



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No. 6/56 – 15 September 2015



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, 24p 30 cm

Chair: Mr Michael Johnsen MP

15 September 2015

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 6 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 6 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

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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. ALCOHOLIC BEVERAGES ADVERTISING PROHIBITION BILL 2015*

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

Reverse onus of proof

The Committee notes the clauses in the Bill which operate to reverse the onus of proof for certain offence proceedings. However, the Committee acknowledges that it may be difficult for a prosecution to prove that a person obtained a direct or indirect benefit. As such, the Committee makes no further comment.

Deemed liability and reverse onus of proof

The Committee notes the provisions which deem all members of a body corporate to have committed an offence, unless they can prove otherwise. The Committee considers this may trespass on personal rights and liberties and refers the provision to Parliament.

2. COAL SEAM AND OTHER UNCONVENTIONAL GAS MORATORIUM BILL 2015*

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

Denial of compensation

The Bill may impact on the property rights of those who hold production leases or other petroleum titles by providing that they are not entitled to compensation from the State for possible losses as a result of the Bill being enacted. However, the Committee notes that clause 10(3) of the Bill states that the State is not prevented from voluntarily providing compensation to affected individuals, in appropriate circumstances. The Committee makes no further comments.

3. FIREARMS AMENDMENT (LEVER ACTION SHOTGUNS – COMMUNITY SAFETY) BILL 2015*

The Committee makes no comment on the Bill in respect of issues set out in s8A of the *Legislation Review Act 1987*.

4. INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2015

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

Retrospectivity

The Committee notes that certain provisions of the Bill apply retrospectively by relating to conduct that may have occurred prior to the commencement of the amendment Act. Such retrospectivity is 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. The Committee refers the matter to Parliament for further consideration.

5. PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT (UNDERQUOTING PROHIBITION) BILL 2015

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

Strict liability

The Committee notes that the Bill introduces strict liability in relation to a number of offences. The Committee will always comment where strict liability occurs as the Crown is not required to prove intent, negligence or recklessness on the part of the accused. However, in these circumstances strict liability is designed to ensure compliance with the new regulatory measures. As such, the Committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) 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.

6. TRANSPORT ADMINISTRATION AMENDMENT (CLOSURE OF RAILWAY LINE AT NEWCASTLE) BILL 2015

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987 (NSW).

PART TWO – REGULATIONS

1. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (OFFENCES AND ENFORCEMENT) REGULATION 2015

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

Excessive punishment – Issue one

The Committee assumes that the increases in the maximum penalties for the offences relating to fire safety notices, fire exits, and signs on development sites are due to safety issues. However, the Committee notes that the policy reasons for the very significant level of the increases, including from a maximum penalty of \$1,100 to \$110,000 in one instance, have not been explained. The Committee makes no further comments.

Excessive punishment – Issue two

The Amending Regulation seeks to double the penalties for a number of offences listed as penalty notice offences in Schedule 5 to the Current Regulation. The Committee makes no further comments apart from drawing the Parliament's attention to this issue.

Part One - Bills

1. Alcoholic Beverages Advertising Prohibition Bill 2015*

Date introduced	10 September 2015
House introduced	Legislative Council
Member responsible	Revd. the Hon Fred Nile MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to encourage a healthier lifestyle:
 - (a) by prohibiting advertising and other promotional activities aimed at assisting the sale of alcoholic beverages and consequently reducing the incentive for people to consume alcohol, and
 - (b) by providing for the declaration of local option areas within which the purchase, sale or delivery, or the consumption in a public place, of alcoholic beverages will be an offence.
2. The Bill also establishes the Alcohol Advertising Prohibition Committee which will be required to prepare a timetable for the removal of advertisements promoting alcoholic beverages and the termination of sponsorships related to the promotion of any such beverages.

BACKGROUND

3. In the Second Reading Speech to the Bill, Rev the Hon Fred Nile, stated that alcohol is increasingly being advertised and promoted in new media and through a diverse range of media and such advertising is assisting in the negative health and social consequences of alcohol.
4. Reverend Nile commented that the Alcohol Beverages Advertising Code and complaints management scheme is a self-regulating advertising scheme and is not underpinned by legislation hence the reason for this Bill.

ISSUES CONSIDERED BY COMMITTEE

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

Reverse onus of proof

5. The Bill includes a number of clauses which reverse the onus of proof. These clauses have the effect of deeming any person accused of an offence guilty of contravening the Act unless they can prove otherwise.

6. For example, clause 6(7) of the Bill states that in any proceedings for an offence against clause 6(1), it is presumed that the person displayed the alcohol advertisement for direct or indirect benefit, unless the contrary is proved.
7. Similarly, clause 6(8) states that in any proceedings for any offence under proposed section 6, if the thing that is alleged to be an alcohol advertisement contains the trademark or brand name of an alcoholic beverage, then it is presumed that it was designed to promote or publicise the alcoholic beverage, unless the contrary is proved.
8. The Committee notes that provisions reversing the onus of proof act contrary to the presumption of innocence, which is a fundamental principle of the rule of law. However, the Committee also notes that laws reversing the onus of proof have been justified in certain circumstances. Such circumstances can include where it is particularly difficult for the prosecution to meet a legal burden or the offences are of a serious nature.

The Committee notes the clauses in the Bill which operate to reverse the onus of proof for certain offence proceedings. However, the Committee acknowledges that it may be difficult for a prosecution to prove that a person obtained a direct or indirect benefit. As such, the Committee makes no further comment.

Deemed liability and reverse onus of proof

9. Part 5 clause 27 of the Bill states that when a body corporate commits an offence under the Act or the regulations, every officer of the body corporate commits the same offence unless they can prove otherwise.
10. As mentioned above, provisions reversing the onus of proof act contrary to the presumption of innocence, which is a fundamental principle of the rule of law.

The Committee notes the provisions which deem all members of a body corporate to have committed an offence, unless they can prove otherwise. The Committee considers this may trespass on personal rights and liberties and refers the provision to Parliament.

2. Coal Seam and Other Unconventional Gas Moratorium Bill 2015*

Date introduced	10 September 2015
House introduced	Legislative Council
Member responsible	The Hon Adam Searle MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to place a moratorium on prospecting for, or the mining of, coal seam gas or other unconventional gas.

BACKGROUND

2. The Bill seeks to impose an immediate statewide moratorium on coal seam and other unconventional gas exploration activity while the environmental, scientific and regulatory design work recommended by the NSW Chief Scientist and Engineer in her September 2014 report, *Final report of the independent review of coal seam gas activities in NSW*, is completed.
3. The Legislative Council's Select Committee on the Supply and Cost of Gas and Liquid Fuels in NSW also recommended, in its report of 25 February 2015, that the NSW Government fully implement the Chief Scientist and Engineer's recommendations before any expansion of the coal seam gas industry in NSW.

ISSUES CONSIDERED BY COMMITTEE

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

Denial of compensation

4. Clause 4 of the Bill proposes that once it is enacted, a moratorium period will commence to prevent coal seam or other unconventional gas prospecting or mining in certain areas.
5. During the moratorium period, prospecting for, or mining, coal seam or other unconventional gas will be prohibited except in accordance with existing production leases. Existing production leases will be taken to have been modified by the Act so that holders will not be authorised to conduct petroleum mining operations involving drilling or hydraulic fracturing for the purpose of increasing or extending the holder's capacity to produce gas in the area (clause 4(1)(a) and (2)).
6. The Bill also provides that any petroleum title, other than an existing production lease, relating to coal seam or other unconventional gas that is in force immediately before the Act commences will cease to have effect to the extent to which it authorises prospecting for, or mining, coal seam or other unconventional gas (clause 4(1)(b)).

7. Clause 10 of the Bill provides that compensation is not payable by or on behalf of the State because of the enactment or operation of the Bill. The provision extends to conduct or any other matters before the commencement of the provision.

The Bill may impact on the property rights of those who hold production leases or other petroleum titles by providing that they are not entitled to compensation from the State for possible losses as a result of the Bill being enacted. However, the Committee notes that clause 10(3) of the Bill states that the State is not prevented from voluntarily providing compensation to affected individuals, in appropriate circumstances. The Committee makes no further comments.

3. Firearms Amendment (Lever Action Shotguns – Community Safety) Bill 2015*

Date introduced	10 September 2015
House introduced	Legislative Council
Member responsible	David Shoebridge MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Firearms Act 1996 to restrict the possession and use of lever action shotguns in the same manner as currently applies in relation to pump action shotguns.
2. As a result of the proposed Act, only a restricted class of licensed shooters (such as primary producers and professional contract shooters engaged in vertebrate pest animal control on rural land) will be authorised to possess or use a lever action shotgun.

BACKGROUND

3. As mentioned in the Second Reading Speech, firearms ownership in New South Wales is increasing and this Bill seeks to restrict access of lever action shotguns to a limited class of licensed firearms owners. Mr Shoebridge stated that the change proposed in this Bill is consistent with the objects of the Firearms Act, most notably the first principle which provides that firearm possession and use is a privilege that is conditional on the overriding need to ensure public safety.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in s8A of the *Legislation Review Act 1987*.

4. Independent Commission Against Corruption Amendment Bill 2015

Date introduced	8 September 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Mike Baird MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend *the Independent Commission Against Corruption Act 1988* to implement all of the recommendations of the report made on 30 July 2015 by the Independent Panel established to review the jurisdiction of the Independent Commission Against Corruption (ICAC) following the decision of the High Court in *ICAC v Cunneen* [2015] HCA 14. That decision excluded certain conduct of private persons from the definition of “corrupt conduct” under that Act that had previously been assumed to be within ICAC’s jurisdiction. The Hon Murray Gleeson AC (Chair) and Mr Bruce McClintock SC were commissioned by the Government to conduct the review by letters patent issued on 27 May 2015. The Panel made the following specific recommendations that are implemented by the Bill:
 - (a) to extend ICAC’s jurisdiction in respect of “corrupt conduct” to include certain specified acts of non-public officials that could impair public confidence in public administration,
 - (b) to provide that ICAC’s education, advisory and prevention functions can be used generally for the purpose of promoting the integrity and good repute of public administration,
 - (c) to limit ICAC’s power to make findings of “corrupt conduct” against an individual to cases where the corrupt conduct is serious.
2. The Panel also recommended that ICAC be given jurisdiction to investigate possible criminal offences under electoral and lobbying laws (without extending the meaning of “corrupt conduct”) should Parliament consider that breaches of those laws should be made the subject of ICAC’s jurisdiction. The Bill implements this recommendation as follows:
 - (a) Conduct that may involve possible criminal offences under the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011* may be referred to ICAC for investigation by the Electoral Commission (which has responsibility for enforcing compliance with those Acts):
 - i if there are reasonable grounds to suspect that the conduct may involve possible criminal offences of a designated kind, or

- ii if the conduct is related to possible corrupt conduct that ICAC is already investigating.
3. ICAC is required to discontinue an investigation if, after a preliminary investigation, the conduct does not involve possible criminal offences of the designated kind and is not related to possible corrupt conduct that ICAC is already investigating.
- (a) Conduct that may involve possible criminal offences under any of those Acts that is already under investigation by ICAC in the investigations known as Operation Spicer and Operation Credo are taken to have been referred to ICAC so that it can complete and report on those investigations.
 - (b) Persons who seek public office may be engaged in corrupt conduct for the purposes of ICAC's jurisdiction in respect of any proposed future exercise of their functions as public officials even if they do not succeed in being elected or appointed to the public office.

BACKGROUND

4. In May 2015, NSW Parliament passed the *Independent Commission Against Corruption (Validation) Act 2015*. It legislated the actions and findings of the ICAC before the date of the *Independent Commission Against Corruption v Cunneen* [2015] HCA 14 judgement. The Government also commissioned an independent panel to review the jurisdiction of the ICAC in light of the High Court's decision and to provide considered and expert guidance.
5. The panel was appointed by the Governor on 27 May 2015. The panel made four formal recommendations for legislative reform. The Government accepted all of them and are implemented by the Bill. Namely, that the ICAC can continue to investigate certain types of conduct, such as collusive tendering for government contracts, fraudulently obtaining government mining leases and fraudulently obtaining or retaining employment or appointment as a public official.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

6. The Bill proposes a number of new provisions which, upon commencement, are to have retrospective effect.
7. For example, the Bill proposes a new section at 8(2A) of the Act which extends to conduct occurring before the commencement of the proposed Act. Proposed section 2(A) extends the definition of corrupt conduct to the conduct of non-public officials that could impair public confidence in public administration.
8. Similarly, the Bill proposes a new section at 8(4) of the Act to clarify that individuals who seek public office may be found to be engaged in corrupt conduct for the purposes of the ICAC's jurisdiction in respect of any proposed future exercise of their functions. This applies in circumstances where the individual concerned is not elected or appointed to

office. As with section 8(2A), this provision applies to conduct before the commencement of the section.

The Committee notes that certain provisions of the Bill apply retrospectively by relating to conduct that may have occurred prior to the commencement of the amendment Act. Such retrospectivity is 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. The Committee refers the matter to Parliament for further consideration.

5. Property, Stock and Business Agents Amendment (Underquoting Prohibition) Bill 2015

Date introduced	8 September 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Victor Dominello MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to require a real estate agent to include in an agency agreement for the sale of residential property the agent's reasonable estimate of the likely selling price of the property (the *estimated selling price*), and to provide evidence for that estimate to the vendor,
 - (b) to ensure that the estimated selling price remains a reasonable estimate of the likely selling price of the property (including provision for the revising of the estimated selling price if required),
 - (c) to prohibit the publishing of advertisements in relation to residential property:
 - i that state a selling price that is less than the estimated selling price, or
 - ii that offer a property for sale by reference to "offers above", "offers over" or any other similar statement,
 - (d) to prohibit a real estate agent, or an agent's employee, from representing to a buyer or prospective buyer a likely selling price that is less than the estimated selling price for the property and to provide for a court to order that any fees or commission payable to the agent in relation to the sale of such a property are to be forfeited to the Property Services Compensation Fund,
 - (e) to require a real estate agent to keep a record of any quotes given by the agent in the course of marketing a residential property.

BACKGROUND

2. This Bill is part of a package of reforms aimed at promoting higher standards and greater professionalism in the real estate industry. Industry stakeholders such as the Real Estate Institute of New South Wales, the Estate Agents Co-operative and the Australian Livestock and Property Agents Association have been consulted throughout the development of the reforms.

3. The particular reforms in this Bill seek to address the occurrence of underquoting in the industry. The current Act prohibits this practice however the provisions as they currently stand are proving difficult to prosecute. This Bill provides greater clarity as to when underquoting occurs and introduces a number of obligations upon real estate agents to comply with the new provisions.

ISSUES CONSIDERED BY COMMITTEE

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

Strict liability

4. The Bill introduces a number of strict liability clauses in relation to offences concerning underquoting. That is, in any prosecution for an offence under the Act, the Crown will not have to show that the agent intended to underquote.
5. For example, under section 72(1) a real estate agent must not enter into an agency agreement with a person unless the agreement includes the agent's estimate of the likely selling price. Equally, under section 73(1) a real estate agent must not publish an advertisement for the sale of a residential property that indicates a selling price that is less than the estimated selling price.
6. In these and other instances, the Bill has not provided any exceptions or defences for failure to comply with the provisions.
7. However, the Committee notes that these provisions are not uncommon in regulatory settings to enable effective compliance with new measures and strengthen the offence provisions.

The Committee notes that the Bill introduces strict liability in relation to a number of offences. The Committee will always comment where strict liability occurs as the Crown is not required to prove intent, negligence or recklessness on the part of the accused. However, in these circumstances strict liability is designed to ensure compliance with the new regulatory measures. As such, the Committee makes no further comment.

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

Commencement by proclamation

8. 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.

6. Transport Administration Amendment (Closure of Railway Line at Newcastle) Bill 2015

Date introduced	9 September 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Andrew Constance MP
Portfolio	Transport and Infrastructure

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Transport Administration Act 1988* to authorise a rail infrastructure owner (within the meaning of the Act) to close the public railway line that runs from Railway Street, Wickham, to Newcastle railway station. The authorisation is for the purposes of section 99A of the Act, which prohibits a rail infrastructure owner from closing a railway line (by selling or otherwise disposing of the land concerned or by removing the railway tracks and other works concerned) unless authorised to do so by an Act of Parliament.

BACKGROUND

2. The Bill is associated with the Government's Newcastle Urban Transformation and Transport Program and, in particular, enables the replacement of heavy rail from the Wickham Transport Interchange to the beach at Newcastle with light rail.
3. Under section 99A of the *Transport Administration Act 1988*, a rail infrastructure owner must not, unless authorised by an Act of Parliament, close a railway line. In this instance, relevant Government entities considered that section 99A would not require an Act of Parliament before the heavy rail infrastructure was removed. In December 2014, a group opposed the closure of the line in the courts. Government entities have appealed the matter to the Court of Appeal, which has not yet handed down its decision. The purpose of the Bill is to end the current uncertainty in relation to this issue.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987 (NSW).

Part Two – Regulations

1. Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015

PURPOSE AND DESCRIPTION

1. The objects of this Regulation are as follows:
 - (a) to provide that certain time periods are not included in the calculation of the assessment period for State significant development and are not counted in the calculation of the deemed refusal period for that category of development,
 - (b) to increase the maximum penalties for certain fire safety offences, and an offence relating to signs on development sites, by omitting the stated penalties and relying on the default maximum penalty of \$110,000 (fixed by section 125D(2) of the *Environmental Planning and Assessment Act 1979*, as inserted by the *Environmental Planning and Assessment Amendment Act 2014*),
 - (c) to update a reference to a provision about fire brigade inspection powers that has been amended,
 - (d) to allow authorised fire officers to issue penalty notices, but only in respect of the contravention of orders given by authorised fire officers and certain other fire-related offences,
 - (e) to provide for the enforcement of court orders to cease the use of premises as backpackers' accommodation and boarding houses by the making of utilities orders (directing that a provider of water, electricity or gas to the premises concerned cease to provide those services),
 - (f) to modify the application to planning matters of provisions of the *Protection of the Environment Operations Act 1997* relating to court orders in connection with offences,
 - (g) to extend the expanded offence of providing false or misleading information in connection with a planning matter to the provision of information in response to a requirement of a condition of a development consent, an approval to carry out a project that is a transitional Part 3A project or an approval under Part 5.1 of the *Environmental Planning and Assessment Act 1979*,
 - (h) to provide for further offences to be dealt with by penalty notices (or "on-the-spot fines"),
 - (i) to increase the penalties for certain offences that are dealt with by penalty notice,

- (j) to omit penalty notice offences that are outdated or otherwise considered unnecessary,
- (k) to make savings and transitional provisions that are consequential on amendments made by the *Environmental Planning and Assessment Amendment Act 2014* in relation to offences, penalties, enforcement and the disclosure of political donations and gifts.

ISSUES CONSIDERED BY COMMITTEE

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

Excessive punishment – Issue one

2. The *Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015* (Amending Regulation) seeks to remove references to the maximum penalties for the offences relating to fire safety notices and fire exits in clauses 183 to 186 of the *Environmental Planning and Assessment Regulation 2000* (Current Regulation). These offences presently carry a maximum penalty of 100 penalty units, or \$11,000. Reference to the maximum penalty will also be removed for the offence in clause 227A of the Current Regulation, which requires certain signs to be maintained on development sites. That offence only carries a maximum penalty of 10 penalty units or \$1,100.
3. The effect of the amendments is that the default maximum penalty of \$110,000, set out in section 125D of the *Environmental Planning and Assessment Act 1979*, will now apply to these offences.

The Committee assumes that the increases in the maximum penalties for the offences relating to fire safety notices, fire exits, and signs on development sites are due to safety issues. However, the Committee notes that the policy reasons for the very significant level of the increases, including from a maximum penalty of \$1,100 to \$110,000 in one instance, have not been explained. The Committee makes no further comments.

Excessive punishment – Issue two

4. The *Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015* (Amending Regulation) proposes to replace Schedule 5 to the *Environmental Planning and Assessment Regulation 2000* (Current Regulation), which contains a list of penalty notice offences. In many instances, the Amending Regulation seeks to double the amount of the current penalty that an individual would be liable for.
5. For example, the penalty for an offence against section 81A(4) of the *Environmental Planning and Assessment Act 1979*, in relation to requirements around subdivision work, will increase from \$750 to \$1,500. Likewise, the penalty for an offence against section 109D(2) or (3), in relation to requirements around occupation and subdivision certificates, will increase from \$1,500 to \$3,000.

The Amending Regulation seeks to double the penalties for a number of offences listed as penalty notice offences in Schedule 5 to the Current

Regulation. 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,

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FUNCTIONS OF THE COMMITTEE

- 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.