



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. FAIR TRADING AMENDMENT (INFORMATION ABOUT COMPLAINTS) BILL 2015

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

Privacy

Making publicly available the identity of an individual who has been the subject of a complaint to NSW Fair Trading could impact on the individual's right to privacy. However, the Committee notes that the Minister's Second Reading Speech states that the NSW Information and Privacy Commission supports the concept of the complaints register. The Committee also recognises the freedom of information and consumer protection objectives of the Bill. The Committee therefore makes no further comments.

Retrospectivity

The proposed amendments will operate retrospectively with no time limit set on how far back NSW Fair Trading can go in publishing information about individuals who have been the subject of complaints. The Committee considers that this may particularly impact on those who have only been the subject of complaints a long time ago and who may appear on the register even though they have improved their customer service and/or business model. However, the Committee notes that the rights of traders have to be balanced with the rights of consumers and also notes the Minister released a discussion paper titled '*Consumer Complaints Register: Discussion Paper – October 2015*' which seeks discussion on options for the introduction of a complaints register. The Committee therefore makes no further comments.

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

Commencement by proclamation

While the Committee understands that it may take some time to design and establish the complaints register, the Committee prefers legislation to commence on a fixed date or on assent.

2. LIMITATION AMENDMENT (CHILD ABUSE) BILL 2015*

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

Retrospectivity

The Committee will always be concerned with any retrospective effect of legislation. However, given that the provisions of the Bill are for the benefit of victims and survivors of child abuse, the Committee does not consider the provisions trespass on personal rights and liberties.

3. LOCAL GOVERNMENT AMENDMENT (COUNCILLOR MISCONDUCT AND POOR PERFORMANCE) BILL 2015

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

Retrospectivity

The Committee notes that suspensions occurring before the commencement of the Act will count towards the disqualification of a person from holding civic office. The Committee notes the retrospective application of this provision. Retrospectivity acts contrary to the rule of law which allows citizens knowledge of the law at any given time so that they may order their behaviour accordingly.

However, the Committee also notes that Councillors are allowed one more suspension after the commencement of the Act before they are disqualified. Additionally, the Committee considers that these amendments are aimed at improving the behavioural standards of people elected by their communities. As such, the Committee makes no further comments.

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Ill-defined and wide powers

The Committee notes the wide discretion given to the Departmental Chief Executive to arrange for a departmental report to be prepared without an investigation, in particular, whenever the Departmental Chief Executive considers it appropriate to do so. Considering that the preparation of a Departmental Report may be a precursor to disciplinary action against a councillor, the Committee considers there should be clear and well defined circumstances where such a report can be prepared. The Committee refers to parliament the question as to whether this makes a right, liberty or obligation unduly dependent upon insufficiently defined administrative powers.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Excludes merits review

The Committee notes the Bill seeks to remove a right of appeal against certain types of disciplinary action. The Committee acknowledges that the amendments contained in this Bill are designed to provide greater deterrence for councillor misconduct and more efficient disciplinary measures, and that this provision forms part of the Bill's objectives. However, the Committee refers to Parliament the question as to whether the above provision makes a right, liberty or obligation unduly dependent upon a non-reviewable decision.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Commencement by proclamation

The Committee prefers legislation of this kind, which contains offence provisions, to commence on a fixed date or on assent.

PART TWO – REGULATIONS

1. ADOPTION REGULATION 2015

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

Right to privacy

The Committee notes the change to the Adoption Regulation to allow the release of the putative birth father's details and that this change may impact on the putative birth father's right to privacy. However, the Committee acknowledges the advice from the Department and

the support from stakeholders for the change. The Committee also notes that there are restrictions on the release of the information and penalties for a breach of these restrictions. The Committee makes no further comment.

2. CHILDREN (DETENTION CENTRES) REGULATION 2015

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

Privacy – Inspection of mail and parcels

Opening and inspecting mail to, and from, a detainee at any time and for any reason, and copying that mail in limited circumstances, could impact on a detainee's right to privacy. However, the Committee notes that the amendment does not apply to exempt persons or bodies and is intended to permit random searches to identify suspicious mail. Correctional centres will also have to comply with the NSW privacy legislation when collecting, using and disclosing information contained in detainee letters. Therefore the Committee considers that clause 40 of the Regulation is unlikely to unduly impact on the privacy rights of detainees.

Personal physical integrity

Allowing custodial staff to carry out random alcohol testing of detainees at any time, without any suspicion that the person may record a positive result, may impact on a detainee's right to personal physical integrity. However, the Regulatory Impact Statement notes that the amendment will allow for random breath testing of detainees; will be a significant deterrent for detainees ingesting alcohol; and will allow more effective monitoring of detainees who have previously been found to be under the influence of alcohol. In light of this, the Committee considers that the clause 67 of the Regulation is unlikely to unduly impact on the personal physical integrity rights of detainees.

3. DRUG MISUSE AND TRAFFICKING AMENDMENT (METHYLAMPHETAMINE) REGULATION 2015

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

Excessive punishment and Henry VIII clause

The maximum penalties for certain offences relating to the manufacture, production or supply of a large commercial quantity of prohibited drugs under the Drug Misuse and Trafficking Act 1985 include life imprisonment.

The Committee notes that halving the threshold quantity of methylamphetamine required to fall within these offences may constitute excessive punishment. Further, the Committee notes whether an amendment of this nature should be by an Act of Parliament rather than a Regulation. The Committee makes no further comments apart from drawing the Parliament's attention to this issue.

4. ELECTRICITY (CONSUMER SAFETY) REGULATION 2015

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

Excessive punishment

The Committee notes the large penalties for an offence introduced by a regulation. The Committee would prefer offences carrying such large penalties to be introduced by the principal Act as opposed to regulation however, it also recognises the need to deter unlicensed

and unsafe practices, putting lives at risk. The Committee makes no further comments apart from drawing the Parliament's attention to this issue.

5. PUBLIC HEALTH AMENDMENT (CONTACT TRACING) REGULATION 2015

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

Privacy

Authorising a medical practitioner to disclose information to an individual about another person's medical condition could impact on that other person's privacy, particularly if they are suffering from a condition such as HIV, which is not easily transmittable. However, the Committee notes the purpose of clause 39B is to minimise the risk of infectious diseases spreading through the community and that an individual will only be notified if a practitioner believes they have come in contact with someone suffering from a contagious condition. The Committee makes no further comments apart from drawing the Parliament's attention to this issue.

Part One - Bills

1. Fair Trading Amendment (Information About Complaints) Bill 2015

Date introduced	16 September 2015
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The object of this Bill is to give the Commissioner for Fair Trading the power to publish information about complaints received by the Commissioner, including the names of persons or businesses that are the subject of the greatest number of complaints.

BACKGROUND

2. NSW Fair Trading keeps an internal record of the traders that are the subject of the most complaints. However, this information has never been made public.
3. The Minister's Second Reading Speech notes that complaint-handling bodies such as the Telecommunications Industry Ombudsman, the Commonwealth Financial Ombudsman Service, the Credit and Investments Ombudsman and the Energy and Water Ombudsman NSW all make complaint data publicly available. The Minister refers to the open data policy of the NSW Government, which supports the release of government data wherever possible.
4. In 2015, the Telecommunications Industry Ombudsman said that its work in highlighting the causes of consumer complaints and working with the industry to improve services has contributed to telecommunications providers improving their networks, plans and customer service. Research from the United Kingdom has also found that the release of complaints and performance data is improving trader performance.
5. Key consumer advocates, including CHOICE, the NSW Customer Service Commissioner, the NSW Information and Privacy Commission, and the Consumer Action Law Centre have expressed strong support for the register concept.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

6. The Bill proposes to add a new section 86AA into the *Fair Trading Act 1987* to authorise information about complaints to NSW Fair Trading to be made publicly available, including the identity of the persons or businesses about whom complaints have been

made, and about whom the greatest number of complaints have been received. However, the identity of complainants will not be made public.

Making publicly available the identity of an individual who has been the subject of a complaint to NSW Fair Trading could impact on the individual's right to privacy. However, the Committee notes that the Minister's Second Reading Speech states that the NSW Information and Privacy Commission supports the concept of the complaints register. The Committee also recognises the freedom of information and consumer protection objectives of the Bill. The Committee therefore makes no further comments.

Retrospectivity

7. Proposed section 86AA of the *Fair Trading Act 1987* states that information about complaints made before the commencement of the provision can be made public.

The proposed amendments will operate retrospectively with no time limit set on how far back NSW Fair Trading can go in publishing information about individuals who have been the subject of complaints. The Committee considers that this may particularly impact on those who have only been the subject of complaints a long time ago and who may appear on the register even though they have improved their customer service and/or business model. However, the Committee notes that the rights of traders have to be balanced with the rights of consumers and also notes the Minister released a discussion paper titled '*Consumer Complaints Register: Discussion Paper – October 2015*' which seeks discussion on options for the introduction of a complaints register. The Committee therefore makes no further comments.

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

Commencement by proclamation

8. The Bill provides for commencement on a day to be appointed by proclamation.

While the Committee understands that it may take some time to design and establish the complaints register, the Committee prefers legislation to commence on a fixed date or on assent.

2. Limitation Amendment (Child Abuse) Bill 2015*

Date introduced	17 September 2015
House introduced	Legislative Council
Member responsible	Mr David Shoebridge MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Limitation Act 1969* (the Act) to remove any limitation period applying under the Act to an action on a cause of action for damages that relate to death or personal injury resulting from child abuse.

BACKGROUND

2. This Bill seeks to remove any limitation period applying under the *Limitation Act 1969* to a cause of action for damages that relates to the death or personal injury resulting from child abuse. In the Second Reading Speech, Mr David Shoebridge MLC, referred to the recent recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse which included:

State and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child.

State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.¹

3. Mr Shoebridge also referred to the recent implementation of Victorian legislation which removed the operation of the statute of limitations for all civil claims relating to child sexual assault abuse.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

4. The Bill provides that the exclusion of an action for damages that relate to death or personal injury resulting from child abuse extends to existing causes of action, including cases where the relevant limitation period has already expired, an action has been commenced previously on the cause of action, or judgment on the cause of action has previously been given on the ground that the action was statute barred.

¹ Royal Commission into Institutionalised Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, September 2015, p53

The Committee will always be concerned with any retrospective effect of legislation. However, given that the provisions of the Bill are for the benefit of victims and survivors of child abuse, the Committee does not consider the provisions trespass on personal rights and liberties.

3. Local Government Amendment (Councillor Misconduct and Poor Performance) Bill 2015

Date introduced	16 September 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Paul Toole MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The object of this Bill is to reform the legislative scheme for addressing councillor misconduct and poor performance and council maladministration by, in particular, streamlining processes, improving the effectiveness of performance improvement orders and providing additional relevant powers to the Minister and the Chief Executive of the Office of Local Government (the Departmental Chief Executive).

BACKGROUND

2. In 2013 the Government enacted an early intervention framework to provide a response for poor performing local councils. The amendments in this Bill are designed to add to these earlier reforms.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

3. The Bill introduces provisions which disqualify a person from holding civic office if they have been suspended from civic office for a third time by either the Departmental Chief Executive or the Civil and Administrative Tribunal because of misconduct. Suspensions that occurred before the commencement of the provisions count towards disqualification if a further suspension is made after the Act commences.

The Committee notes that suspensions occurring before the commencement of the Act will count towards the disqualification of a person from holding civic office. The Committee notes the retrospective application of this provision. Retrospectivity acts contrary to the rule of law which allows citizens knowledge of the law at any given time so that they may order their behaviour accordingly.

However, the Committee also notes that Councillors are allowed one more suspension after the commencement of the Act before they are disqualified. Additionally, the Committee considers that these amendments are aimed at improving the behavioural standards of people elected by their communities. As such, the Committee makes no further comments.

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Ill-defined and wide powers

4. The Bill states that in certain circumstances the Departmental Chief Executive may arrange for a departmental report to be prepared about whether a councillor has engaged in misconduct without an investigation being carried out. The Bill specifies the following circumstances where this can occur:
 - where the Departmental Chief Executive considers the report may be based on an investigation conducted by or on behalf of the Council;
 - where the alleged misconduct, if proven, would be minor in nature; or
 - where the Departmental Chief Executive otherwise considers it appropriate to do so.
5. Under the Local Government Act, the preparation of a departmental report is a prerequisite to a decision by the Director-General to take disciplinary action against a councillor.

The Committee notes the wide discretion given to the Departmental Chief Executive to arrange for a departmental report to be prepared without an investigation, in particular, whenever the Departmental Chief Executive considers it appropriate to do so. Considering that the preparation of a Departmental Report may be a precursor to disciplinary action against a councillor, the Committee considers there should be clear and well defined circumstances where such a report can be prepared. The Committee refers to parliament the question as to whether this makes a right, liberty or obligation unduly dependent upon insufficiently defined administrative powers.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Excludes merits review

6. Clause 32 of Schedule 1 amends the *Local Government Act 1993* to remove the right of appeal to the Civil and Administrative Tribunal against disciplinary action comprised of counselling or reprimanding a councillor.

The Committee notes the Bill seeks to remove a right of appeal against certain types of disciplinary action. The Committee acknowledges that the amendments contained in this Bill are designed to provide greater deterrence for councillor misconduct and more efficient disciplinary measures, and that this provision forms part of the Bill's objectives. However, the Committee refers to Parliament the question as to whether the above provision makes a right, liberty or obligation unduly dependent upon a non-reviewable decision.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Commencement by proclamation

7. The Bill provides for the commencement of the Act on a day or days to be appointed by proclamation.

The Committee prefers legislation of this kind, which contains offence provisions, to commence on a fixed date or on assent.

Part Two – Regulations

1. Adoption Regulation 2015

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake the provisions of the Adoption Regulation 2003, which is repealed on 1 September 2015 by the Subordinate Legislation Act 1989. The Regulation includes several new provisions, including provisions that:
 - (a) require the Secretary of the Department of Family and Community Services (the Secretary) and adoption service providers to notify an applicant for adoption of a decision to decline to assess the applicant's application to adopt, and
 - (b) remove the current restriction on a child being placed with adoptive parents if the woman is pregnant, and
 - (c) require a person who has been approved to adopt a child to notify the Secretary, or the adoption service provider that approved the person, of any significant change in the person's circumstances that might affect the approval (such as a deterioration in health or change in marital status), and
 - (d) specify that, in the case of the placement of a child for adoption who has both a parent and a guardian, the wishes of the parent in relation to the religious upbringing and cultural heritage, identity and ties of the child prevail over any wishes expressed by the guardian, and
 - (e) require an adopted person to sign an undertaking that the adopted person will not contact a person who an information source reasonably believes to be the birth father of the adopted person (the putative birth father) or a relative of the putative birth father if the information source supplies information relating to the putative birth father to the adopted person, and
 - (f) require an adoption service provider to publish on its website its scale of fees and the criteria it uses to select prospective adoptive parents.
2. The Regulation also makes provision for the following:
 - (a) the accreditation of adoption service providers,
 - (b) the selection of prospective adoptive parents,
 - (c) the selection of authorised carers as adoptive parents of children already in their care,
 - (d) adoption proceedings, including adoption plans and consenting to adoptions,
 - (e) the supply of adoption information (such as birth certificates, birth records and other non-identifying information) to adopted persons, adoptive parents, birth parents and siblings,
 - (f) miscellaneous, formal and savings provisions.

ISSUES CONSIDERED BY COMMITTEE

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

Right to privacy

3. The previous *Adoption Regulation 2003* provided that an information source that holds information about a putative birth father must not, without his prior consent, disclose this information to an adopted person. The Regulatory Impact Statement indicated that the requirement to obtain the consent of the putative birth father before any information is released was viewed as an important privacy safeguard.
4. Clause 110 of the new *Adoption Regulation 2015* amends this provision to provide that information can now be released provided the adopted person signs an undertaking that they will not:
 - contact or attempt to contact the putative birth father or a relative of the putative birth father, except through the support services provided by an information source to facilitate the contact, or
 - procure another person to contact or attempt to contact the putative birth father or a relative of the putative birth father, except through the support services provided by an information source to facilitate the contact.
5. A maximum penalty of 25 penalty units (\$2750) applies if a person breaches the undertaking.
6. Advice from the Department indicated that submissions responding to the draft Regulation overwhelmingly supported the right of an adopted person to be given the name of their putative birth father. This included major organisations operating in the adoption area.

The Committee notes the change to the Adoption Regulation to allow the release of the putative birth father's details and that this change may impact on the putative birth father's right to privacy. However, the Committee acknowledges the advice from the Department and the support from stakeholders for the change. The Committee also notes that there are restrictions on the release of the information and penalties for a breach of these restrictions. The Committee makes no further comment.

2. Children (Detention Centres) Regulation 2015

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake the provisions of the *Children (Detention Centres) Regulation 2010*, which was repealed on 1 September 2015 by section 10(2) of the *Subordinate Legislation Act 1989*.
2. This Regulation makes provision with respect to the following:
 - (a) the administration of detention centres and management of detainees,
 - (b) visits to detention centres and communications with detainees,
 - (c) the making of complaints in relation to a detention centre,
 - (d) the granting of day leave or overnight leave to detainees,
 - (e) the maintenance of order in detention centres,
 - (f) misbehaviour by detainees,
 - (g) parole orders in relation to detainees,
 - (h) the health and welfare of detainees,
 - (i) conduct of juvenile justice officers regarding alcohol and prohibited drugs,
 - (j) chaplains and the spiritual welfare of detainees,
 - (k) other miscellaneous matters.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy – Inspection of mail and parcels

3. Clause 40 of the *Children (Detention Centres) Regulation 2010* (which has been repealed) provided that a letter or parcel sent to, or from, a detainee could be opened or inspected, if in the opinion of the centre manager, the security, safety or good order of the detention centre was likely to be adversely affected.
4. Clause 40 of the *Children (Detention Centres) Regulation 2015* changed this provision to remove the requirement that mail could only be opened or inspected where the centre manager was satisfied that the security, safety or good order of the detention centre was likely to be adversely affected by the mail.

5. The amendment also authorises the centre manager to copy any material contained in a letter or parcel before it is sent. This can only occur if the centre manager or a juvenile justice officer is of the opinion that the material is likely to prejudice the good order and security of the centre, or is threatening, offensive, indecent, obscene or abusive.
6. These provisions do not apply to letters to, or from, an exempt person or body, such as a legal practitioner or the NSW Ombudsman.
7. The Regulatory Impact Statement notes that the amendments will enable staff to conduct targeted searches of mail where they hold a suspicion that the mail contains a prohibited item but where that suspicion would not meet the standards for opening mail under the repealed Regulation. The Regulatory Impact Statement also highlights that this will allow random searches of incoming and outgoing mail and that this is based on the current practice in adult correctional centres.

Opening and inspecting mail to, and from, a detainee at any time and for any reason, and copying that mail in limited circumstances, could impact on a detainee's right to privacy. However, the Committee notes that the amendment does not apply to exempt persons or bodies and is intended to permit random searches to identify suspicious mail. Correctional centres will also have to comply with the NSW privacy legislation when collecting, using and disclosing information contained in detainee letters. Therefore the Committee considers that clause 40 of the Regulation is unlikely to unduly impact on the privacy rights of detainees.

Personal physical integrity

8. Clause 67 of the *Children (Detention Centres) Regulation 2010* (which is now repealed) authorised relevant staff to require a detainee to undergo a breath test if they suspected that the detainee had recently consumed, or was under the influence of, alcohol or another intoxicating substance.
9. Clause 67 of the *Children (Detention Centres) Regulation 2015* now allows staff to require a detainee to undergo a breath test at any time. Staff will not have to firstly suspect that a detainee has recently consumed, or is under the influence of, alcohol or another intoxicating substance.
10. The Regulatory Impact Statement says that the amendment will allow for random breath testing of detainees and that this will be a significant deterrent for detainees ingesting alcohol or other intoxicating substances.

Allowing custodial staff to carry out random alcohol testing of detainees at any time, without any suspicion that the person may record a positive result, may impact on a detainee's right to personal physical integrity. However, the Regulatory Impact Statement notes that the amendment will allow for random breath testing of detainees; will be a significant deterrent for detainees ingesting alcohol; and will allow more effective monitoring of detainees who have previously been found to be under the influence of alcohol. In light of this, the Committee considers that the clause 67 of the Regulation is unlikely to unduly impact on the personal physical integrity rights of detainees.

3. Drug Misuse and Trafficking Amendment (Methylamphetamine) Regulation 2015

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to decrease, from one kilogram to half a kilogram, the threshold at which a quantity of the prohibited drug methylamphetamine (also known as “ice”) is considered a large commercial quantity for the purposes of the *Drug Misuse and Trafficking Act 1985*.
2. The maximum penalty for certain offences under that Act involving the manufacture, production or supply of a large commercial quantity of a prohibited drug is:
 - (a) 5,000 penalty units or imprisonment for life (or both), or
 - (b) if the offence involves exposure of a child to the manufacture or production of the drug, or the procurement by an adult of a person under the age of 16 to supply the drug – 6,000 penalty units or imprisonment for life (or both).

ISSUES CONSIDERED BY COMMITTEE

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

Excessive punishment and Henry VIII clause

3. The Regulation amends Schedule 1 of the *Drug Misuse and Trafficking Act 1985* to decrease the quantity of methylamphetamine (Ice) required to be considered a large commercial quantity from 1 kilogram to 0.5 kilograms.

The maximum penalties for certain offences relating to the manufacture, production or supply of a large commercial quantity of prohibited drugs under the Drug Misuse and Trafficking Act 1985 include life imprisonment.

The Committee notes that halving the threshold quantity of methylamphetamine required to fall within these offences may constitute excessive punishment. Further, the Committee notes whether an amendment of this nature should be by an Act of Parliament rather than a Regulation. The Committee makes no further comments apart from drawing the Parliament’s attention to this issue.

4. Electricity (Consumer Safety) Regulation 2015

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with some amendments, the provisions of the Electricity (Consumer Safety) Regulation 2006 which is repealed on 1 September 2015 by section 10 (2) of the Subordinate Legislation Act 1989.
2. The new Regulation:
 - (a) makes provision with respect to model approvals for electrical articles and the marking, seizure, forfeiture and disposal of such articles, and
 - (b) requires the Secretary to cause a register of model approvals to be maintained, and
 - (c) requires work on electrical installations to comply with certain requirements (including the requirements of the Australian/New Zealand Wiring Rules published jointly by Standards Australia and Standards New Zealand) and to be tested for safety by appropriately qualified persons, and
 - (d) makes provision in respect of the maintenance of electrical installations, and
 - (e) makes it an offence, when carrying out work near an electrical installation, to interfere with the installation in a way that adversely affects its safety, and
 - (f) prescribes certain matters in respect of the reporting of serious electrical accidents, and
 - (g) establishes the Electrical Equipment Safety Advisory Committee to advise the Secretary on various issues concerning electrical articles, and
 - (h) prescribes certain offences under the Electricity (Consumer Safety) Act 2004 and the new Regulation to be penalty notice offences, and
 - (i) makes provision in respect of other minor, consequential and ancillary matters.

ISSUES CONSIDERED BY COMMITTEE

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

Excessive punishment

3. The *Electricity (Consumer Safety) Regulation 2015* introduces a new offence for anyone that interferes with electrical installations in a manner that affects the safety of the installation. The offence carries a maximum penalty of 500 penalty units (\$55 000) for a corporation and 200 penalty units (\$22 000) for an individual.
4. According to the Regulatory Impact Statement, the offence has been introduced in response to fires occurring in homes where installers of home insulation did not carry

out work according to Australian standards. The fires occurred where the insulation covered in whole or in part of the electrical installation.

The Committee notes the large penalties for an offence introduced by a regulation. The Committee would prefer offences carrying such large penalties to be introduced by the principal Act as opposed to regulation however, it also recognises the need to deter unlicensed and unsafe practices, putting lives at risk. The Committee makes no further comments apart from drawing the Parliament's attention to this issue.

5. Public Health Amendment (Contact Tracing) Regulation 2015

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Public Health Regulation 2012*:
 - (a) to enable a registered medical practitioner who attends a person with a particular scheduled medical condition, and certain other health practitioners, if authorised by that medical practitioner or the Secretary, to provide advice to anyone who may have been in contact with the person, in relation to minimising the danger of the medical condition being passed on, and
 - (b) to disapply a requirement not to disclose information relating to a particular scheduled medical condition that is obtained in the course of providing a health service, if the disclosure is required by order of a court or a person authorised by law to examine witnesses.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

2. Proposed clause 39B of the *Public Health Regulation 2012* will allow the Secretary, or an attending medical practitioner, to notify an individual if they believe that individual has come in contact with someone suffering from one of the conditions listed as a Category 2, 3 or 4 condition in Schedule 1 of the *Public Health Act 2010*. The purpose of notification is to advise the individual of measures to be taken, and activities to be avoided, to minimise the danger of contracting the condition or passing it onto a third person.
3. Most of the conditions in Categories 2, 3 and 4 are potentially contagious infections, such as HIV, Measles, Whooping Cough, Avian Influenza and Severe Acute Respiratory Syndrome, however, not all of them are. For example, Cancer is included as a Category 3 condition as is pregnancy with a child having a congenital malformation.

Authorising a medical practitioner to disclose information to an individual about another person's medical condition could impact on that other person's privacy, particularly if they are suffering from a condition such as HIV, which is not easily transmittable. However, the Committee notes the purpose of clause 39B is to minimise the risk of infectious diseases spreading through the community and that an individual will only be notified if a practitioner believes they have come in contact with someone suffering from a contagious condition. The Committee makes no further comments apart from drawing the Parliament's attention to this issue.

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.