



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
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr Alister Henskens SC MP, Member for Ku-ring-gai Mr David Mehan MP, Member for The Entrance The Hon Shaoquett Moselmane MLC The Hon Gregory Pearce MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2096 / 02 9230 3382
FACSIMILE	02 9230 3309
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

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. COURTS LEGISLATION AMENDMENT (DISRESPECTFUL BEHAVIOUR) BILL 2016

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

Ill-defined terms

The Committee notes that the new offence created by this Bill is ill defined, in that the Bill does not provide any guidance on what behaviour could be considered disrespectful according to established court practice and convention. This may lead to varying interpretations and inconsistency in the application of the provision.

However, the Committee notes the intention to provide procedural guidance to judges, magistrates and the community. As such, the Committee makes no further comment.

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

Commencement by proclamation

The Committee generally prefers legislation of this kind to commence on a fixed date or on assent, rather than by proclamation. However, the Committee notes the requirement for appropriate education and training and as such makes no further comment.

2. HURLSTONE AGRICULTURAL HIGH SCHOOL SITE BILL 2016*

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

3. LOCAL GOVERNMENT AMENDMENT (PARLIAMENTARY INQUIRY RECOMMENDATIONS) BILL 2016*

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

4. PUBLIC HEALTH AMENDMENT (REGISTERED NURSES IN NURSING HOMES) BILL 2016*

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

5. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2016

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

Commencement by proclamation

The Committee generally prefers legislation to commence on a fixed date or on assent, rather than by proclamation. However, the Committee notes that the repeal of the *Home Care Service Act 1988* and the amendments consequent on that repeal are dependent on other amendments in the Bill relating to the National Disability Insurance Scheme, which will commence on 8 July 2016. As such, the Committee acknowledges that it would be desirable

for there to be some flexibility with respect to the repeal of the *Home Care Service Act 1988* and the commencement of associated changes. The Committee makes no further comments.

6. SYDNEY CRICKET AND SPORTS GROUND AMENDMENT (DEVELOPMENT ASSESSMENT) BILL 2016*

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

7. TAXATION ADMINISTRATION AMENDMENT (COLLECTION AND DISCLOSURE OF INFORMATION TO COMMONWEALTH) BILL 2016

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

Privacy

The Bill impacts on privacy rights by overriding provisions in the *Privacy and Personal Information Protection Act 1998* to allow disclosures of property information from NSW public sector agencies to the Commonwealth Commissioner of Taxation. However, the Committee is satisfied that the Bill does not unreasonably intrude on privacy rights given that the transfer of information is intended to improve compliance with tax laws and the foreign investment framework. The Commissioner of Taxation would also be subject to equivalent privacy laws at the Commonwealth level. The Committee makes no further comments.

Part One – Bills

1. Courts Legislation Amendment (Disrespectful Behaviour) Bill 2016

Date introduced	11 May 2016
House introduced	Legislative Council
Minister responsible	The Hon. Gabrielle Upton MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make it a summary offence for a person to engage in behaviour that is disrespectful (according to practice and convention) in the Supreme Court, Land and Environment Court, District Court or Local Court or in coronial proceedings (maximum penalty: 14 days imprisonment or 10 penalty units, or both).

BACKGROUND

2. In December 2015 the Attorney General announced that a Bill would be introduced to create a new offence covering deliberate behaviour in court which is disrespectful. The announcement followed a NSW District Court trial which highlighted that certain behaviour, such as failing to stand for a judge, may not amount to contempt of court.

ISSUES CONSIDERED BY COMMITTEE

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

Ill-defined terms

3. The Bill amends the *Supreme Court Act 1970*, the *Land and Environment Court Act 1979*, the *District Court Act 1973*, the *Local Court Act 2007*, and the *Coroners Act 2009* to insert a new offence of disrespectful behaviour in court. A person will be guilty of the offence if they intentionally engage in behaviour which is disrespectful according to established court practice and convention. Established court practice and convention is not further defined in the Bill.
4. In the Second Reading Speech, the Hon David Clarke MLC indicated that guidance concerning the new offence will be included in the Judicial Commission's bench books. As the Hon David Clarke MLC stated:

The judicial bench books will be updated to provide guidance to judges, magistrates and the community about the procedure relating to this new offence, including issues of procedural fairness, which are currently accorded to persons relating to possible contempt matters and will likewise apply to the new offence. This includes recommending that the judge or magistrate provide the person an opportunity to correct their behaviour or apologise before deciding to refer the matter to the Attorney General.

5. The maximum penalty for the offence is 14 days imprisonment or \$1 100, or both.

The Committee notes that the new offence created by this Bill is ill defined, in that the Bill does not provide any guidance on what behaviour could be considered disrespectful according to established court practice and convention. This may lead to varying interpretations and inconsistency in the application of the provision.

However, the Committee notes the intention to provide procedural guidance to judges, magistrates and the community. As such, the Committee makes no further comment.

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

Commencement by proclamation

6. The Bill provides that the proposed Act is to commence on a day or days to be appointed by proclamation.
7. In the Second Reading Speech to the Bill, the Hon David Clarke MLC, stated:

The Bill will commence on proclamation once the appropriate education and training have been released by the Judicial Commission and provided to the legal profession.

The Committee generally prefers legislation of this kind to commence on a fixed date or on assent, rather than by proclamation. However, the Committee notes the requirement for appropriate education and training and as such makes no further comment.

2. Hurlstone Agricultural High School Site Bill 2016*

Date introduced	12 May 2016
House introduced	Legislative Assembly
Member responsible	Mr Anoulack Chanthivong MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to ensure that the Hurlstone Agricultural School site (the site) remains in public ownership, and
 - (b) to limit the use of the site to that of a government school.

BACKGROUND

2. The NSW Department of Education reports that the Hurlstone Agricultural High School will move to a new facility at Western Sydney University's Hawkesbury Campus in 2020.
3. The Bill seeks to prevent the current school site from being sold to private interests and ensure that the property remains a public school.
4. Mr Chanthivong MP, in his Second Reading Speech, raises concerns that the relocation of this school will affect the educational opportunities of children in south-west Sydney and will impact on their opportunity to study and share in the economic prosperity of the agribusiness industry:

Deloitte Access Economics estimates agribusiness to be a top five major growth industry producing more than \$40 billion in exports in 2015, with forecasted double-digit growth and global opportunities for rising exports, economic growth and income.

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.

3. Local Government Amendment (Parliamentary Inquiry Recommendations) Bill 2016*

Date introduced	12 May 2016
House introduced	Legislative Council
Member responsible	Reverend the Hon. Fred Nile MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to give effect to some of the recommendations contained in the report of the Legislative Council General Purpose Standing Committee No 6 entitled *Local Government in New South Wales (the 2015 Report)*. Those recommendations relate to amalgamations and other boundary changes, joint service delivery and co-operation between councils, mayoral elections, political donations, election expenditure and the financing of councils.
2. The *Local Government Act 1993* is amended:
 - (a) to modify the functions and procedure of the Boundaries Commission:
 - i by providing that a proposal for amalgamations, boundary changes or to constitute an area can be initiated by a public authority (as well as by the Minister, a council or a specified minimum number of enrolled electors), and
 - ii by changing the procedure for the Commission's examination and report on amalgamations and boundary change proposals, including by requiring the holding of inquiries in all cases and requiring opinion surveys or polls to be carried out amongst the residents and ratepayers of the relevant areas, and
 - iii by providing that an amalgamation of council areas cannot occur when the affected councils do not consent to the amalgamation unless there is evidence that those councils are severely financially unsustainable, and
 - iv by requiring a period of transition between any decision to amalgamate council areas and the creation of a new merged council, to allow sufficient time to ensure effective, planning, consultation, implementation and ongoing service delivery to the local communities, and
 - v by requiring the Commission to undertake regular reviews of local government boundaries across the State by conducting an inquiry, and
 - vi by empowering the Commission to initiate proposals for boundary changes when of the opinion that change is required, and

- vii by changing the process for the Boundaries Commission's examination and report, and
 - viii by extending the list of factors to which the Commission must have regard in exercising its functions, and
- (b) to increase the independence of the Boundaries Commission:
- i by changing the membership of the Boundaries Commission, so that it is to consist of 3 commissioners appointed by the Governor one of whom is nominated by the Minister to be the independent Chairperson of the Commission with the other 2 being nominated jointly by the Minister and the President of Local Government NSW, and
 - ii by making serving public officials, current or former members of a council, county council or regional joint authority, or current or former members of the Legislative Assembly or of the Legislative Council, ineligible for membership of the Commission, and
 - iii by requiring the Minister to ensure that the Commission is assisted in the performance of its functions by a secretariat consisting of the number of staff determined by the Minister, having regard to the recommendations of the Boundaries Commission and Local Government NSW, and
- (c) to extend the capacity for councils to co-operate in the exercise of their functions by providing for councils to co-operate in collaboration, planning and service delivery, through regional joint authorities, which may have service delivery functions and will replace county councils, and
- (d) to modify the financing of councils:
- i by ensuring that those water utilities that are currently operated by a local council remain under the exclusive control of that council, unless the council resolves otherwise after community consultation, and
 - ii by ensuring consistency in the treatment of assets in the financial reports of councils, and
 - iii by creating an exemption from rate pegging, and allowing councils to determine their own rates, conditional on the delivery of a local works plan outlining the expenditure associated with any proposed rate increases and demonstrated community support, and
- (e) to modify the procedure for the election of mayors:
- i by requiring a constitutional referendum to be held about whether the mayor of a council should be elected by the electors (for those councils where the mayor is currently elected by councillors), and
 - ii by extending the term of office of mayors who are elected by councillors from 1 year to 2 years.

3. The *Election Funding, Expenditure and Disclosures Act 1981* is also amended to introduce donation and spending caps for local government elections.

BACKGROUND

4. This Bill amends the *Local Government Act 1983*; the *Election Funding, Expenditure and Disclosures Act 1981* and related Acts to give effect to some of the recommendations contained in the report of the Legislative Council General Purpose Standing Committee No. 6 entitled *Local Government in New South Wales 2015*.
5. The areas which the Bill amends include:
 - the functions and procedures of the Boundaries Commission;
 - increasing the independence of the Boundaries Commission;
 - extending the capacity for councils to cooperate in the exercise of their functions;
 - modifying the financing of councils
 - modifying the procedure for the election of mayors; and
 - introducing donation and spending caps for local government elections.

ISSUES CONSIDERED BY COMMITTEE

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

4. Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2016*

Date introduced	12 May 2016
House introduced	Legislative Council
Member responsible	The Hon. Robert Brown MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. At present under section 104 of the *Public Health Act 2010*, a registered nurse is required to be on duty in a nursing home at all times. The object of this Bill is to ensure that this requirement is continued by updating the definition of nursing home so that it is consistent with the terminology relating to aged care facilities under the *Aged Care Act 1997* of the Commonwealth.

BACKGROUND

2. Section 104(1)(a) of the *Public Health Act 2010* (NSW) currently provides that a registered nurse must be on duty in a nursing home at all times. However, the operation of this provision is tied to definitions relating to nursing homes in the *Aged Care Act 1997* (Cth).
3. On 1 July 2014, the Commonwealth Government repealed the distinction between high and low level residential care. Section 104 of the *Public Health Act 2010* (NSW) was then rendered inoperable given that the definition of a nursing home relied on the definition of 'high level of residential care' in the *Aged Care Act 1997* (Cth).
4. In response to this, the NSW Government published the *Public Health (Nursing Homes) Regulation 2014* that maintained the requirement for a registered nurse to be on duty at all times in facilities that were classified as nursing homes before 1 July 2014. However, this would not apply to any new facilities which commenced operations after 1 July 2014.
5. On 29 October 2015, the NSW Legislative Council General Purpose Standing Committee No. 3 released a report, *Registered nurses in New South Wales nursing homes*. This report recommended that the NSW Government retain the requirement for registered nurses to be on duty in nursing homes at all times and amend the definition of a 'nursing home' under the *Public Health Act 2010* (NSW).
6. The Bill seeks to ensure that the definition of a 'nursing home' in the *Public Health Act 2010* (NSW) is amended to continue the requirement for registered nurses to be on duty in nursing homes at all times, whether or not a facility commenced operation before 1 July 2014.

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. Statute Law (Miscellaneous Provisions) Bill 2016

Date introduced	11 May 2016
House introduced	Legislative Council
Minister responsible	The Hon. John Ajaka MLC
Portfolio	Ageing, Disability Services and Multiculturalism

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to make minor amendments to various Acts and regulations (Schedule 1), and
 - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and
 - (c) to repeal various Acts and instruments and provisions of Acts and instruments (Schedule 4), and
 - (d) to make amendments to various Acts and instruments consequent on the proposed repeal of the *Home Care Service Act 1988* by Schedule 4 (Schedule 5), and
 - (e) to make other provisions of a consequential or ancillary nature (Schedules 3 and 6).

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. David Clarke MLC, on behalf of the Hon. John Ajaka MLC, noted that the Bill continues the statute law revision program which has been in place for over 30 years. He highlighted that Bills of this nature have been introduced in most sessions of Parliament since 1984 and are effective for making minor policy changes, repealing redundant legislation and maintaining the quality of New South Wales statutes.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

3. While many of the provisions in the Bill will commence on a fixed date or on assent, the following actions will commence by proclamation:
 - (a) the repeal of the *Home Care Service Act 1988*; and
 - (b) the commencement of amendments consequent on the repeal of the *Home Care Service Act 1988* (see clause 2 of the Bill).

4. The repeal of the *Home Care Service Act 1988* is enabled by the dissolution of the Home Care Service by proposed amendments to the *National Disability Insurance Scheme (NSW Enabling) Act 2013* in Schedule 1 of the Bill (see Schedule 4 of the Bill, in particular the explanatory note to clause 2).

The Committee generally prefers legislation to commence on a fixed date or on assent, rather than by proclamation. However, the Committee notes that the repeal of the *Home Care Service Act 1988* and the amendments consequent on that repeal are dependent on other amendments in the Bill relating to the National Disability Insurance Scheme, which will commence on 8 July 2016. As such, the Committee acknowledges that it would be desirable for there to be some flexibility with respect to the repeal of the *Home Care Service Act 1988* and the commencement of associated changes. The Committee makes no further comments.

6. Sydney Cricket and Sports Ground Amendment (Development Assessment) Bill 2016*

Date introduced	12 May 2016
House introduced	Legislative Assembly
Member responsible	Mr Alex Greenwich MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to apply planning and local government laws to the carrying out of improvements on certain land to which the *Sydney Cricket and Sports Ground Act 1978* applies.

BACKGROUND

2. The *Sydney Cricket and Sports Ground Act 1978* exempts the operation of planning and local government laws with regard to the carrying out of improvements on the land designated under the Act. This Bill seeks to remove these exemptions so that any future developments are subject to the processes under current laws. In the Second Reading Speech, Mr Greenwich commented that

The Environmental Planning and Assessment Act 1979 and the Local Government Act 1993 set out the requirements for proposed development to limit impacts on the environment, neighbours, traffic and heritage, and provide opportunities for public input in the shaping of the built environment. These Acts ensure that people living adjacent to a proposed development will know about it before it is approved and can have their concerns taken into consideration by decision-makers. Even smaller developments that get approved by private certifiers need to be permissible in a local environmental plan.

ISSUES CONSIDERED BY COMMITTEE

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

7. Taxation Administration Amendment (Collection and Disclosure of Information to Commonwealth) Bill 2016

Date introduced	11 May 2016
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads, Maritime and Freight

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Taxation Administration Act 1996* to enable the Chief Commissioner of State Revenue (the Chief Commissioner) to collect, and disclose to the Commissioner of Taxation of the Commonwealth (the Taxation Commissioner), information about the transfer of freehold and leasehold interests in real property situated in New South Wales, even if:
 - (a) the information is collected only for the purposes of disclosure to the Taxation Commissioner and is not collected under or in relation to the administration of any law of the State (except for the proposed new law), and
 - (b) the information is not disclosed in connection with the administration or execution of any law of the State (except for the proposed new law).
2. The information is proposed to be used by the Australian Taxation Office for the purposes of data-matching and ensuring compliance with the taxation laws of the Commonwealth. In addition, it is proposed that the information (which will include information about the nationality and residency of vendors and purchasers) be used for the purposes of a National Register of Foreign Ownership of Land Titles to be administered by the Australian Taxation Office. The creation of a National Register was agreed to at the Council on Federal Financial Relations held on 16 October 2015.
3. The Bill also provides for related amendments to the *Conveyancing (Sale of Land) Regulation 2010* to prescribe an implied term of a contract for the sale of land that requires a vendor to serve on the purchaser, before completion, a certificate issued under the *Land Tax Management Act 1956* (a current land tax certificate) that shows whether there is any land tax charged on the land. It is intended that the application by the vendor for a current land tax certificate will enable the Chief Commissioner to collect information about the vendor for disclosure to the Taxation Commissioner.

BACKGROUND

4. On 16 October 2015, all Australian Treasurers, with the exception of the Treasurer for the Northern Territory, agreed to establish a national register of foreign ownership of

land titles. The Bill will enable New South Wales to collect new property information, such as a buyer's nationality and citizenship details, for inclusion in the national register from 1 July 2016. At the end of each quarter, the Office of State Revenue will disclose this information to the Australian Taxation Office, which will administer the register. The Minister's Second Reading Speech notes that the national register will strengthen the Commonwealth's foreign investment framework.

5. In addition, the arrangements in the Bill will also provide Commonwealth and State agencies with more data to improve compliance and enforcement in areas such as land tax and capital gains tax.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

6. The Bill overrides any restrictions in the *Privacy and Personal Information Protection Act 1998* to allow the collection of certain property-related information by NSW public sector agencies and the disclosure of that information to the Commissioner of Taxation of the Commonwealth (see in particular proposed section 80D of the *Taxation Administration Act 1996*).

The Bill impacts on privacy rights by overriding provisions in the *Privacy and Personal Information Protection Act 1998* to allow disclosures of property information from NSW public sector agencies to the Commonwealth Commissioner of Taxation. However, the Committee is satisfied that the Bill does not unreasonably intrude on privacy rights given that the transfer of information is intended to improve compliance with tax laws and the foreign investment framework. The Commissioner of Taxation would also be subject to equivalent privacy laws at the Commonwealth level. The Committee 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,

- 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.