



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

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

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# Membership

CHAIR	Mr Michael Johnsen MP, Member for Upper Hunter
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# Guide to the Digest

## COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

## COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

### Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

# Conclusions

## PART ONE - BILLS

### 1. BETTING TAX LEGISLATION AMENDMENT BILL 2015

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

#### *Retrospectivity*

The Committee will always comment when provisions in legislation are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law that allows people knowledge of what the law is at any given time, so they may behave, and order their affairs, accordingly. In this instance, the retrospective provision does not seek to remove rights or liberties or impose burdens. In the circumstances the Committee makes no further comment.

### 2. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (PROTECTION FROM SERIOUS OFFENDERS) BILL 2015\*

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

#### *Oppressive Official Power*

The Committee notes that the Bill may contain an oppressive official power by providing that parents found guilty of certain serious offences against their children will automatically have their future children removed at birth. In certain circumstances, this may impact not only on the offending parent but also on the child removed from his or her biological parent. It may also give rise to undue punishment as the removal may occur in circumstances where the offender committed the offence many years before and has paid for his or her crime with a lengthy prison sentence. However, the Bill contains an exception where there are significant mitigating circumstances or where the offence arose because of an illness or condition, or circumstances, that no longer exist. There is also a right to appeal decisions before the Children's Court. Given these safeguards, and the child protection objectives of the Bill, the Committee makes no further comment.

#### *Retrospectivity*

The Committee notes that the Bill is drafted with some retrospective effect. Retrospectivity is contrary to the rule of law which allows people knowledge of what the law is at any given time, so they may order their behaviour accordingly. While the retrospective provision in the Bill does not create any new offences it does remove significant rights to bring up one's own children. Nonetheless, the focus of the Bill is child protection, not the punishment of a person for a criminal offence. Given this and the safeguards outlined above, the Committee makes no further comment.

### 3. CONVEYANCING AMENDMENT (SUNSET CLAUSES) BILL 2015

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

#### *Retrospectivity*

The Committee will always comment when provisions in legislation are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law that allows people knowledge of what the law is at any given time, so they may behave, and order their affairs, accordingly. However, the Committee notes the retrospectivity does not operate to remove rights or liberties or impose burdens. As such, the Committee makes no further comment.

#### 4. GAMING MACHINES AMENDMENT (CENTRALISED MONITORING SYSTEM) BILL 2015

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

#### 5. PAYROLL TAX DEFERRAL (BLUESCOPE STEEL) BILL 2015

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

### PART TWO - REGULATIONS

#### CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (NATIONAL SECURITY INTEREST INMATES) REGULATION 2015

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

##### *Wide discretion*

The Committee notes the wide discretion available to the Commissioner to classify an inmate as a national security interest inmate. The Committee acknowledges the Commissioner must consult with certain law enforcement agencies before making any decision, however there is no requirement to consult with the inmate or an inmate's advocate.

The Committee acknowledges that in the explanatory note to the Regulation it is accepted that the Regulation will affect the rights of inmates classified as a national security interest inmate. The Committee considers that in some circumstances additional measures, such as those in this Regulation, need to be taken to protect and manage risks to national security. The Committee makes no further comment.

##### *Oppressive official powers –written communications with inmates*

The Committee is of the view that the extent to which the Regulation permits the monitoring of written communication and the limitation on what language any communication must be in, may unduly trespass on personal rights and liberties. However, as discussed above, the Committee acknowledges that in some circumstances additional measures are reasonable in order to protect and manage risks to national security.

##### *Oppressive official powers – access to Official Visitors*

Official Visitors have a legislated responsibility to ensure the health, safety and welfare of inmates. The Committee considers that restricting access to Official Visitors may unduly trespass on personal rights and liberties. However, as discussed above, the Committee acknowledges that in some circumstances additional measures are reasonable in order to protect and manage risks to national security.





## Part One - Bills

# 1. Betting Tax Legislation Amendment Bill 2015

Date introduced	11 November 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Troy Grant MP
Portfolio	Racing

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Betting Tax Act 2001 (the Betting Tax Act) and the Totalizator Act 1997 (the Totalizator Act) as follows:
  - (a) to provide for the staged reduction of the following rates of tax payable by a totalizator licensee:
    - i the rate of tax payable on the commission deducted under the Totalizator Act in connection with totalizator betting,
    - ii the rate of tax payable on roundings arising in connection with totalizator betting,
    - iii the rate of tax payable on net earnings in connection with certain betting activities conducted otherwise than by means of a totalizator,
  - (b) to provide for the quarterly payment of a tax reduction amount as a consequence of the reduction:
    - i to Racing New South Wales and Harness Racing New South Wales, and
    - ii to a Tax Reduction Trust Fund from which payments may be made to Greyhound Racing New South Wales at the direction of the Minister for Racing,
  - (c) to provide for the establishment, management and control of the Tax Reduction Trust Fund.
2. The Bill makes a consequential amendment to the Totalizator Regulation 2012 to prescribe the rates at which the tax reduction amount is to be apportioned to each racing controlling body.

### BACKGROUND

3. In his second reading speech to Parliament, the Hon Troy Grant MP, Deputy Premier and Minister for Racing stated that the Bill's object is to progressively reduce the rates of

wagering tax payable by totalizator licensees in respect of totalizator and approved betting activities, other than a computer-simulated racing event betting activity.

4. Mr Grant further stated that this honours a commitment made by the Government in June 2015 to facilitate tax parity with Victoria; and that it will enable the NSW racing industry to more effectively compete with other jurisdictions to retain jobs and encourage investment.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity*

5. The Committee notes that the Bill provides for the staged reduction of the betting tax rates payable by a totalizator licensee under the *Betting Tax Act 2001* and that the first reductions will operate retrospectively, commencing on 1 July 2015.

**The Committee will always comment when provisions in legislation are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law that allows people knowledge of what the law is at any given time, so they may behave, and order their affairs, accordingly. In this instance, the retrospective provision does not seek to remove rights or liberties or impose burdens. In the circumstances the Committee makes no further comment.**

## 2. Children and Young Persons (Care and Protection) Amendment (Protection from Serious Offenders) Bill 2015\*

Date introduced	12 November 2015
House introduced	Legislative Assembly
Member responsible	Ms Tania Mihailuk MP
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are to:
  - (a) ensure that, subject to some exceptions, any person found guilty of the murder or manslaughter of a child or young person, or of certain other serious offences in relation to a child or young person, where the offender was the parent or guardian of the victim, will automatically have his or her future children removed from his or her care at birth or will be prevented from residing with, approaching or contacting them, and
  - (b) provide for the issue of restraining notices so that any person found guilty of such an offence may be prevented from residing with, approaching or having any contact with a child or young person.

### BACKGROUND

2. In her second reading speech to Parliament, Ms Tania Mihailuk MP stated that she was introducing the Bill to Parliament following three particularly devastating cases of child abuse involving the deaths of Chloe Valentine, Ikicia Leach and Bailey Constable.
3. Ms Mihailuk further stated that, galvanised by these cases, NSW Labor launched a child protection discussion paper in June 2015 which proposed the reforms included in the Bill, and consulted with a wide range of stakeholders concerning child protection reform. Ms Mihailuk also indicated that the provision contained in the Bill to automatically remove a child born to a parent already found guilty of certain serious offences against their own child or children is based on a recommendation of the South Australian coroner in the Chloe Valentine case.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Oppressive Official Power*

4. The Committee notes the Bill provides, subject to some exceptions, that any person found guilty of the murder or manslaughter of a child or young person, or of certain other serious offences in relation to a child or young person, where the offender was the

parent or guardian of the victim, will automatically have his or her future children removed from his or her care at birth or will be prevented from residing with, approaching or contacting them.

**The Committee notes that the Bill may contain an oppressive official power by providing that parents found guilty of certain serious offences against their children will automatically have their future children removed at birth. In certain circumstances, this may impact not only on the offending parent but also on the child removed from his or her biological parent. It may also give rise to undue punishment as the removal may occur in circumstances where the offender committed the offence many years before and has paid for his or her crime with a lengthy prison sentence. However, the Bill contains an exception where there are significant mitigating circumstances or where the offence arose because of an illness or condition, or circumstances, that no longer exist. There is also a right to appeal decisions before the Children's Court. Given these safeguards, and the child protection objectives of the Bill, the Committee makes no further comment.**

#### *Retrospectivity*

5. The Committee notes that in providing for the automatic removal of the future children of people found guilty of certain serious offences against their child or children, section 38H of the Bill provides that it does not matter whether the offence was committed before or after the commencement of the legislation. In this sense, the Bill has retrospective effect.

**The Committee notes that the Bill is drafted with some retrospective effect. Retrospectivity is contrary to the rule of law which allows people knowledge of what the law is at any given time, so they may order their behaviour accordingly. While the retrospective provision in the Bill does not create any new offences it does remove significant rights to bring up one's own children. Nonetheless, the focus of the Bill is child protection, not the punishment of a person for a criminal offence. Given this and the safeguards outlined above, the Committee makes no further comment.**

### 3. Conveyancing Amendment (Sunset Clauses) Bill 2015

Date introduced	10 November 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 prevent developers from unreasonably rescinding off the plan contracts for residential lots under sunset clauses.

#### BACKGROUND

2. As stated in the Second Reading Speech, this Bill follows reports of some developers using the sunset clause in off-the-plan contracts to disadvantage purchasers. The Bill has been introduced on an urgent basis to counter this conduct.
3. The Hon Victor Dominello MP stated there has been increased incidence of developers delaying projects until the sunset date is reached. The developer can then rescind the contract and resell the property, often times for a profit. The deposit the purchaser paid will be returned however they will lose any capital appreciation. In addition, they have been prevented from purchasing another property while their deposit has been used for the off-the-plan purchase.

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Retrospectivity*

4. Schedule 1, clause 3 of the Bill provides that the provisions in the Bill apply to off-the-plan contracts entered into before, on or after the commencement of the Act. In addition, it also provides that the Bill will have retrospective effect from 2 November 2015.
5. In the Second Reading Speech, the Hon Victor Dominello MP stated the retrospective application honours the date that he announced legislation would be introduced to address this issue.

**The Committee will always comment when provisions in legislation are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law that allows people knowledge of what the law is at any given time, so they may behave, and order their affairs, accordingly. However, the Committee notes the retrospectivity does not operate to remove rights or liberties or impose burdens. As such, the Committee makes no further comment.**

## 4. Gaming Machines Amendment (Centralised Monitoring System) Bill 2015

Date introduced	12 November 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Troy Grant MP
Portfolio	Racing

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Gaming Machines Act 2001* (the principal Act) to provide a more comprehensive system for the licensing of the operation and management of the centralised monitoring system (CMS) under that Act.

### BACKGROUND

2. This Bill implements reforms to the licensing framework for the centralised monitoring system (CMS) that undertakes monitoring of all gaming machines in New South Wales. The CMS calculates and invoices gaming machine taxes in addition to monitoring the gaming machine and system integrity. All gaming machines in New South Wales must be connected to the CMS before they can operate.
3. As stated in the Second Reading Speech, the CMS was originally conceived in the late 1990's and commenced operation in 2001. The current legislative framework reflects the environment at that time. This Bill introduces a modern regulatory framework.

### 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*.**

## 5. Payroll Tax Deferral (BlueScope Steel) Bill 2015

Date introduced	12 November 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Gladys Berejiklian MP
Portfolio	Treasury

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to authorise the Treasurer to enter into and give effect to a deed with BlueScope Steel Limited (ABN 16 000 011 058) (BlueScope) providing for the deferral of payroll tax payments for which BlueScope and certain BlueScope Taxpayer Entities are liable to pay in the period commencing 1 January 2016 and ending 31 December 2018 and for payment by instalments of the total amount deferred in accordance with a structured payment plan set out in the deed.
2. The Bill provides for a copy of the text of the proposed deed to be tabled in Parliament on the date of introduction of the Bill.

### BACKGROUND

3. As stated in the Second Reading Speech, this Bill implements a structured deferral of payroll tax of up to \$60 million for BlueScope Steel. The arrangement will assist BlueScope Steel to secure its Port Kembla operations.

### 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*.**



# Part Two - Regulations

## Crimes (Administration of Sentences) Amendment (National Security Interest Inmates) Regulation 2015

### PURPOSE AND DESCRIPTION

1. The object of this Regulation is to make provision with respect to the designation of inmates as national security interest inmates in connection with the management of security and other risks. The designation of an inmate as a national security interest inmate affects the inmate's right to have visitors, to receive letters or packages, to use a language other than English and to request to speak with the Minister, the Commissioner or the Official Visitor.

### ISSUES CONSIDERED BY COMMITTEE

**Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA**

#### *Wide discretion*

2. Clause 2 of the Regulation amends the *Crimes (Administration of Sentences) Regulation 2014* to allow the Commissioner to designate an inmate as a national security interest inmate if the Commissioner considers the inmate may engage in, or incite others to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.
3. Inmates given this classification are subject to additional security measures and restricted access to visitors and written communications.
4. In making a decision about an inmate's classification, the Commissioner is required to consider any advice from the NSW Police Force or from any other authority established for law enforcement, security or terrorist purposes.

**The Committee notes the wide discretion available to the Commissioner to classify an inmate as a national security interest inmate. The Committee acknowledges the Commissioner must consult with certain law enforcement agencies before making any decision, however there is no requirement to consult with the inmate or an inmate's advocate.**

**The Committee acknowledges that in the explanatory note to the Regulation it is accepted that the Regulation will affect the rights of inmates classified as a national security interest inmate. The Committee considers that in some circumstances additional measures, such as those in this Regulation, need to be taken to protect and manage risks to national security. The Committee makes no further comment.**

*Oppressive official powers –written communications with inmates*

5. Clauses 12 and 13 of the Regulation amend the *Crimes (Administration of Sentences) Regulation 2014* to provide for the monitoring and regulation of written communication to and from inmates designated a national security interest inmate.
6. Clause 12 has the effect of requiring the general manager of a correctional centre to open, inspect, read and copy any letter or parcel sent or received by a national security interest inmate. Written communications to and from an exempt body or legal representative are exempt from the operation of the provision, however, any such communication must be accompanied by a note requesting confidentiality and declaring the communication does not contain anything prohibited. Despite any such declaration, a nominated officer may still require a national security interest inmate to open any written communication from an exempt body or legal practitioner in the presence of a nominated officer.
7. In addition, clause 13 has the effect of requiring correspondence from a national security interest inmate to be written in English or another language approved by the Commissioner.

**The Committee is of the view that the extent to which the Regulation permits the monitoring of written communication and the limitation on what language any communication must be in, may unduly trespass on personal rights and liberties. However, as discussed above, the Committee acknowledges that in some circumstances additional measures are reasonable in order to protect and manage risks to national security.**

*Oppressive official powers – access to Official Visitors*

8. The Regulation excludes an inmate classified as a national security interest inmate from being notified when an Official Visitor is available at a correctional centre for interviews.

**Official Visitors have a legislated responsibility to ensure the health, safety and welfare of inmates. The Committee considers that restricting access to Official Visitors may unduly trespass on personal rights and liberties. However, as discussed above, the Committee acknowledges that in some circumstances additional measures are reasonable in order to protect and manage risks to national security.**

# 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.