



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 Michael Johnsen MP, Member for Upper Hunter
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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. APPROPRIATION BILL 2015; APPROPRIATION (PARLIAMENT) BILL 2015;
APPROPRIATION (BUDGET VARIATIONS) BILL 2015

The Committee has not identified any issues under s8(A)(1) of the Legislation Review Act 1987.

2. NON-PROFIT BODIES (FREEDOM TO ADVOCATE) BILL 2015*

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

Retrospectivity

The Committee generally comments where provisions in legislation are drafted with retrospective effect. Given these provisions do not impact on personal rights, the Committee makes no further comment.

Part One - Bills

1. Appropriation Bill 2015; Appropriation (Parliament) Bill 2015; Appropriation (Budget Variations) Bill 2015

Date introduced	23 June 2015
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Treasurer

PURPOSE AND DESCRIPTION

Appropriation Bill 2015

1. The object of this Bill is to appropriate from the Consolidated Fund various sums of money required during the 2015-16 financial year for the recurrent services and capital works and services of the Government, including:
 - (a) the principal departments, and
 - (b) various special offices.
2. The Consolidated Fund largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.
3. The Bill for the 2015-16 financial year contains an additional appropriation which allocates revenue raised in connection with gaming machine taxes to the Minister for Health for spending on health related services.
4. The Bill for the 2015-16 financial year contains provision for transfer payments from the Commonwealth to non-Government schools and local government.
5. The Bill provides for appropriation for the whole of the 2015-16 financial year.

Appropriation (Parliament) Bill 2015

6. The object of this Bill is to appropriate out of the Consolidated Fund the following sums of money required during the 2015-16 financial year for the recurrent services and capital works and services of the Legislature.

Appropriation (Budget Variations) Bill 2015

7. The objects of this Bill are as follows:
 - (a) to set out the capital works and services for which the "Advance to the Treasurer" appropriation was expended in the 2013-14 financial year, to appropriate \$2,190,000 from the Consolidated Fund for those capital works and services and to

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APPROPRIATION BILL 2015; APPROPRIATION (PARLIAMENT) BILL 2015; APPROPRIATION (BUDGET VARIATIONS) BILL 2015

make the necessary adjustment to the “Advance to the Treasurer” appropriation for that year,

- (b) to appropriate \$422,000,000 from the Consolidated Fund for recurrent services that were required by the exigencies of Government in accordance with section 22 (1) of the *Public Finance and Audit Act 1983* in relation to the 2013–14 financial year.

BACKGROUND

- 8. These Bills give legislative effect to the 2015 – 2016 Budget.
- 9. Although they are separate Acts when operative, the Appropriation Bill 2015, The Appropriation (Parliament) Bill 2015 and the Appropriation (Budget Variations) Bill 2015 are cognate Bills. Therefore, all three Bills have been considered in one report.

ISSUES CONSIDERED BY COMMITTEE

The Committee has not identified any issues under s8(A)(1) of the Legislation Review Act 1987.

2. Non-profit Bodies (Freedom to Advocate) Bill 2015*

Date introduced	25 June 2015
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch MP
	Private Members' Bill*

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit and invalidate content (prohibited content) in State agreements with non-profit bodies that restricts or prevents those bodies from advocating on State law, policy or practice.

BACKGROUND

2. This Bill seeks to prevent an agency of the State from including clauses in an agreement between itself and a non-profit body that seek to restrict or prevent a non-profit body from doing a number of things. This includes possibly preventing the non-profit body from commenting on, advocating support for, or opposing any matter established by a law, policy or practice of the State. In short, the Bill seeks to prohibit the inclusion of 'gag clauses' in agreements between the government and non-profit bodies.
3. The Bill is based on legislation passed in 2013 by the Commonwealth and South Australian governments.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

4. Clause 6 of the Bill provides that the bill applies to a State agreement entered into before the commencement of the Act.

The Committee generally comments where provisions in legislation are drafted with retrospective effect. Given these provisions do not impact on personal rights, 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:
 - (c) to consider any Bill introduced into Parliament, and
 - (d) 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.