



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”.

Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
PART ONE - BILLS	1
1. PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT BILL 2012	1
PART TWO - REGULATIONS	5
APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	6
APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	7

Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
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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.

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*.

Ministerial Correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

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.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the Digest contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Bill and correspondence appear.

**APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS
REPORTED ON**

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Regulation and correspondence appear.

Conclusions

PART ONE - BILLS

1. PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT BILL 2012

Schedule 1 Amendment of Property, Stock and Business Agents Act 2002 No 66

Stock auctioneers

Entitlement to commission

Trust accounts

Trust account audits

Savings, transitional and miscellaneous amendments

Schedule 2 Amendment of Unclaimed Money Act 1995 No 75

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the implementation of this Bill will require certain administrative arrangements to be implemented. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

PART TWO - REGULATIONS

Part One - Bills

1. Property, Stock and Business Agents Amendment Bill 2012

Date introduced	14 November 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Fair Trading

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Property, Stock and Business Agents Act 2002 (the Act) as follows:
 - (a) to provide for a court or tribunal to allow the recovery of agent's commission and expenses despite a minor non-compliance with requirements of the regulations as to the content of agency agreements,
 - (b) to broaden the class of persons who are qualified to act as a trust account auditor under the Act,
 - (c) to remove the requirement that a licensee provide a statutory declaration when no money is held on trust by the licensee,
 - (d) to limit the circumstances in which a trust account audit report is required to be provided to the Director-General,
 - (e) to require a trust account audit report to be kept at the business premises of the licensee,
 - (f) to allow the Director-General to order the random auditing of trust account records,
 - (g) to make it an offence for a trust account auditor to fail to report trust account discrepancies and breaches,
 - (h) to require the opening of a trust account to be notified to the Director-General,
 - (i) to repeal the current provisions relating to unclaimed trust money (with the Unclaimed Money Act 1995 to be amended so that it will apply to unclaimed trust money),
 - (j) to allow a certificate of registration holder to auction livestock under the supervision of an appropriately qualified licensee whether or not the licensee is the licensee in charge of the place of business where the certificate holder is employed or is the certificate holder's employer,

- (k) to enact consequential savings and transitional provisions and to make miscellaneous minor amendments.

BACKGROUND

- 2. This bill follows the statutory review of the Property, Stock and Business Agents Act 2002 in 2007 and 2008.
- 3. During the Second Reading Speech for the Bill, the Minister stated:

The review found that, while the Act was working well to achieve its objectives, a number of improvements could be made, particularly with a view to clarifying parts of the legislation and removing red tape for agents. The Property, Stock and Business Agents Amendment Bill 2012 aims to remove red tape while ensuring at the same time that consumer protection is not compromised.

OUTLINE OF PROVISIONS

- 4. Clause 1 sets out the name (also called the short title) of the proposed Act.
- 5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Property, Stock and Business Agents Act 2002 No 66

Stock auctioneers

- 6. Schedule 1 [1] provides that the holder of a certificate of registration as a stock and station salesperson is authorised to auction livestock under the supervision of an appropriately qualified licensee whether or not the licensee is the licensee in charge of the place of business where the salesperson is employed. An existing exception allows a stock and station salesperson to auction livestock under the supervision of a licence holder and the amendment makes it clear that the supervising licensee does not have to be the licensee in charge of the place of business where the salesperson is employed and does not have to be the salesperson's employer.

Entitlement to commission

- 7. Schedule 1 [3]–[5] enable a court or tribunal to order that commission and expenses are recoverable by a licensee despite a failure to comply with the requirements of the regulations as to the content of agency agreements but only if the court or tribunal is satisfied that the failure is minor, the consumer has suffered no loss and it would be unjust not to allow recovery.

Trust accounts

- 8. Schedule 1 [6] requires the Director-General to be notified of the opening of a trust account by requiring the licensee to give the Director-General a copy of the notice that is given to the authorised deposit-taking institution at which the account is opened. The amendment also requires the notification to be in a form approved by the Director-General. Schedule 1 [7] requires the notification given to the Director-General that a trust account has been closed to be in a form approved by the Director-General. Schedule 1 [8] exempts certain trust accounts from these notification requirements.

9. Schedule 1 [9] repeals the provisions relating to unclaimed money held in trust accounts. In future, the Unclaimed Money Act 1995 will apply to unclaimed trust money (pursuant to amendments to be made by Schedule 2 to the Bill).
10. Schedule 1 [14] repeals an existing provision that requires a licensee to provide the Director-General with a statutory declaration if the licensee does not hold money on trust during the licensee's audit period. Schedule 1 [2] makes a consequential amendment.

Trust account audits

11. Schedule 1 [10] and [11] limit the requirement to provide an auditor's report on a trust account audit to the Director-General so that the report will only have to be provided if the report is "qualified" because of a discovery by the auditor of a breach of the Act or the regulations, any discrepancy relating to the trust account or a failure to keep records or documents in a manner that enables them to be properly audited.
12. Schedule 1 [12] extends the existing requirement that an auditor's report on a trust account audit be retained for 3 years by requiring that the report be kept at the licensee's registered office or in the possession, custody or control of a former licensee or other person who becomes responsible for a licensee's or former licensee's affairs.
13. Schedule 1 [13] provides for the random auditing of trust accounts by authorising the Director-General to appoint a qualified person to audit the trust account of a licensee at any time.
14. Schedule 1 [15] extends the list of persons who are qualified to audit trust accounts under the Act to include authorised audit companies and members of certain professional accounting bodies who hold a Public Practice Certificate or Certificate of Public Practice.
15. Schedule 1 [17] makes it an offence (maximum penalty 50 penalty units) for a trust account auditor to fail to report trust account discrepancies, breaches or record keeping irregularities or to fail to forward a copy of such a report to the Director-General. Schedule 1 [16] requires the report to be forwarded to the Director-General within 14 days after the report is provided to the licensee.

Savings, transitional and miscellaneous amendments

16. Schedule 1 [18] makes a minor amendment to an offence provision to provide for a defence of reasonable excuse.
17. Schedule 1 [19] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
18. Schedule 1 [20] inserts savings and transitional provisions.

Schedule 2 Amendment of Unclaimed Money Act 1995 No 75

19. Schedule 2 provides for the Unclaimed Money Act 1995 to apply to unclaimed money held in a trust account under the Property, Stock and Business Agents Act 2002.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

20. Clause 2 states that the Bill commences on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the implementation of this Bill will require certain administrative arrangements to be implemented. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

Part Two - Regulations

The Committee does not report on any Regulations in this Digest.

Appendix One – Index of Ministerial Correspondence on Bills

The Committee is not in receipt of Ministerial Correspondence with respect to Bills.

Appendix Two – Index of Correspondence on Regulations on which the Committee has reported

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In Digest 12/55, the Committee reported on the Water Management (General) Amendment (Water Sharing Plans) Regulation (No 2) 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
3. In Digest 16/55, the Committee reported on the Home Building Amendment (Threshold for Home Warrant Insurance) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
4. In Digest 12/55, the Committee reported on the Local Government (General) Amendment (Election Procedures) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 21 June 2012 which addresses to the Committee's satisfaction the issues raised.
5. In Digest 15/55, the Committee reported on the Police Amendment (Death and Disability) Regulation 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 9 July 2012 which addresses to the Committee's satisfaction the issues raised.
6. On 8 May 2012 the Committee wrote to the Attorney General in relation to James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012. The Committee was in receipt of a response from the Attorney General dated 10 August 2012 which addressed to the Committee's satisfaction the issues raised. Further information in relation to this can be found in Digest 23/55.