



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No. 14/56 – 8 March 2016



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, 2016, 20p 30 cm

Chair: Mr Michael Johnsen MP

8 March 2016

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 14 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 14 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”.

Contents

Membership	ii
Guide to the Digest	iii
Conclusions	iv
PART ONE – BILLS	1
1. GOVERNMENT INFORMATION (PUBLIC ACCESS) AMENDMENT (SYDNEY MOTORWAY CORPORATION) BILL 2016*	1
2. HEALTH PRACTITIONER REGULATION NATIONAL LAW (NSW) AMENDMENT (REVIEW) BILL 2016	2
3. TRANSPORT ADMINISTRATION AMENDMENT (AUTHORITY TO CLOSE RAILWAY LINES) BILL 2016	4
PART TWO – REGULATIONS	6
1. LIQUOR AMENDMENT (FEES AND OTHER MATTERS) REGULATION 2016	6
2. MINING LEGISLATION AMENDMENT (HARMONISATION) REGULATION 2016	8
3. ROAD TRANSPORT LEGISLATION AMENDMENT (BICYCLE RIDERS) REGULATION 2016	10
APPENDIX ONE – FUNCTIONS OF THE COMMITTEE	11

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. GOVERNMENT INFORMATION (PUBLIC ACCESS) AMENDMENT (SYDNEY MOTORWAY CORPORATION) BILL 2016*

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

2. HEALTH PRACTITIONER REGULATION NATIONAL LAW (NSW) AMENDMENT (REVIEW) BILL 2016

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

Commencement by proclamation

The Committee prefers legislation to commence on assent or an appointed day. However, given the administrative nature of a number of changes to the operation of the Health Practitioner Regulation National Law contained in this Bill, flexibility with regard to its commencement is understandable. The Committee makes no further comment.

3. TRANSPORT ADMINISTRATION AMENDMENT (AUTHORITY TO CLOSE RAILWAY LINES) BILL 2016

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

Retrospectivity

The Bill retrospectively authorises works already carried out to close the railway line from Balmain Road, Lilyfield to Victoria Road, Rozelle. This could impact on the rights of others, for example, if an individual has commenced litigation in relation to the railway line, or the works impact on a person's other property rights. However, the Committee notes that the relevant railway line has not been used for over 20 years and the amendments are designed to address uncertainty in the existing legislation. The Committee therefore makes no further comments.

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

Decision-making power of Parliament delegated to Minister

The Bill delegates the decision-making power of the NSW Parliament to the relevant Minister in some cases. However, the Minister will only be permitted to make decisions about certain kinds of development that also require approval under the *Environmental Planning and Assessment Act 1979* and only within a defined area of the State. The Committee acknowledges the practicalities and efficiencies of delegating limited power to a Minister in some cases, rather than requiring the authority of an Act of Parliament in every instance. The Committee therefore makes no further comments.

PART TWO – REGULATIONS

1. LIQUOR AMENDMENT (FEES AND OTHER MATTERS) REGULATION 2016

May have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Extending the period of restrictions on certain licensed premises

Extending the restrictions which apply to certain licensed premises within the Sydney CBD Entertainment Precinct could have an adverse impact on the business community within that area. The restrictions were originally introduced to deal with alcohol-related violence and improve public safety. The Deputy Premier recently announced that the freeze extension will give certainty to residents and businesses within the precinct pending completion of the statutory review of the relevant legislation. For these reasons, the Committee makes no further comments.

2. MINING LEGISLATION AMENDMENT (HARMONISATION) REGULATION 2016

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

Increased penalties for penalty notice offences

Certain penalties for penalty notice offences against the *Mining Act 1992* have increased significantly. Large increases in penalties can sometimes result in excessive punishment, where the penalty is not proportionate to the crime. However, the amendments in the Regulation are associated with broader changes to the mining legislation framework by the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*. The Committee therefore makes no further comments.

3. ROAD TRANSPORT LEGISLATION AMENDMENT (BICYCLE RIDERS) REGULATION 2016

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

Increased penalties

The Regulation increases certain penalty notice offences relating to bicycle riders on NSW roads. Significant increases in penalties can sometimes lead to excessive punishment, where the penalty is not proportionate to the crime. The Committee notes that proposed increases in penalties were announced by the relevant Minister last year. The changes have been developed in consultation with key stakeholders and government bodies to improve road safety. The Committee therefore makes no further comments.

Part One – Bills

1. Government Information (Public Access) Amendment (Sydney Motorway Corporation) Bill 2016*

Date introduced	25 February 2016
House introduced	Legislative Assembly
Member responsible	Jodi McKay MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Government Information (Public Access) Act 2009* to provide that information held by the Sydney Motorway Corporation may be accessed under that Act.

BACKGROUND

2. This Bill seeks to provide that information held by the Sydney Motorway Corporation may be accessed under the *Government Information (Public Access) Act 2009* (GIPA Act). As stated in the Second Reading Speech:

In establishing the Sydney Motorway Corporation as a so-called “private corporation”, the Government places it beyond the scrutiny of a regular government agency and, therefore beyond the parameter of the *Government Information (Public Access) Act* – or GIPA Act.

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.

2. Health Practitioner Regulation National Law (NSW) Amendment (Review) Bill 2016

Date introduced	24 February 2016
House introduced	Legislative Assembly
Minister responsible	The Hon Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make miscellaneous amendments to the Health Practitioner Regulation National Law (NSW) in respect of the following:
 - (a) the functions, membership and procedure of health professional Councils,
 - (b) matters relating to the conduct and physical and mental capacity of health practitioners,
 - (c) the proceedings and jurisdiction of NCAT in matters relating to health practitioners,
 - (d) the membership and procedure of Assessment Committees, Impaired Registrants Panels and Professional Standards Committees,
 - (e) matters relating to statute law revision.

BACKGROUND

2. Since 2009, New South Wales has been a co-regulatory jurisdiction of the National Registration and Accreditation Scheme (NRAS) for health professionals. The NRAS operates as a national registration and accreditation scheme aimed at ensuring consistencies across Australia.
3. New South Wales is a co-regulatory jurisdiction of the NRAS in that they decided not to adopt the national provisions relating to conduct, health and performance and complaint handling. The New South Wales specific provisions relating to conduct, health and performance and complaints handling are set out in parts 5A and 8 of the Health Practitioner Regulation National Law (NSW) (NSW National Law).
4. In 2014 2015 a review of the NSW National Law was conducted and a report tabled in Parliament in late 2015. The review made a number of recommendations which this Bill seeks to implement. In the Second Reading Speech to the Bill, the Hon Pru Goward MP stated:

These changes are minor and are designed to promote consistency in the legislation, to give more flexibility and to ensure the smooth operation of the complaints handling processes.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

5. The Bill provides for the Act to commence on a day or days to be appointed by proclamation.

The Committee prefers legislation to commence on assent or an appointed day. However, given the administrative nature of a number of changes to the operation of the Health Practitioner Regulation National Law contained in this Bill, flexibility with regard to its commencement is understandable. The Committee makes no further comment.

3. Transport Administration Amendment (Authority to Close Railway Lines) Bill 2016

Date introduced	24 February 2016
House introduced	Legislative Council
Member responsible	The Hon. Duncan Gay MLC
Portfolio	Roads, Maritime and Freight

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Transport Administration Act 1988* (the Act) to:
 - (a) authorise a rail infrastructure owner to close the railway line that runs from Balmain Road, Lilyfield, to Victoria Road, Rozelle (including that part of the railway line known as the Rozelle rail yards), and
 - (b) enable the Minister for Transport and Infrastructure to authorise, by order published in the Gazette, a rail infrastructure owner to close any other railway line in the greater Sydney, Newcastle, Central Coast or Wollongong metropolitan region for the purposes of or in connection with development that is declared to be State significant infrastructure under the *Environmental Planning and Assessment Act 1979*.
2. A railway line is closed (for the purposes of section 99A of the Act) if the land concerned is sold or otherwise disposed of or the railway tracks and other works concerned are removed.

BACKGROUND

3. The Minister's second reading speech says the Bill addresses uncertainty about the operation of section 99A of the *Transport Administration Act 1988*. This provision prevents a rail infrastructure owner from closing a railway line unless an Act of Parliament authorises such action.
4. The Minister emphasises that the intention behind section 99A is to ensure that rail links in NSW are not lost at the whim of a rail infrastructure owner. However, it is unclear what constitutes a 'railway line' and what actions a rail infrastructure owner may take without the authority of an Act of Parliament.
5. The Bill amends section 99A to deal with uncertainty around the re-use of railway lines within the greater metropolitan region where they are required for projects declared to be State significant infrastructure.
6. The Minister hoped the confusion around the practical application of section 99A would be clarified by the court in litigation following the Government's decision to truncate the Newcastle branch line at Wickham. However, this did not happen.

7. The Minister says the amendments will not reduce transport services. Rather they will facilitate a major expansion of transport and infrastructure services through several projects.

ISSUES CONSIDERED BY THE COMMITTEE

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

Retrospectivity

8. The Bill authorises a rail infrastructure owner to close the whole or any part of the railway line that runs from Balmain Road, Lilyfield to Victoria Road, Rozelle. A rail infrastructure owner will be permitted to sell or otherwise dispose of the relevant land and remove the railway tracks and other works.
9. These provisions will extend to any action taken by the rail infrastructure owner before the commencement of the provisions (see Schedule 1, clause [4] of the Bill).

The Bill retrospectively authorises works already carried out to close the railway line from Balmain Road, Lilyfield to Victoria Road, Rozelle. This could impact on the rights of others, for example, if an individual has commenced litigation in relation to the railway line, or the works impact on a person's other property rights. However, the Committee notes that the relevant railway line has not been used for over 20 years and the amendments are designed to address uncertainty in the existing legislation. The Committee therefore makes no further comments.

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

Decision-making power of Parliament delegated to Minister

10. Section 99A(1) of the *Transport Administration Act 1998* states that a rail infrastructure owner must not, unless authorised by an Act of Parliament, close a railway line.
11. The Bill amends section 99A so the Minister can authorise a rail infrastructure owner to close a railway line, or part of a railway line, on land within the Greater Metropolitan Region.
12. The Minister will be required to publish any such order in the Gazette. The Minister can only make an order of this kind if they are satisfied that the closure is required for the purposes of, or in connection with, State significant infrastructure. Any such order will not take effect until the State significant infrastructure is approved under the *Environmental Planning and Assessment Act 1979* (see Schedule 1, clause [2] of the Bill).

The Bill delegates the decision-making power of the NSW Parliament to the relevant Minister in some cases. However, the Minister will only be permitted to make decisions about certain kinds of development that also require approval under the *Environmental Planning and Assessment Act 1979* and only within a defined area of the State. The Committee acknowledges the practicalities and efficiencies of delegating limited power to a Minister in some cases, rather than requiring the authority of an Act of Parliament in every instance. The Committee therefore makes no further comments.

Part Two – Regulations

1. Liquor Amendment (Fees and Other Matters) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Liquor Regulation 2008* as follows:
 - (a) to extend the period for restrictions on the granting of liquor licences, various other liquor-related authorisations and development consents in respect of the Sydney CBD Entertainment precinct, which includes the Oxford Street, Darlinghurst precinct,
 - (b) to give effect to the application of that period in relation to the Oxford Street, Darlinghurst precinct by consequentially removing the precinct from Schedule 5 to the *Liquor Act 2007*,
 - (c) to extend the fee exemption for applications for a multi-occasion extended trading authorisation made on or before 31 December 2015 so that the exemption applies in relation to applications made on or before 31 December 2016,
 - (d) to prescribe a single annual base fee element of a periodic licence fee for all producer/wholesaler licences of \$200,
 - (e) to provide that a trading hours risk loading element is not payable in relation to hotel or club licences that relate to a tourist accommodation establishment in certain circumstances or licences relating to licensed premises in remote locations,
 - (f) to enable the Secretary of the Department of Justice to re-assess any assessed periodic licence fee, rather than only any initially assessed fee,
 - (g) to provide that a licence holder must apply for a waiver of the periodic licence fee payable in relation to the licence no later than 7 days before the due date for payment or, if the person satisfies the Secretary that exceptional circumstances exist, no later than the date specified by the Secretary,
 - (h) to provide that the Secretary may only waive certain elements of that fee if satisfied that the applicant is suffering financial hardship,
 - (i) to provide that a compliance history risk loading element of a periodic licence fee is first payable for the year commencing 15 March 2017 instead of 15 March 2016,
 - (j) to specify that certain authorisations that relate to licensed premises at the Opera House site are not subject to the conditions requiring the giving of notice in relation to any function held within the Opera House site at which the licensee provides catering,
 - (k) to remove the requirement for licensees to provide biennial returns,

- (l) to prescribe a proof of age card issued by Australia Post (known as a “Keypass identity card”) as an evidence of age document from 1 March 2016.

ISSUES CONSIDERED BY THE COMMITTEE

May have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Extending the period of restrictions on certain licensed premises

2. Part 4, Division 1A of the *Liquor Act 2007* contains provisions placing a temporary freeze on liquor licences and other authorisations in certain precincts within Sydney. The freeze period for the Sydney CBD Entertainment Precinct, which is defined in the *Liquor Regulation 2008*, was from 5 February 2014 to 5 February 2016. However, the Amending Regulation extended that period to 19 February 2017 (See Schedule 1, clause [18] of the Amending Regulation). The Oxford Street, Darlinghurst area is also now included within this Precinct and is therefore subject to the extended period of restrictions (see clause 3 of the Amending Regulation).
3. Examples of the kind of restrictions which relevant premises within these areas are subject include restrictions relating to granting certain new liquor licences or extended trading authorisations; varying or revoking licence conditions; changing the boundaries of premises; and granting development consent (see Part 4, Division 1A of the *Liquor Act 2007*).

Extending the restrictions which apply to certain licensed premises within the Sydney CBD Entertainment Precinct could have an adverse impact on the business community within that area. The restrictions were originally introduced to deal with alcohol-related violence and improve public safety. The Deputy Premier recently announced that the freeze extension will give certainty to residents and businesses within the precinct pending completion of the statutory review of the relevant legislation. For these reasons, the Committee makes no further comments.

2. Mining Legislation Amendment (Harmonisation) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to make the following amendments, which are consequential on the enactment of the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*:
 - (a) amendments to savings and transitional provisions inserted in the *Mining Act 1992* by that Act:
 - i to ensure that environmental information provided by holders of authorities can be disclosed to or exchanged with other agencies, and
 - ii to ensure that existing activity approval conditions in assessment leases are taken to be activity approvals issued under new provisions requiring such approvals for assessable prospecting operations,
 - (b) amendments to the Mining Regulation 2010:
 - i to specify the information required to accompany applications for renewal of exploration licences, assessment leases and mining leases, and
 - ii to provide for the content of work programs required to accompany applications for exploration licences and assessment leases, and
 - iii to specify the reports required to be prepared by the holder of an authority and to omit provisions requiring reports on operations to be in accordance with the agenda provided, and
 - iv to require the collection, labelling and preservation of certain cores and samples, and
 - v to specify matters relating to the disclosure or use of information and protected documents that are otherwise required to be kept confidential, and
 - vi to provide for the notification of agents of certain holders of authorisations, and
 - vii to prescribe the offences under the *Mining Act 1992* that can be dealt with by penalty notice and the penalty if they are dealt with that way, and
 - viii to omit redundant provisions and update terminology and cross-references as a consequence of amendments to the *Mining Act 1992*.

ISSUES CONSIDERED BY THE COMMITTEE

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

Increased penalties for penalty notice offences

2. The Amending Regulation updates the penalty notice offences in Schedule 11 of the *Mining Regulation 2010*. Some of these penalties have increased significantly. For example, the penalty for an offence committed by an individual against section 378B of the *Mining Act 1992*, relating to obstructing the holder of an authorisation, has increased from \$250 to \$2,500. Likewise, the penalty for an offence committed by an individual against section 163C(3) of the *Mining Act 1992*, relating to failing to prepare or lodge reports, has also increased from \$500 to \$2,500.

Certain penalties for penalty notice offences against the *Mining Act 1992* have increased significantly. Large increases in penalties can sometimes result in excessive punishment, where the penalty is not proportionate to the crime. However, the amendments in the Regulation are associated with broader changes to the mining legislation framework by the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*. The Committee therefore makes no further comments.

3. Road Transport Legislation Amendment (Bicycle Riders) Regulation 2016

PURPOSE AND DESCRIPTION

1. The objects of this Regulation are as follows:
 - (a) to require motorists to keep a specified minimum distance from a bicycle when passing to the right of the bicycle on a road,
 - (b) to provide that the offence under the *Road Rules 2014* of not obeying the applicable speed limit (which currently applies to bicycle riders as well as motorists) may be dealt with by way of a penalty notice if the offence is committed by a bicycle rider,
 - (c) to increase the level of the penalty payable under penalty notices for offences under the *Road Rules 2014* that relate to the use of bicycles or to persons riding bicycles,
 - (d) to prescribe the offence of failing to keep the minimum distance when passing to the right of a bicycle as an offence for which demerit points may be incurred.

ISSUES CONSIDERED BY COMMITTEE

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

Increased penalties

2. The Amending Regulation increased some of the penalty notice offences in Schedule 5 of the *Road Transport (General) Regulation 2013* relating to bicycle riders on NSW roads who are:
 - Not wearing a helmet, increased from \$71 to \$319
 - Running a red light, increased from \$71 to \$425
 - Riding dangerously, increased from \$71 to \$425
 - Holding onto a moving vehicle, increased from \$71 to \$319
 - Not stopping at a children's or pedestrian crossing, increased from \$71 to \$425 (see Schedule 2, clause [2] of the Amending Regulation).

The Regulation increases certain penalty notice offences relating to bicycle riders on NSW roads. Significant increases in penalties can sometimes lead to excessive punishment, where the penalty is not proportionate to the crime. The Committee notes that proposed increases in penalties were announced by the relevant Minister last year. The changes have been developed in consultation with key stakeholders and government bodies to improve road safety. The Committee therefore makes no further comments.

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,

LEGISLATION REVIEW COMMITTEE

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.