



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

| | |
|------------------------|--|
| CHAIR | Mr Michael Johnsen MP, Member for Upper Hunter |
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| MEMBERS | Ms Melanie Gibbons MP, Member for Holsworthy Mr Alister Henskens MP, Member for Ku-ring-gai Mr David Mehan MP, Member for The Entrance Mr Shaoquett Moselmane MLC The Hon. Gregory Pearce MLC Mr David Shoebridge MLC |
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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. DAMS SAFETY BILL 2015

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

Strict Liability

The Committee notes that while the Bill introduces new penalties and offences with financial implications that are strict liability offences, it is also accepted that these provisions are essential requirements to ensure dam safety. As such, the Committee does not consider these provisions unreasonable in the circumstances.

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

Commencement by proclamation

The Committee prefers legislation of this kind, including offence and penalty provisions, to commence on a fixed date or on assent, not by proclamation.

2. DRUG AND ALCOHOL TREATMENT AMENDMENT (REHABILITATION OF PERSONS WITH SEVERE SUBSTANCE DEPENDENCE) BILL 2015*

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

Involuntary detention and treatment of young people

The Committee notes the intentions behind the Bill to rehabilitate individuals with severe substance dependence and to protect the community from the effects of drugs. Nevertheless, the Committee refers proposed section 4(3) of the Bill to Parliament for further consideration as to whether it unduly impacts on the rights and liberties of young people by permitting those who are 16 years or older to receive involuntary treatment for severe substance dependence.

Personal physical integrity

Implanting Naltrexone under a person's skin as a form of involuntary treatment could impact on the right to personal physical integrity. The Committee notes that the out-patient scheme proposed by the Bill is an alternative to involuntary treatment in detention. Proposed section 9A of the Bill provides that an individual must agree in writing to have Naltrexone implanted under their skin. Some individuals may prefer this option to treatment in detention. In light of this, the Committee makes no further comments.

Retrospectivity

The Committee is concerned about how certain provisions of the Bill may be interpreted, in respect of individuals who are already receiving involuntary treatment. For example, the Committee notes that the Bill contains a provision extending the standard detention period from 28 days to 90 days. The Committee therefore refers Schedule 4, Part 2, Item 6 of the Bill to Parliament for further consideration as to whether the retrospective application of that provision unduly impacts on the rights of individuals.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions

Length of detention

The Bill seeks to remove the role of the Magistrate to determine whether a person should be detained for treatment for longer than 28 days. While the Committee understands that, in some cases, treatment may not be effective within 28 days, the Committee nevertheless refers proposed section 14 to Parliament for further consideration.

No review rights for involuntary out-patient treatment

The Committee notes that while an individual who is to be involuntarily detained for treatment will have their matter reviewed by a Magistrate, pursuant to the Bill, no such right exists for a person who is the subject of a certificate recommending out-patient treatment. The Committee refers this matter to Parliament for further consideration.

3. JOBS FOR NSW 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).

4. STATE ARMS, SYMBOLS AND EMBLEMS AMENDMENT (FOSSIL EMBLEM) 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 One - Bills

1. Dams Safety Bill 2015

| | |
|----------------------|--------------------------------|
| Date introduced | 26 August 2015 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon Anthony Roberts MP |
| Portfolio | Industry, Resources and Energy |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to ensure that any risks that may arise in relation to dams (including any risks to public safety and to environmental and economic assets) are of a level that is acceptable to the community,
 - (b) to promote transparency in regulating dams safety,
 - (c) to encourage proper and efficient management in matters relating to dams safety,
 - (d) to encourage the application of risk management and the principles of cost benefit analysis in relation to dams safety.
2. The Bill constitutes Dams Safety NSW as a continuation of the Dams Safety Committee constituted under the *Dams Safety Act 1978*. That Act will be repealed by the proposed Act.

BACKGROUND

3. The Dams Safety Bill 2015 replaces the *Dams Safety Act 1978*. The Bill deals with the regulatory framework for dam safety in New South Wales and ensures that the Act reflects the outcomes of the review of the dams safety regime which took place in 2013. *The Dams Safety Act 1978* establishes the Dam Safety Committee and provides the committee with functions and powers to ensure safety for prescribed dams.
4. The Commission of Audit recommended an independent review of the *Dams Safety Act 1978* and the Dams Safety Committee. The review addressed the levels of spending on dams in New South Wales, and that dam owner representatives on the Dams Safety Committee were not in keeping with regulatory best practice. The Bill addresses this concern, as well as the concern with emergency plans.

ISSUES CONSIDERED BY COMMITTEE

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

Strict Liability

5. The Bill introduces a number of strict liability clauses in relation to offences. That is, only particular acts or omissions need to be provided to meet the criminal threshold,

and the Crown is not required to demonstrate intent, negligence or recklessness on the part of the accused.

6. For example, under section 14(3)(b) of the Bill, an owner of a dam must comply with dam safety requirements with the penalty of non-compliance set at a maximum of 2,250 penalty units and 600 further penalty units for each subsequent day of non-compliance. Similarly, section 15(3) of the Bill provides that the owner of a dam must keep reports and records of dam operations and maintenance. The maximum penalty for failure to comply is 500 penalty units for an individual.
7. In these and other instances, the Bill has not provided exceptions or defences for failure to comply with the statutory requirements.
8. However, the Committee also notes that these types of provisions are not uncommon in regulatory settings to ensure proper compliance with health, safety, and corporate governance requirements.

The Committee notes that while the Bill introduces new penalties and offences with financial implications that are strict liability offences, it is also accepted that these provisions are essential requirements to ensure dam safety. As such, the Committee does not consider these provisions unreasonable in the circumstances.

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

Commencement by proclamation

9. The Bill provides for the Act, except as provided in subsection 2, to commence on a day or days to be appointed by proclamation.

The Committee prefers legislation of this kind, including offence and penalty provisions, to commence on a fixed date or on assent, not by proclamation.

2. Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2015*

| | |
|----------------------|---------------------------|
| Date introduced | 27 August 2015 |
| House introduced | Legislative Council |
| Minister responsible | Rev The Hon Fred Nile MLC |
| | *Private Member's Bill |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Drug and Alcohol Treatment Act 2007 (the Act)* to further provide for the involuntary rehabilitative care of persons with severe substance dependence:
 - (a) by providing a new option for rehabilitation, so that, instead of being detained, persons with severe substance dependence can (during a trial-period) agree to undergo out-patient treatment, including having naltrexone implanted under their skin and undergoing counselling for relapse prevention and other health issues, and
 - (b) by amending the procedure for assessing persons for involuntary treatment, including by adding to the persons who can request an assessment and to the circumstances in which a person can be involuntarily treated, and
 - (c) by amending the procedure for the detention and transportation of persons for the purposes of involuntary rehabilitative treatment and for the conduct of the subsequent treatment of those persons, and
 - (d) by adding to the rights of detained dependent persons, including their right to plan their treatment and their rights to competent and reasonable care, to legal representation and to information about these and other rights, and
 - (e) by further restricting the conduct of detained dependent persons (including by prohibiting the abuse or possession of addictive substances, including liquor or drugs, during the period of treatment), and
 - (f) by increasing the maximum time for which a person may be involuntarily detained for treatment (from 28 days to 90 days) and by removing the ability to extend that time, and
 - (g) by providing for the post-rehabilitative care of persons who were formerly detained or treated (which may involve a second detention or treatment if substance use continues), and

- (h) by applying the Act to young people and specifying the rights of their parents or guardians.

BACKGROUND

2. The Bill has been developed in light of increasing public concerns about the effect of drugs on users and the community, particularly Ice. The Second Reading Speech notes that amongst methamphetamine users, the use of Ice has more than doubled. The Bill has been modelled on the Swedish drug rehabilitation program as Sweden has one of the lowest levels of drug use in the world.

ISSUES CONSIDERED BY COMMITTEE

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

Involuntary detention and treatment of young people

3. The existing *Drug and Alcohol Treatment Act 2007* and the amendments proposed by the Bill provide for the involuntary treatment and detention of individuals with severe substance dependence. The *Drug and Alcohol Treatment Act 2007* currently only applies to persons who are 18 years or older (see section 4(1)). Proposed section 4(3) of the Bill seeks to extend the Act to persons who are 16 years or older. However, the Bill requires the consent of a parent or guardian before a young person is assessed by an accredited medical practitioner, and before involuntary treatment can commence (see proposed section 11B of the Bill).

The Committee notes the intentions behind the Bill to rehabilitate individuals with severe substance dependence and to protect the community from the effects of drugs. Nevertheless, the Committee refers proposed section 4(3) of the Bill to Parliament for further consideration as to whether it unduly impacts on the rights and liberties of young people by permitting those who are 16 years or older to receive involuntary treatment for severe substance dependence.

Personal physical integrity

4. Proposed section 9A of the Bill authorises an accredited medical practitioner to recommend that, instead of being detained, a person with severe substance dependence receive treatment at an out-patient centre. The individual would have Naltrexone implanted under their skin as part of the treatment.

Implanting Naltrexone under a person's skin as a form of involuntary treatment could impact on the right to personal physical integrity. The Committee notes that the out-patient scheme proposed by the Bill is an alternative to involuntary treatment in detention. Proposed section 9A of the Bill provides that an individual must agree in writing to have Naltrexone implanted under their skin. Some individuals may prefer this option to treatment in detention. In light of this, the Committee makes no further comments.

Retrospectivity

5. The Bill's amendments will extend to any person who is already subject to involuntary treatment in detention pursuant to the Act (Proposed item 6 in Part 2 of Schedule 4 of the Bill).

The Committee is concerned about how certain provisions of the Bill may be interpreted, in respect of individuals who are already receiving involuntary treatment. For example, the Committee notes that the Bill contains a provision extending the standard detention period from 28 days to 90 days. The Committee therefore refers Schedule 4, Part 2, Item 6 of the Bill to Parliament for further consideration as to whether the retrospective application of that provision unduly impacts on the rights of individuals.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions

Length of detention

6. Proposed section 14 of the Bill seeks to lengthen the period for which a person can be detained for treatment from 28 days to 90 days (see also section 14 of the *Drug and Alcohol Treatment Act 2007*).
7. Part 4 of the current Act authorises a Magistrate to extend a period of detention for treatment to three months. The relevant medical practitioner must satisfy the Magistrate that the individual is suffering from drug or alcohol related brain injury and that additional time is needed to carry out treatment and plan the person's discharge (see sections 35 and 36 of the *Drug and Alcohol Treatment Act 2007*).

The Bill seeks to remove the role of the Magistrate to determine whether a person should be detained for treatment for longer than 28 days. While the Committee understands that, in some cases, treatment may not be effective within 28 days, the Committee nevertheless refers proposed section 14 to Parliament for further consideration.

No review rights for involuntary out-patient treatment

8. Where a medical practitioner has issued a certificate recommending that a person be involuntarily detained for treatment, the practitioner must bring the person before a Magistrate for a review as soon as possible (see proposed section 14A of the Bill). However, an individual who is the subject of a certificate recommending out-patient treatment is not afforded the same right.

The Committee notes that while an individual who is to be involuntarily detained for treatment will have their matter reviewed by a Magistrate, pursuant to the Bill, no such right exists for a person who is the subject of a certificate recommending out-patient treatment. The Committee refers this matter to Parliament for further consideration.

3. Jobs for NSW Bill 2015

| | |
|----------------------|---|
| Date introduced | 26 August 2015 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon Anthony Roberts MP |
| Portfolio | Minister for Industry, Resources and Energy |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) To facilitate job creation and economic development through job creation incentives,
 - (b) To establish Jobs for NSW to provide high level strategic advice to government for the purpose of jobs creation and driving investment in New South Wales.

BACKGROUND

2. This Bill establishes a new body, known as Jobs for NSW, which will take advantage of private sector expertise to provide strategic advice to the Government for the creation of jobs and for boosting investment in New South Wales. Jobs for NSW will also identify the competitive advantages of the New South Wales economy in terms of attracting, developing and consolidating new and existing businesses.
3. Jobs for NSW will be held accountable and will be required to report on its operations, job creation incentives and measures taken to demonstrate its success. The Bill also establishes the Jobs for NSW Fund to allow for a ready source of funding for investment projects.

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)*.

4. State Arms, Symbols and Emblems Amendment (Fossil Emblem) Bill 2015

| | |
|----------------------|---|
| Date introduced | 26 August 2015 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon Anthony Roberts MP |
| Portfolio | Minister for Industry, Resources and Energy |

PURPOSE AND DESCRIPTION

1. Currently, the State emblems recognised under the State Arms, Symbols and Emblems Act 2004 are as follows:
 - (a) the animal emblem of New South Wales is the platypus,
 - (b) the bird emblem of New South Wales is the kookaburra,
 - (c) the floral emblem of New South Wales is the waratah,
 - (d) the state fish of New South Wales is the blue groper,
 - (e) the gemstone emblem of New South Wales is the black opal.
2. The object of this Bill is to recognise the fish fossil *Mandageria fairfaxi* as a State emblem.

BACKGROUND

3. Currently there is no legislated form of a State fossil emblem in New South Wales. This Bill seeks to address that by introducing the mandageria fairfaxi as a State fossil emblem.
4. The mandageria fairfaxi is a long extinct fish which roamed freshwater rivers and lakes around 370 million years ago. Its fossil was discovered in 1955 outside the town of Canowindra.
5. The recognition of the mandageria fairfaxi as a State emblem is supported by palaeontologists and geologists from the Australian Museum and at the Geological Survey of NSW.

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).

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.