



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No. 24/56 – 13 September 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, 34p 30 cm

Chair: Mr Michael Johnsen MP

13 September 2016

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 24 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 24 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. CRIMINAL PROCEDURE AMENDMENT (SUMMARY PROCEEDINGS FOR INDICTABLE OFFENCES) BILL 2016	1
2. SCRAP METAL INDUSTRY BILL 2016	3
PART TWO – REGULATIONS	7
1. FIRE BRIGADES AMENDMENT (FALSE ALARM CHARGE) REGULATION 2016	7
2. HEALTH PRACTITIONER REGULATION (NEW SOUTH WALES) REGULATION 2016	8
3. MINING REGULATION 2016	10
4. PUBLIC LOTTERIES REGULATION 2016	12
5. SPORTING VENUES (INVASIONS) REGULATION 2016	13
6. TERRORISM (POLICE POWERS) REGULATION 2016	14
7. WORKERS COMPENSATION REGULATION 2016	17
APPENDIX ONE – FUNCTIONS OF THE COMMITTEE	21

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. CRIMINAL PROCEDURE AMENDMENT (SUMMARY PROCEEDINGS FOR INDICTABLE OFFENCES) BILL 2016

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

Right to trial by jury

The Committee notes that moving matters from the District Court to the Local Court may impact on an individual's right to a trial by jury. However, given the aims of the legislation in relation to the more timely resolution of matters, and the associated benefits of a timely resolution to the accused, the Committee makes no further comment in relation to this issue.

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

Commencement by proclamation

The Committee generally prefers Acts to commence on a fixed date, or on assent, so the Executive does not have unfettered control over the commencement date. However, the Committee notes the administrative reasons provided by the Attorney General in her second reading speech and makes no further comment in relation to this issue.

2. SCRAP METAL INDUSTRY BILL 2016

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

Right against self-incrimination; right to silence

The Committee notes that placing a proactive duty on scrap metal dealers to report any scrap metal in their possession or sold to them if they suspect it has been stolen may impact on a right against self-incrimination. Given the prevention of property crime aims of the Bill, and that this does not represent a new practice, the Committee makes no further comment in relation to the right against self-incrimination.

The Committee notes that requiring a person to answer questions in relation to documents or any other relevant matter following the entry of a scrap metal business by a police officer may impact on the right to silence. However, the Committee also notes that this does not represent a new practice and makes no further comment in relation to this issue.

Right to compensation

The Committee notes that the Bill provides the Commissioner or the Local Court with the power to close a business premises in circumstances where it may transpire that the business was not acting improperly. Given the requirement that the Commissioner form a reasonable suspicion before issuing closure orders, and the aims of this Bill, the Committee makes no further comment in relation to this issue.

Property rights

The Committee notes providing police with a power to enter a property without a warrant interferes with an individual's right to quiet enjoyment of their property. The Committee also

notes that providing the police with the power to take documents, photographs, films, audio, video and to require the production of documents and the answering of questions trespasses on an individual's right to silence and right against self-incrimination. Given the aims of this legislation, and that this is a pre-existing practice in many aspects of policing, the Committee makes no further comment in relation to this issue.

Reverses onus of proof

The Committee notes that providing officers with the power to issue penalty notices has the effect of requiring a recipient of such a notice with the obligation to prove their innocence, thus reversing the onus of proof. Notwithstanding that a number of the clauses that attract penalties may unduly trespass on rights liberties - including a prohibition on bartering, the right against self-incrimination, and the right to silence – the Committee notes the pre-existing practice of police officers issuing penalty notices and makes no further comment in relation to this issue.

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Interim closure of premises

The Committee notes the aims of the legislation, being the prevention of property crime, and also notes that the Commissioner may only order the interim closure of a scrap metal business for up to 72 hours and may only do this once during a seven day period. Notwithstanding the advantages to the police in being able to issue interim closures, the Committee prefers the process outlined in clause 18 where the scrap metal business may be heard by the court with the court's decision also being reviewable. However, given the aims of the Bill the Committee makes no further comment in relation to this issue.

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

Unknown regulatory burden

The Committee notes that scrap metal businesses will be required to pay a fee in order to continue to operate. As this fee is to be set by the regulations, the Committee is unable to comment on whether the regulatory burden will be onerous. The Committee also notes that the Minister has outlined in the second reading speech that the fee is likely to be less than \$300 for a three-year registration. The Committee would prefer that the regulatory burden be outlined in the principal legislation. However, based on the information outlined in the second reading speech the Committee considers the fee to be reasonable and makes no further comment on this issue.

Creation of offences

Notwithstanding the limit of 10 penalty units, the Committee refers to Parliament the appropriateness of delegating the power of creating offences to the Executive rather than ensuring that offences are contained within principal legislation and subject to parliamentary debate.

Commencement by proclamation

The Committee generally prefers Acts to commence on a fixed date, or on assent, so the Executive does not have unfettered control over the commencement date. However, the Committee understand that establishing a new regulatory scheme may require some flexibility in the commencement of certain provisions. Notwithstanding the uncertainty that may result

within the scrap metal industry if this legislation is passed but a commencement date is not known, the Committee makes no further comments.

PART TWO – REGULATIONS

1. FIRE BRIGADES AMENDMENT (FALSE ALARM CHARGE) REGULATION 2016

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

Increased charge

The increased charge for responding to a subsequent false alarm is more than CPI increases since 1 July 2013. This may create financial difficulties for some individuals, particularly those on a limited income. However, the Committee notes that the charge will only apply in limited circumstances where the fire brigade has responded to a false alarm on a second or subsequent occasion within 60 days. The Commissioner is empowered to waive or reduce this charge, having regard to such matters as the Commissioner considers relevant. The Committee also acknowledges that constantly responding to false alarms may divert the fire brigade's resources from other critical situations. For these reasons, the Committee does not consider the increase to be an undue trespass on rights and liberties.

2. HEALTH PRACTITIONER REGULATION (NEW SOUTH WALES) REGULATION 2016

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

Privacy

The Committee considers that requiring the reporting of the mental health status of health practitioners and students to their relevant Council and National Board trespasses on those individuals' right to privacy. Given the patient safety aims, the Committee does not consider this to be an undue trespass in these circumstances.

The Committee notes that keeping records in relation to the partners of patients with chlamydia impacts on their privacy. However, given that the records are only kept in circumstances where those partners are prescribed or supplied with treatment, the Committee does not consider this to be an undue trespass.

3. MINING REGULATION 2016

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

Non reviewable decisions

The Committee notes that the regulation does not provide a right of review in relation to the Minister's decisions in relation to the matters outlined in clause 75. The Committee notes that providing for non-reviewable decisions by the Minister may have an adverse impact on the business community insofar as it may affect confidence in decision making processes. As this does not represent a new practice, the Committee makes no further comment.

Charging fees not outlined in the principal legislation or regulation

The Committee notes that empowering the Secretary to set fees that are not provided for in the principal legislation or the regulation may prevent a mining lease holder from knowing their regulatory costs. The capacity of the Secretary to introduce such fees may have an adverse impact on the business community insofar as it may deter businesses from investing in mining in New South Wales. However, the Committee has reference to the fee schedule

outlined in Schedule 9 of the regulation and notes that the fees listed have not increased based on the 2010 Regulation. The Committee considers that this should give some confidence to the business community as to the stability of the fee structure within which the Mining Act and Regulation operates. As such, the Committee makes no further comment in relation to this Regulation.

4. PUBLIC LOTTERIES REGULATION 2016

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

Expiring property rights

The Committee notes that requiring an individual to claim a prize within six years has the effect of placing an expiry period on a property right. The Committee notes that this is an ongoing practice and makes no further comment in relation to this issue.

Privacy

The Committee notes the presumption in favour of publishing the identity of persons claiming a prize. Notwithstanding the right to privacy, the Committee notes that the presumption in favour of publishing the identity of persons claiming a prize is an ongoing practice and makes no further comment in relation to this issue.

5. SPORTING VENUES (INVASIONS) REGULATION 2016

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

Strict liability, privacy and silence

The Committee notes that individuals who are present on the playing surface at the prohibited time are required to pay 50 penalty units and are subject to either a 12 month or lifetime ban. The Committee also notes that an offence in relation to Central Coast Stadium, Wollongong Stadium, Newcastle Stadium or Parramatta Stadium results in an equivalent ban at the Sydney Cricket Ground, the Sydney Football Stadium and the Sydney Olympic Park Stadium.

The Committee particularly notes that requirements to provide name and address may impact on individuals' right to silence and allowing officers to photograph accused individuals may impact on their right to privacy.

The Committee notes the safety aims, specifically in relation to players, officials and the public of this Regulation. The Committee also notes that this is a pre-existing practice. As such, the Committee makes no further comments in relation to this Regulation.

6. TERRORISM (POLICE POWERS) REGULATION 2016

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

Rights of persons detained under preventative detention orders

The Committee is concerned that a number of safeguards that were included in the Crimes (Administration of Sentences) Regulation 2014 are ousted by this 2016 Regulation. Of particular concern to the Committee is the ousting of the role of the Review Council, the Official Visitor and the incapacity of legal practitioners to meet and correspond with individuals who are being detained under a preventative detention order.

The Committee highlights that these rights may be fundamental to an accused person when seeking relief, and/or mounting a defence, in the courts.

The Committee notes the national framework that the preventative detention scheme works within, and the role of the judiciary in assessing a person before an order is granted that they be detained under a preventative detention order.

The Committee recognises that the rights of persons detained under a preventative detention scheme are severely impacted. The Committee also notes that trespass on rights is being achieved through an act of the Executive, rather than through an Act of Parliament. The Committee notes the national security aims, the role of the judiciary in assessing such persons before they are detained under the scheme and the importance of a consistent approach by all states and territories to this issue. However, given the nature of the trespass on rights the Committee notes its preference that such a scheme be established by principal legislation rather than by regulation.

7. WORKERS COMPENSATION REGULATION 2016

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

Right to fair workers compensation

The Committee previously commented on this issue on 10 May 2016 in Digest 18/56 when these amendments were first inserted into the previous Regulation. The Committee restates its comments here. The Regulation prescribes certain circumstances in which an employer responsible for a work injury is not liable to pay compensation to the relevant employee. However, the Committee recognises that the exclusions strike a fair balance between workers and employers by ensuring workers gather appropriate evidence for their claim and carry out training and education from registered providers which is relevant to their future. Employers will also not be liable for work assistance which only leads to very short term re-employment. The Committee makes no further comments.

Limitations on admissible evidence

The Committee acknowledges that placing limits on the number of medical reports which may be admissible in workers compensation proceedings may assist with controlling the costs of the scheme. It may also alleviate the possibility of conflicting reports from a range of practitioners, which may cause confusion. The Committee notes that Part 9 of the Workers Compensation Regulation 2016 does not change current practice. Notwithstanding that Part 9 of this regulation may place restrictions on admissible evidence which may lead to unjust outcomes in certain cases where further medical evidence is needed to adequately determine the claim, given that this does not represent a change in the current practice the Committee makes no further comment on this issue.

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

Restrictions on marketing of work injury agent services

Restrictions on advertising may impact on businesses providing work injury agent services and individuals seeking the assistance of such services. However, the Committee acknowledges that such businesses are permitted to advertise in particular circumstances. The Committee notes that some individuals with work injuries may be in vulnerable situations. As such, restrictions of this kind minimise the risk of unscrupulous operators misrepresenting

themselves as lawyers or overstating the benefits an individual may receive from their services. The Committee therefore makes no further comments.

Restrictions on costs recoverable in compensation matters

Placing restrictions and caps on costs in workers compensation matters may impact on businesses assisting with these claims, mainly lawyers and law firms. However, in the Committee's view, the right of injured workers to adequate compensation, after costs, outweighs the desires of businesses and law firms to completely unregulated costs. The Committee therefore does not consider the restrictions on costs to be unreasonable in the circumstances.

Part One – Bills

1. Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016

Date introduced	25 August 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Gabrielle Upton
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Criminal Procedure Act 1986* (the *principal Act*):
 - (a) to provide for certain indictable breaking and entering offences under the Crimes Act 1900 to be dealt with summarily unless the prosecutor or person charged elects otherwise, and
 - (b) to make other amendments in the nature of statute law revision.

BACKGROUND

2. The Bill follows a 2011 Sentencing Council Report “An Examination of Sentencing Powers of the Local Court in NSW” which recommended a review to determine whether any additional offences should be re-categorised from strictly indictable to summary offences or indictable offences with the option to hear the matter the in Local Court.
3. Following a review by Department of Justice and relying on data collected by the Bureau of Crime Statistics and Research (BOCSAR), the Bill seeks to re-categorise four break and enter offences to enable police prosecutors to elect to prosecute those offences in the Local Court when appropriate.
4. The Attorney General highlights that moving matters to the Local Court will enable matters to be heard more quickly, reducing delay and uncertainty for victims and witnesses, avoiding the evidence of providing evidence twice in the circumstances of committal proceedings, accused persons receiving justice faster, quicker access to support and supervision for guilty persons and earlier acquittals for innocent accused people.¹

¹ The Hon. Gabrielle Upton, second reading speech *Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016*, Hansard, 25 August 2016

ISSUES CONSIDERED BY COMMITTEE

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

Right to trial by jury

5. Clause 3 of Schedule 1 of the Bill moves four break and enter matters to Table 1 of Schedule 1 of the *Criminal Procedure Act 1986*, enabling police prosecutors to prosecute the matters in the Local Court rather than the District Court. There are no juries in the Local Court.

The Committee notes that moving matters from the District Court to the Local Court may impact on an individual's right to a trial by jury. However, given the aims of the legislation in relation to the more timely resolution of matters, and the associated benefits of a timely resolution to the accused, the Committee makes no further comment in relation to this issue.

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

Commencement by proclamation

6. Clause 2 of the Bill outlines that the Act will commence on a day or days to be appointed by proclamation. In the second reading speech, the Attorney General highlighted that this is to allow time for police and court computer systems to be updated to accommodate the reform.²

The Committee generally prefers Acts to commence on a fixed date, or on assent, so the Executive does not have unfettered control over the commencement date. However, the Committee notes the administrative reasons provided by the Attorney General in her second reading speech and makes no further comment in relation to this issue.

² The Hon. Gabrielle Upton, second reading speech *Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016, Hansard*, 25 August 2016

2. Scrap Metal Industry Bill 2016

Date introduced	24 August 2016
House introduced	Legislative Assembly
Minister responsible	The Hon. Troy Grant MP
Portfolio	Minister for Justice and Police

PURPOSE AND DESCRIPTION

1. The object of this Bill is to regulate the scrap metal industry as follows:
 - (a) to require persons who carry on a business of dealing in scrap metal (*scrap metal dealers*) to register the business with the Commissioner of Police,
 - (b) to prohibit scrap metal dealers from paying cash for scrap metal,
 - (c) to require scrap metal dealers to keep and maintain records of transactions for buying scrap metal, including details of the person selling the scrap metal,
 - (d) to require scrap metal dealers to report suspicious transactions to the police,
 - (e) to prohibit scrap metal dealers from accepting a motor vehicle (or any motor vehicle body, engine or chassis) as scrap metal if it does not display its identification details,
 - (f) to provide for short-term and long-term closure orders in respect of premises at which a scrap metal business is being carried on if the business is not registered under the proposed Act or serious criminal offences have been committed on the premises,
 - (g) to authorise police officers without a warrant to enter premises at which a scrap metal business is being carried on to investigate contraventions of the proposed Act and to search, take photographs and recordings and seize and copy records,
 - (h) to provide for other regulatory measures in respect of the scrap metal industry.

BACKGROUND

2. This Bill forms part of the government's response to property crime in New South Wales. The Minister reported that there are between 600 and 700 scrap metal businesses operating across New South Wales in a mostly unregulated fashion.³
3. The regulatory model introduced by this Bill is designed to prevent property crime that is opportunistic, organised, large or small-scale crime. The model proposed in the Bill seeks to strike the right balance between the operation of scrap metal businesses and police powers to investigate property theft. The model addresses the quick and anonymous disposal of stolen property such as cars, hot water system, building materials and parts of critical infrastructure.

³ *Hansard*, Scrap Metal Industry Bill 2016, Second Reading Speech, 24 August 2016

ISSUES CONSIDERED BY COMMITTEE

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

Right against self-incrimination; right to silence

4. Clause 13 of the Bill places a duty on scrap metal dealers to inform a police officer of any suspicion they may have that scrap metal in their possession or sold to them may have been stolen.
5. Clause 23 also requires a person to answer any question relating to any document or any other relevant matter.

The Committee notes that placing a proactive duty on scrap metal dealers to report any scrap metal in their possession or sold to them if they suspect it has been stolen may impact on a right against self-incrimination. Given the prevention of property crime aims of the Bill, and that this does not represent a new practice, the Committee makes no further comment in relation to the right against self-incrimination.

The Committee notes that requiring a person to answer questions in relation to documents or any other relevant matter following the entry of a scrap metal business by a police officer may impact on the right to silence. However, the Committee also notes that this does not represent a new practice and makes no further comment in relation to this issue.

Right to compensation

6. Division 1 of the Bills outlines the process by which a scrap metal business may be the subject of closure orders. Clause 20 specifies that compensation is not payable to any person for the closure of premises under Division 1.

The Committee notes that the Bill provides the Commissioner or the Local Court with the power to close a business premises in circumstances where it may transpire that the business was not acting improperly. Given the requirement that the Commissioner form a reasonable suspicion before issuing closure orders, and the aims of this Bill, the Committee makes no further comment in relation to this issue.

Property rights

7. Division 2 of the Bill outlines the powers of entry and inspection in relation to scrap metal business premises. The Division provides that a police officer may enter without a warrant at any reasonable time for the purposes of determining whether there has been compliance with, or a contravention of, all sections of this Bill. This right does not extend to parts of the premises used for residential purposes without permission of the occupier or a warrant. Once on the premises, a police officer may take documents, photographs, films, audio, video and require the production of documents and answers to questions. This includes a power to seize anything that will provide evidence of the commission of an offence [clause 23(2)].

The Committee notes providing police with a power to enter a property without a warrant interferes with an individual's right to quiet enjoyment of their property. The Committee also notes that providing the police with the

power to take documents, photographs, films, audio, video and to require the production of documents and the answering of questions trespasses on an individual's right to silence and right against self-incrimination. Given the aims of this legislation, the Committee makes no further comment in relation to this issue.

Reverses onus of proof

8. Clause 27 of the Bill outlines that a police officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.

The Committee notes that providing officers with the power to issue penalty notices has the effect of requiring a recipient of such a notice with the obligation to prove their innocence, thus reversing the onus of proof. Notwithstanding that a number of the clauses that attract penalties may unduly trespass on rights liberties - including a prohibition on bartering, the right against self-incrimination, and the right to silence – the Committee notes the pre-existing practice of police officers issuing penalty notices and makes no further comment in relation to this issue.

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Interim closure of premises

9. Clause 17 of the Bill outlines the circumstances in which the Commission may make an order that specified premises be closed. Interim closures may take place for up to 72 hours every seven days in circumstances where the Commissioner is satisfied that the scrap metal business is not registered or that a serious criminal offence is being committed. This is a non-reviewable power of the Commissioner.
10. In contrast, clause 18 of the Bill enables the local court to close a premises for such a period or until such time as the Court considers appropriate. The scrap metal business may respond to such an application, and the court's decision is reviewable.

The Committee notes the aims of the legislation, being the prevention of property crime, and also notes that the Commissioner may only order the interim closure of a scrap metal business for up to 72 hours and may only do this once during a seven day period. Notwithstanding the advantages to the police in being able to issue interim closures, the Committee prefers the process outlined in clause 18 where the scrap metal business may be heard by the court with the court's decision also being reviewable. However, given the aims of the Bill the Committee makes no further comment in relation to this issue.

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

Unknown regulatory burden

11. Clause 6 of the Bill outlines that to register a business a fee must be paid under clause 7. Clause 7 outlines that the fee is to be prescribed by the regulations.

The Committee notes that scrap metal businesses will be required to pay a fee in order to continue to operate. As this fee is to be set by the regulations, the

Committee is unable to comment on whether the regulatory burden will be onerous. The Committee also notes that the Minister has outlined in the second reading speech that the fee is likely to be less than \$300 for a three-year registration. The Committee would prefer that the regulatory burden be outlined in the principal legislation. However, based on the information outlined in the second reading speech the Committee considers the fee to be reasonable and makes no further comment on this issue.

Creation of offences

12. Clause 28(3) of the Bill provides the regulations with the power to create offences punishable by a penalty not exceeding 10 penalty units.

Notwithstanding the limit of 10 penalty units, the Committee refers to Parliament the appropriateness of delegating the power of creating offences to the Executive rather than ensuring that offences are contained within principal legislation and subject to parliamentary debate.

Commencement by proclamation

13. Clause 2 of the Bill outlines that the Act is to commence on a day or days to be appointed by proclamation.

The Committee generally prefers Acts to commence on a fixed date, or on assent, so the Executive does not have unfettered control over the commencement date. However, the Committee understand that establishing a new regulatory scheme may require some flexibility in the commencement of certain provisions. Notwithstanding the uncertainty that may result within the scrap metal industry if this legislation is passed but a commencement date is not known, the Committee makes no further comments.

Part Two – Regulations

1. Fire Brigades Amendment (False Alarm Charge) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Fire Brigades Regulation 2014* to increase (from \$1,250 to \$1,600) the charge that is payable when a fire brigade responds to an alarm that is afterwards discovered to have been a false alarm and where it is the second or subsequent occasion of any such false alarm during any period of 60 days. The charge for a false alarm was last increased on 1 July 2013.

ISSUES CONSIDERED BY COMMITTEE

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

Increased charge

2. The Regulation increases the charge payable when the fire brigade responds to a false alarm on a second or subsequent occasion within a period of 60 days from \$1,250 to \$1,600.
3. The Commissioner of Fire and Rescue NSW may, at his or her discretion, waive or reduce this charge having regard to such matters as the Commissioner considers relevant (see section 43 of the *Fire Brigades Act 1989*).

The increased charge for responding to a subsequent false alarm is more than CPI increases since 1 July 2013. This may create financial difficulties for some individuals, particularly those on a limited income. However, the Committee notes that the charge will only apply in limited circumstances where the fire brigade has responded to a false alarm on a second or subsequent occasion within 60 days. The Commissioner is empowered to waive or reduce this charge, having regard to such matters as the Commissioner considers relevant. The Committee also acknowledges that constantly responding to false alarms may divert the fire brigade's resources from other critical situations. For these reasons, the Committee does not consider the increase to be an undue trespass on rights and liberties.

2. Health Practitioner Regulation (New South Wales) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with some minor changes, the *Health Practitioner Regulation (New South Wales) Regulation 2010*, which is repealed on 1 September 2016 under section 10 (2) of the *Subordinate Legislation Act 1989*.
2. This Regulation makes provision with respect to the following:
 - (a) membership of each Council established by the *Health Practitioner Regulation National Law (NSW)*,
 - (b) infection control standards that medical practitioners, nurses, midwives, pharmacists and physiotherapists practising in New South Wales must comply with,
 - (c) records a medical practitioner, or a corporation that engages medical practitioners to provide medical services, must make and keep in relation to each patient of the medical practitioner or corporation,
 - (d) standards that premises must comply with for approval by the Pharmacy Council to be given for those premises to be used for a pharmacy business,
 - (e) certain fees payable by pharmacists, holders of financial interests in pharmacy businesses and persons inspecting the Register of Pharmacies kept by the Pharmacy Council,
 - (f) specifying the person who must notify the Council for a health profession of the mental incapacity of a health practitioner or student registered in the profession.
3. This Regulation is made under the *Health Practitioner Regulation National Law (NSW)*, including section 247A.
4. Parts 1 and 5 and Schedules 1 and 2 of this Regulation comprise or relate to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature.

Under the *Subordinate Legislation Act*, on 6 September 2016 the Committee received from the Ministry of Health the draft regulation, the Regulatory Impact Statement, the submissions received on the draft regulation, and the final regulation.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

5. Clause 16 of this Regulation requires the superintendent of a mental health facility to provide notice to the relevant health profession Council and the relevant health

profession National Board in circumstances where a registered health practitioner or student is involuntarily admitted to the mental health facility. Clause 16 also requires that the NSW Trustee or Guardian make a similar notification if the registered health practitioner or student is a protected person under the *NSW Trustee and Guardian Act 2009*.

The Committee considers that requiring the reporting of the mental health status of health practitioners and students to their relevant Council and National Board trespasses on those individuals' right to privacy. Given the patient safety aims, the Committee does not consider this to be an undue trespass in these circumstances.

6. Clause 2 of Schedule 4 of the regulation requires that records be kept in relation to partners of patients with chlamydia in circumstances where the partner is prescribed or supplied with azithromycin.

The Committee notes that keeping records in relation to the partners of patients with chlamydia impacts on their privacy. However, given that the records are only kept in circumstances where those partners are prescribed or supplied with treatment, the Committee does not consider this to be an undue trespass.

3. Mining Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the Mining Regulation 2010. That Regulation is due to be repealed on 1 September 2016 under section 10 (2) of the Subordinate Legislation Act 1989.
2. This Regulation makes provision for the following:
 - (a) fossicking,
 - (b) activities that are taken not to be prospecting or mining,
 - (c) authorities issued under the Act (that is, exploration licences, assessment leases and mining leases),
 - (d) small-scale titles issued under the Act (that is, mineral claims and opal prospecting licences),
 - (e) access management plans,
 - (f) the reports that are required to be furnished by the holders of authorisations,
 - (g) the use of audit information and the disclosure of protected documents,
 - (h) the payment of royalties by the holder of a mining lease,
 - (i) fees (including annual rental fees) and levies payable in relation to authorisations,
 - (j) the constitution and procedure of boards of management, to which the Minister or Secretary may delegate functions,
 - (k) the offences under the Mining Act 1992 and the Regulation that can be dealt with by penalty notice and the penalty that applies if they are dealt with that way.
3. This Regulation is made under the Mining Act 1992, including sections 388 (the general regulation-making power) and 390, Schedule 4 (the general regulation-making power) and the sections referred to in the Regulation.

ISSUES CONSIDERED BY COMMITTEE

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

Non reviewable decisions

4. Clause 75 of the regulation provides that if there is a dispute about the quantity of the minerals disposed of or held by the holder of a mining lease, or the quantity of coal disposed of by the holder of a mining lease or whether and the extent to which coal was

covered by open cut mining, underground mining or deep underground mining, a determination is to be made by the Minister and that determination is final and binding.

The Committee notes that the regulation does not provide a right of review in relation to the Minister's decisions in relation to the matters outlined in clause 75. The Committee notes that providing for non-reviewable decisions by the Minister may have an adverse impact on the business community insofar as it may affect confidence in decision making processes. As this does not represent a new practice, the Committee makes no further comment.

Charging fees not outlined in the principal legislation or regulation

5. Clause 79 provides that the Secretary may determine the fee payable for any service provided in connection with the administration or execution of the Act for which a fee is not prescribed by this Regulation.

The Committee notes that empowering the Secretary to set fees that are not provided for in the principal legislation or the regulation may prevent a mining lease holder from knowing their regulatory costs. The capacity of the Secretary to introduce such fees may have an adverse impact on the business community insofar as it may deter businesses from investing in mining in New South Wales. However, the Committee has reference to the fee schedule outlined in Schedule 9 of the regulation and notes that the fees listed have not increased based on the 2010 Regulation. The Committee considers that this should give some confidence to the business community as to the stability of the fee structure within which the Mining Act and Regulation operates. As such, the Committee makes no further comment in relation to this Regulation.

4. Public Lotteries Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with minor amendments, the *Public Lotteries Regulation 2007*, which was repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*. The disallowance date for this Regulation is 21 October 2016.
2. The Regulation makes provisions in relation to the time within which claims for unclaimed public lottery prizes must be made, the disposal of unclaimed public lottery prizes, requests for anonymity, responsible practices in the conduct of public lotteries and licensing and contract matters relating to the public lotteries.
3. By way of email on 30 August 2016, and as required under section 5(4) of the *Subordinate Legislation Act 1989*, the Committee received a Regulatory Impact Statement and a report on the public consultation process that informed the development of the new regulation.

ISSUES CONSIDERED BY COMMITTEE

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

Expiring property rights

4. The Regulation provides that a claim for an unclaimed prize must take place within six years.

The Committee notes that requiring an individual to claim a prize within six years has the effect of placing an expiry period on a property right. The Committee notes that this is an ongoing practice and makes no further comment in relation to this issue.

Privacy

5. The Regulation provides that individuals may request anonymity either before or after winning a prize.

The Committee notes the presumption in favour of publishing the identity of persons claiming a prize. Notwithstanding the right to privacy, the Committee notes that the presumption in favour of publishing the identity of persons claiming a prize is an ongoing practice and makes no further comment in relation to this issue.

5. Sporting Venues (Invasions) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the *Sporting Venues (Invasions) Regulation*, which was repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*. The disallowance date for this Regulation is 21 October 2016.
2. The Regulation makes provisions for prescribing Central Coast Stadium, Wollongong Stadium, Newcastle Stadium and Parramatta Stadium as designated sporting venues for the purposes of the *Sporting Venues (Invasions) Act 2003*.

ISSUES CONSIDERED BY COMMITTEE

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

Strict liability, privacy and silence

3. The Regulation operates within a strict liability scheme. Any individual accused of invading the playing surface of the listed sporting venues is required to pay the 50 penalty units and faces a ban of 12 months or a life ban if they have previously been banned. This ban relates to the sporting venue at which they are accused of invading, and additionally the Sydney Cricket Ground, the Sydney Football Stadium and Sydney Olympic Park Stadium.
4. Proceedings for an offence may be dealt with summarily before the Local Court.
5. The Regulation operates to require individuals who are suspected on reasonable grounds to have committed or to have been involved in the commission of a contravention of the principal Act to state their name and address when requested by authorised officers and allows photographs to be taken of such individuals.

The Committee notes that individuals who are present on the playing surface at the prohibited time are required to pay 50 penalty units and are subject to either a 12 month or lifetime ban. The Committee also notes that an offence in relation to Central Coast Stadium, Wollongong Stadium, Newcastle Stadium or Parramatta Stadium results in an equivalent ban at the Sydney Cricket Ground, the Sydney Football Stadium and the Sydney Olympic Park Stadium.

The Committee particularly notes that requirements to provide name and address may impact on individuals' right to silence and allowing officers to photograph accused individuals may impact on their right to privacy.

The Committee notes the safety aims, specifically in relation to players, officials and the public of this Regulation. The Committee also notes that this is a pre-existing practice. As such, the Committee makes no further comments in relation to this Regulation.

6. Terrorism (Police Powers) Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with minor amendments, the provisions of the *Terrorism (Police Powers) Regulation 2011*, which was repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*. The disallowance date for this Regulation is 21 October 2016.
2. The Regulation makes provisions for, amongst other matters, the delegation of functions by the Commissioner of Police, the keeping and inspection of documents relating to covert search warrants and provisions that do not apply in respect of a person detained under a preventative detention order.

ISSUES CONSIDERED BY COMMITTEE

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

Rights of persons detained under preventative detention orders

3. Clause 8 of this Regulation excludes certain legislated rights in relation to individuals who are detained under a Part 2A of the *Terrorism (Police Powers) Act 2002* preventative detention order.
4. Clause 8 ousts the following rights:
 - i. The capacity of the Review Council to review a continuous period of segregated or protective custody that exceeds 14 days;
 - ii. The capacity of the Review Council to suspend a segregated or protective custody direction or the transfer of an inmate to another correctional centre;
 - iii. The procedures for a Review Council direction;
 - iv. The Review Council's determination process;
 - v. The capacity of the Commissioner to make a local leave order or an interstate leave order, enabling an inmate to be taken from a correctional centre to any place in the state or interstate respectively;
 - vi. The ability of the Minister to order the transfer of juveniles from a juvenile centre to an adult centre or from an adult centre to a juvenile centre;
 - vii. Movement of inmates in Norfolk Island;
 - viii. The capacity of the Review Council to give a serious offender a security classification that would allow the offender to become eligible for unescorted leave;

- ix. The ability of Official Visitors to meet with an inmate, to receive and deal with inmate complaints and report to the Minister and the Inspector of Custodial Services with respect to that inmate at least once every six months;
- x. To be notified of the role of an Official Visitor;
- xi. To be placed in a correctional centre following the Commissioner's regard to issues such as inmate's classification, provision of health care services, any assessment made as to the inmate's physical or mental health, the level of risk that the inmate poses to good order and security and other matters;
- xii. To have the appropriateness of the correctional centre be reviewed by the general manager, with the general manager ensuring a report with respect to the placement be sent to the Commissioner and in certain circumstances to the Review Council in circumstances of unsuitability;
- xiii. To have the Review Council review any report prepared by the general manager of a correctional centre with respect to placement or continued placement of an inmate who is either a serious offender or with high security, extreme high security, extreme high risk restricted or national security interest designation;
- xiv. To have the Commissioner make a decision with respect to the inmate's placement or continued placement in a centre after considering any report and any submissions by the Review Council;
- xv. To have a case plan prepared and adopted as soon as practicable after becoming a convicted inmate, which is to indicate the services and programs in which the inmate should be encouraged to participate, provision of health care services, strategies to minimise likelihood of self-harm occurring. If the plan is inconsistent with the sentencing court's comments in relation to the inmate, reasons are to be provided for the inconsistency, with the Review Council having the capacity to provide submissions in relation to some case plan reports;
- xvi. To have an accredited chaplain arrange a visit with the chaplain's assistant or by persons suitably qualified in counselling, vocational guidance or other services;
- xvii. To have an accredited chaplain minister to an inmate with the inmate's consent;
- xviii. To be visited by an individual who is at the centre either generally or for the purpose of seeing a particular inmate at the centre;
- xix. To be visited by the inmate's legal practitioner;
- xx. To be visited by diplomatic or consular representatives if a foreign national, or a national or international organisation (for example, Amnesty International) if the inmate is a refugee or stateless person;
- xxi. To be visited by a field officer of the Aboriginal Legal Service if the inmate is Aboriginal;
- xxii. To send or receive letters or parcels, including to legal practitioners;

- xxiii. To receive notification as to the date and time of the Official Visitor, to receive advice from the general manager that the inmate may request the Official Visitor manage a complaint or inquiry,
 - xxiv. To have requests to speak with the Official Visitor referred by a correctional officer to the general manager without unnecessary delay.
5. Part 2A was inserted in the Act via the *Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005*. The purpose of the amendment was to implement a preventative detention scheme designed to detain persons in order to prevent a terrorist attack or preserve evidence following a terrorist attack. The second reading speech described the powers as “extraordinary”, noting that “they are designed to be used only in extraordinary circumstances and are accompanied by strong safeguards and accountability measures”.⁴ The second reading speech also noted that the scheme implements an agreement reached at the COAG meeting of 27 September 2005 and complements the preventative detention scheme introduced by the Commonwealth Government and all other States and Territories.

The Committee is concerned that a number of safeguards that were included in the Crimes (Administration of Sentences) Regulation 2014 are ousted by this 2016 Regulation. Of particular concern to the Committee is the ousting of the role of the Review Council, the Official Visitor and the incapacity of legal practitioners to meet and correspond with individuals who are being detained under a preventative detention order.

The Committee highlights that these rights may be fundamental to an accused person when seeking relief, and/or mounting a defence, in the courts.

The Committee notes the national framework that the preventative detention scheme works within, and the role of the judiciary in assessing a person before an order is granted that they be detained under a preventative detention order.

The Committee recognises that the rights of persons detained under a preventative detention scheme are severely impacted. The Committee also notes that trespass on rights is being achieved through an act of the Executive, rather than through an Act of Parliament. The Committee notes the national security aims, the role of the judiciary in assessing such persons before they are detained under the scheme and the importance of a consistent approach by all states and territories to this issue. However, given the nature of the trespass on rights the Committee notes its preference that such a scheme be established by principal legislation rather than by regulation.

⁴ *Terrorism (Police Powers) Amendment (Preventative Detention) Bill, Second Reading Speech, Hansard, 17 November 2005*

7. Workers Compensation Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with minor amendments, the provisions of the *Workers Compensation Regulation 2010*.
2. This Regulation makes provision for the following:
 - (a) diseases that are taken to be work-related,
 - (b) the determination of pre-injury average weekly earnings,
 - (c) the rate at which the amount of benefit is to be indexed for inflation,
 - (d) return-to-work programs, which are policies for the rehabilitation of injured workers,
 - (e) rates applicable for workplace rehabilitation services,
 - (f) approval of workplace rehabilitation providers,
 - (g) claims procedures,
 - (h) the referral of medical disputes to referees or panels,
 - (i) restrictions on obtaining medical reports,
 - (j) workers compensation insurance policies,
 - (k) self-insurers,
 - (l) the Workers Compensation Operational Fund,
 - (m) the declaration of persons as ministers of religion and the persons taken to be their employers,
 - (n) the Insurers' Guarantee Fund,
 - (o) offences that can be dealt with by way of penalty notice,
 - (p) restrictions on advertising work injury legal services and agent services,
 - (q) costs in workers compensation matters and related common law claims,
 - (r) insurance premiums, the disclosure of information and the keeping of records,
 - (s) savings and transitional provisions consequent on the enactment of various Acts and this Regulation.

ISSUES CONSIDERED BY COMMITTEE

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

Right to fair workers compensation

3. The Regulation prescribes certain circumstances in which an employer responsible for a work injury is not liable to pay compensation to assist the worker to return to work (see Part 5 of the Regulation). Provisions of this kind were also in place in the *Workers Compensation Regulation 2010*.
4. In particular, the employer is not liable to pay compensation for the cost of work assistance for a worker to return to work with a new employer where:
 - (a) the offer of employment with the new employer is for a period of less than three months, or
 - (b) the offer of employment has not been put in writing (see clause 9 of the Regulation).
5. An employer is also not required to pay compensation for the cost of education or training to assist a worker to return to work where:
 - (a) the education or training is inconsistent with the retraining or employment objectives of the worker's injury management plan, or
 - (b) the education or training is not provided by an NVR registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cth) or a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cth) (see clause 10 of the Regulation).

The Committee previously commented on this issue on 10 May 2016 in Digest 18/56 when these amendments were first inserted into the previous Regulation. The Committee restates its comments here. The Regulation prescribes certain circumstances in which an employer responsible for a work injury is not liable to pay compensation to the relevant employee. However, the Committee recognises that the exclusions strike a fair balance between workers and employers by ensuring workers gather appropriate evidence for their claim and carry out training and education from registered providers which is relevant to their future. Employers will also not be liable for work assistance which only leads to very short term re-employment. The Committee makes no further comments.

Limitations on admissible evidence

6. Part 9 of the Regulation places restrictions on the number of medical reports that may be admitted in any proceedings on a claim or a work injury damages threshold dispute. In particular, only one forensic medical report may be admitted on behalf of a party to proceedings.
7. Where the injury has involved treatment by more than one specialist medical practitioner, with different qualifications, an additional report may be admitted from a practitioner with qualifications in that specialty (see clause 44 of the Regulation).

8. A supplementary report may be admitted where it:
 - (a) clarifies the original report; or
 - (b) updates the original report; or
 - (c) addresses issues omitted from the original report; or
 - (d) addresses an opinion in the other party's medical report.
9. However, any supplementary report must be provided by the medical practitioner who provided the original report, unless that person has ceased to practice (see clause 45 of the Regulation).
10. Provisions of this nature have a long history in the workers compensation scheme. For example, the Committee drew Parliament's attention to similar provisions in the *Workers Compensation Regulation 2003* on 24 September 2007 in Digest 2/2007.

The Committee acknowledges that placing limits on the number of medical reports which may be admissible in workers compensation proceedings may assist with controlling the costs of the scheme. It may also alleviate the possibility of conflicting reports from a range a practitioners, which may cause confusion. The Committee notes that Part 9 of the Workers Compensation Regulation 2016 does not change current practice. Notwithstanding that Part 9 of this regulation may place restrictions on admissible evidence which may lead to unjust outcomes in certain cases where further medical evidence is needed to adequately determine the claim, given that this does not represent a change in the current practice the Committee makes no further comment on this issue.

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

Restrictions on marketing of work injury agent services

11. Part 16 of the Regulation places restrictions on marketing of work injury agent services. Provisions of this kind were already in place in the *Workers Compensation Regulation 2010*.
12. An 'agent' is defined as 'a person who acts, or holds himself or herself out as willing to act, as an agent for a person for a fee or reward in connection with a claim but does not include a lawyer' (see clause 72).
13. Examples of agents include persons:
 - (a) giving advice about making claims;
 - (b) assisting individuals to complete or prepare forms, correspondence or other material;
 - (c) making arrangements for medical examinations to determine an individual's entitlement to compensation; or
 - (d) arranging referrals to a lawyer.

14. It is an offence for an agent to publish an advertisement promoting their services if the advertisement refers to:
 - (a) work injuries;
 - (b) circumstances in which a work injury may occur; or
 - (c) a service provided by an agent that relate to recovery of money in respect of work injuries.
15. The maximum penalty for this offence is \$22,000 (see clause 73 of the Regulation).
16. There are some exceptions to this general prohibition on advertising by work injury agents. For example an agent may advertise by placing their name, contact details and specialty in a practitioner directory or on a sign outside their business. An agent may also advertise to those who are already their clients or persons within their business premises. Agents who provide legal education services can also advertise to the legal profession. There are other exceptions listed in the Regulation (see clauses 74 and 75 of the Regulation).
17. Restrictions of this kind also extend to similar advertising by persons other than agents or lawyers (see Part 16, Division 3 of the Regulation).

Restrictions on advertising may impact on businesses providing work injury agent services and individuals seeking the assistance of such services. However, the Committee acknowledges that such businesses are permitted to advertise in particular circumstances. The Committee notes that some individuals with work injuries may be in vulnerable situations. As such, restrictions of this kind minimise the risk of unscrupulous operators misrepresenting themselves as lawyers or overstating the benefits an individual may receive from their services. The Committee therefore makes no further comments.

Restrictions on costs recoverable in compensation matters

18. Certain costs recoverable in compensation matters, primarily legal costs, are heavily regulated. Part 17 of the Regulation, along with Schedules 6 and 7 provide detailed information on the costs which are regulated and certain maximum costs that can be recovered. Provisions of this kind were also in place in the *Workers Compensation Regulation 2010*.

Placing restrictions and caps on costs in workers compensation matters may impact on businesses assisting with these claims, mainly lawyers and law firms. However, in the Committee's view, the right of injured workers to adequate compensation, after costs, outweighs the desires of businesses and law firms to completely unregulated costs. The Committee therefore does not consider the restrictions on costs to be unreasonable in the circumstances.

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.