee notes though the public interest in the aforementioned agencies being able to thoroughly investigate and prosecute serious criminal and terrorist activity. The Committee makes no further comment.

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.