



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. PLASTIC SHOPPING BAGS PROHIBITION BILL 2016*

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

Strict liability

The Committee notes that while the Bill introduces an offence of strict liability, it also accepts that these provisions are aimed at ensuring retailers and customers are aware of the proposed changes. The Committee makes no further comment.

2. SECURITY INDUSTRY AMENDMENT (PRIVATE INVESTIGATORS) 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 a specified date. However, the Committee notes the Government's intention to commence this Bill at the same time as a future Bill yet to be introduced. As such, the Committee makes no further comment.

PART TWO - REGULATIONS

1. GOVERNMENT SECTOR EMPLOYMENT AMENDMENT (TRANSFERS TO NON-GOVERNMENT SECTOR) REGULATION 2016

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

Right to adequate compensation for cessation of employment in the government sector

The Committee is concerned that this Regulation unreasonably impacts on the right to adequate compensation for cessation of employment in the government sector by removing the entitlement to redundancy or severance payments in certain circumstances. The Committee refers this Regulation to Parliament for further consideration for the reasons below.

The Committee highlights the very broad definition of a 'non-government sector body' to which the services of the relevant government agency are being transferred. The Committee is particularly concerned that redundancies will not be paid even where an individual does not apply for a comparable position in the relevant body.

Several factors are to be taken into account in determining whether new employment is comparable, including that the person's prior service in the government sector is recognised.

However, in the Committee's view, there are a much larger range of factors individuals may consider when choosing employment. These factors can differ from person to person. For example, while proposed employment may not unreasonably increase an individual's commute to work, an individual with carer's responsibilities may need to work in a certain location to be close to the person they are caring for. Likewise, an individual may choose to

work in a location with good public transport if they do not drive. A person may also prefer to work in the government sector rather than the private sector for various reasons.

Part One – Bills

1. Plastic Shopping Bags Prohibition Bill 2016*

Date introduced	4 August 2016
House introduced	Legislative Assembly
Member responsible	Ms Tamara Smith MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit the retail supply of certain plastic shopping bags so as to:
 - (a) minimise the number of plastic shopping bags entering waterways and the marine environment and so reduce harm to marine animals, and
 - (b) reduce the consumption of plastic products, and
 - (c) encourage more sustainable packaging solutions using reusable and biodegradable alternatives to plastic, and
 - (d) support the community's aspiration for improving environmental sustainability, and
 - (e) reduce the visual impact of plastic shopping bag litter.

BACKGROUND

2. In the Second Reading Speech, Ms Tamara Smith MP, Member for Ballina, stated that it is estimated that more than four million plastic bags are used in Australia each year and 75% of these are sent to land fill once their use has finished. Ms Smith commented:

These lightweight bags are susceptible to being blown from bins or garbage trucks during transport to landfill and from landfill areas, and often end up in waterways and eventually the ocean. Tens of thousands of marine animals die each year from ingesting plastic bags which look like jellyfish and other food often consumed by dolphins, turtles, whales and other marine life.

ISSUES CONSIDERED BY COMMITTEE

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

Strict liability

3. This Bill provides for the prohibition of certain plastic shopping bags. The Bill proposes a phase in period of 12 months. During this phase in period retailers must make alternative shopping bags available for customers.

4. Clause 6 of the Bill provides that a retailer who ordinarily makes single use plastic bags available to customers must:
 - (a) display a notice about the availability of alternative shopping bags; and
 - (b) provide an alternative shopping bag to any customer that requests an alternative.
5. The maximum penalty for not complying with the provisions is 50 penalty units (\$5 500).
6. The Bill has not provided exceptions or defences for failure to comply with the statutory requirements. However, the Committee notes that these types of provisions are not uncommon in regulatory settings.

The Committee notes that while the Bill introduces an offence of strict liability, it also accepts that these provisions are aimed at ensuring retailers and customers are aware of the proposed changes. The Committee makes no further comment.

2. Security Industry Amendment (Private Investigators) Bill 2016

Date introduced	4 August 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Troy Grant MP
Portfolio	Justice and Police

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for private investigators (formerly known as private inquiry agents) to be licensed under the *Security Industry Act 1997* instead of the *Commercial Agents and Private Inquiry Agents Act 2004*.

BACKGROUND

2. This Bill provides for the private investigation industry to be regulated as a security activity under the *Security Industry Act 1997*. As stated in the Second Reading Speech, some private investigation activities may pose a level of risk to the public due to the intrusive nature of their activities, thus the regulation of the industry would be better placed under the *Security Industry Act 1997*.
3. The Deputy Premier and Minister for Justice and Police further commented that regulating private investigators under the same framework as the security industry aligns with most other Australian jurisdictions.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

4. The Bill provides for the commencement of the Act on a day or days to be appointed by proclamation. This provides the Executive the power to commence the Act on a day of its choosing.
5. In the Second Reading Speech, the Deputy Premier and Minister for Justice and Police stated that the Government intends to introduce further legislation to regulate commercial agents and repeal the *Commercial Agents and Private Inquiry Agents Act 2004*. The Deputy Premier commented that it is the Government's intention to commence this Bill at the same time as the future Bill. For this reason, this Bill commences on a date to be proclaimed.

The Committee prefers legislation to commence on assent or a specified date. However, the Committee notes the Government's intention to commence this Bill at the same time as a future Bill yet to be introduced. As such, the Committee makes no further comment.

Part Two - Regulations

1. Government Sector Employment Amendment (Transfers to Non-Government Sector) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to provide that a government sector employee whose employment in a government sector agency ceases as a result of the transfer to a non-government sector body of the services provided by the agency is not entitled to any severance or redundancy payment for the cessation of employment if the person is offered comparable employment by the non-government sector body.

ISSUES CONSIDERED BY COMMITTEE

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

Right to adequate compensation for cessation of employment in the government sector

2. This Regulation provides that where services delivered by a government sector agency are transferred to a non-government sector body, persons offered comparable employment by that body may not be entitled to severance or redundancy payments from the government sector agency.
3. The definition of a 'non-government sector body' is very broad and includes private sector entities, not-for-profit entities, local councils, State owned corporations and public authorities or government agencies of the Commonwealth or another State or Territory.
4. To enliven these provisions, the relevant individual must either:
 - be offered comparable employment by the non-government sector body, or
 - fail to apply for comparable employment with the relevant body, of which they have been notified.
5. There are several factors to take into account in determining whether employment is comparable, including:
 - prior service in the government sector is recognised;
 - the work is similar;
 - any new industrial instrument or agreement applying to the new employment is substantially similar to, and no less favourable than, any government sector industrial instrument that applied to the former employment; and

- the new employment does not unreasonably increase the individual's commute to work (see proposed clause 25A of the *Government Sector Employment Regulation 2014*).

The Committee is concerned that this Regulation unreasonably impacts on the right to adequate compensation for cessation of employment in the government sector by removing the entitlement to redundancy or severance payments in certain circumstances. The Committee refers this Regulation to Parliament for further consideration for the reasons below.

The Committee highlights the very broad definition of a 'non-government sector body' to which the services of the relevant government agency are being transferred. The Committee is particularly concerned that redundancies will not be paid even where an individual does not apply for a comparable position in the relevant body.

Several factors are to be taken into account in determining whether new employment is comparable, including that the person's prior service in the government sector is recognised.

However, in the Committee's view, there are a much larger range of factors individuals may consider when choosing employment. These factors can differ from person to person. For example, while proposed employment may not unreasonably increase an individual's commute to work, an individual with carer's responsibilities may need to work in a certain location to be close to the person they are caring for. Likewise, an individual may choose to work in a location with good public transport if they do not drive. A person may also prefer to work in the government sector rather than the private sector for various reasons.

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:
 - (c) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (d) 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
- (e) 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.