



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No. 32/56 – 7 March 2017



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, 2017, 16p 30 cm

Chair: Mr Michael Johnsen MP

7 March 2017

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 32 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 32 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”.

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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. BIOSECURITY AMENDMENT BILL 2017

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

Matters left to regulations rather than principal legislation

Authorising regulations, rather than principal legislation, to prescribe circumstances relating to the mandatory suspension or cancellation of biosecurity certifier accreditations or biosecurity auditor appointments may, in some cases, result in reduced parliamentary scrutiny of matters that could impact on the right to work. However, the Committee notes that the principal legislation already contains some procedural fairness safeguards and appeal rights to the Land and Environment Court. Any regulation could also be subject to parliamentary scrutiny through the disallowance processes under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comments.

2. DISCOUNT RATE REDUCTION (MISCELLANEOUS ACTS AMENDMENT) BILL 2017*

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

3. STATE REVENUE LEGISLATION AMENDMENT BILL 2017

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

Privacy

The Bill will permit the Office of State Revenue to disclose information obtained in the course of work under certain taxes and grants legislation to the Australian Charities and Not-for-profits Commission (the Commonwealth Commission). Such information is currently subject to limited disclosure. Therefore, inappropriate disclosure could impact on the right to privacy.

However, the Committee notes that some information about grants and taxes is likely to be relevant to the regulation of the charities and not-for-profits sector. In addition, the NSW Office of State Revenue will need to comply with the broader NSW privacy laws when disclosing personal information. Likewise, the Commonwealth Commission will need to comply with similar Commonwealth privacy laws in how it collects, uses, discloses and otherwise manages the personal information it receives. For these reasons, the Committee makes no further comments.

PART TWO - REGULATIONS

1. LIQUOR AMENDMENT REGULATION 2016

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

Freedom of association

Excluding individuals from premises based on identifying clothing, jewellery or accessories may trespass on personal rights and liberties, including freedom of association. However, the Committee notes that affected individuals would still be permitted to enter the licensed

premises if the identifying clothing, jewellery or accessories are not worn. The Committee therefore makes no further comments.

The regulation may have an adverse impact on the business community:

s 9(1)(b)(ii) of the LRA

Extension of temporary freeze on licences

Extending the timeframe for existing restrictions relating to the trading of licensed premises may have an adverse impact on the business community. However, the Committee notes that the extension is for slightly more than fifteen months and that the restrictions are part of broader measures relating to public health and safety associated with alcohol-fuelled violence. The Committee therefore makes no further comments.

New premises subject to lock out and liquor sales cessation restrictions

Adding additional premises to the list of those subject to lock out and liquor sales cessation restrictions may have an adverse impact on the business community. However, the Committee notes the broader public health and safety objectives associated with the restrictions and therefore makes no further comments.

Part One – Bills

1. Biosecurity Amendment Bill 2017

Date introduced	22 February 2017
House introduced	Legislative Council
Minister responsible	The Hon. Niall Blair MLC
Portfolio	Primary Industries, Regional Water and Trade and Industry

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to make provision with respect to fees paid for the preparation of biosecurity certificates,
- (b) to provide for corporations to be accredited as biosecurity certifiers and appointed as biosecurity auditors,
- (c) to ensure that the issue of a biosecurity certificate by a biosecurity certifier, or the conduct of a biosecurity audit by a biosecurity auditor, will be carried out only by an appropriately qualified individual who is the biosecurity certifier or biosecurity auditor or who is an identified individual,
- (d) to permit mandatory grounds for the suspension or cancellation of accreditation as a biosecurity certifier, or appointment as a biosecurity auditor, to be prescribed by regulations under the *Biosecurity Act 2015* (the Principal Act),
- (e) to ensure that the accreditation of biosecurity certifiers and the appointment of biosecurity auditors by an accreditation authority will be carried out only by individuals notified to the Secretary of the Department of Industry, Skills and Regional Development (the Secretary),
- (f) to permit the Secretary to issue evidentiary certificates to facilitate proof of matters relating to the National Livestock Identification System,
- (g) to provide for the Secretary to make an order that permits an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone.

BACKGROUND

2. The Minister, in his Second Reading Speech, advised that since the assent of the *Biosecurity Act 2015*, the Government has been consulting with stakeholders to develop associated regulations and other policies. During this consultation process, a number of minor omissions have been identified which will impact on the successful implementation of the legislation. The Bill seeks to redress these issues.

ISSUES CONSIDERED BY COMMITTEE

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

Matters left to regulations rather than principal legislation

3. The Bill authorises the regulations to prescribe circumstances in which it is mandatory for the relevant authority to:
 - (a) suspend the accreditation of a biosecurity certifier; or
 - (b) cancel the accreditation of a biosecurity certifier; or
 - (c) suspend the appointment of a biosecurity auditor; or
 - (d) cancel the appointment of a biosecurity auditor (see Schedule 1, clauses [12], [13], [30] and [31] of the Bill).
4. The *Biosecurity Act 2015* contains some procedural fairness safeguards in the event that an accreditation or appointment is suspended or cancelled. For example, the relevant authority must invite the biosecurity certifier or auditor to make submissions about the proposed suspension or cancellation and the authority must take them into account (see for example sections 207, 209, 253 and 255 of the Act). A person aggrieved by such a decision could also appeal to the Land and Environment Court (see for example sections 213 and 259 of the Act).

Authorising regulations, rather than principal legislation, to prescribe circumstances relating to the mandatory suspension or cancellation of biosecurity certifier accreditations or biosecurity auditor appointments may, in some cases, result in reduced parliamentary scrutiny of matters that could impact on the right to work. However, the Committee notes that the principal legislation already contains some procedural fairness safeguards and appeal rights to the Land and Environment Court. Any regulation could also be subject to parliamentary scrutiny through the disallowance processes under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comments.

2. Discount Rate Reduction (Miscellaneous Acts Amendment) Bill 2017*

Date introduced	23 February 2017
House introduced	Legislative Assembly
Member responsible	Mr Clayton Barr MP
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Civil Liability Act 2002*, *Motor Accidents Compensation Act 1999* and *Workers Compensation Act 1987* to reduce the discount rate on an award of damages for future economic loss from five per cent to three per cent.

BACKGROUND

2. Courts may determine an award of damages when a person is injured under the *Civil Liability Act 2001*, *Motor Accidents Compensation Act 1999* and *Workers Compensation Act 1987*. When calculating this award, the judge must discount the final amount five per cent. This discount takes into account any interest the person may earn on the awarded amount.
3. The current discount amount is five per cent. In the second reading speech, the Member for Cessnock noted that it is no longer possible to earn five per cent interest on invested funds and that a better discount rate would be three per cent.

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. State Revenue Legislation Amendment Bill 2017

Date introduced	23 February 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Finance, Services and Property

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

- i to clarify the application of that Act to instruments that are in a digital form, and
- ii to provide for the charging of nominal duty (rather than ad valorem duty) on certain transfers of property to the custodian of a trustee of a self managed superannuation fund where duty on an agreement for the sale or transfer of the property has been paid and the purchaser is the trustee, and
- iii to clarify the matters of which the Chief Commissioner must be satisfied for nominal duty (rather than ad valorem duty) to be charged on transfers of trust property that are a consequence of the retirement or appointment of a trustee, and
- iv to provide for an exemption from duty for the vesting of land occurring as a consequence of the merger of credit unions or of authorised deposit-taking institutions with mutual structures, and
- v to extend existing exemptions from duty on transfers following the break-up of marriages and de facto relationships to cover such transfers to trustees under the *Bankruptcy Act 1966* of the Commonwealth, and
- vi to make further provision in relation to the aggregation of interests acquired by a person in a landholder for the purposes of liability for landholder duty, and
- vii to ensure that the liabilities of a landholder are disregarded in determining whether a person has an interest in a landholder that makes the person liable for landholder duty, and
- viii to make further provision in relation to the tracing of interests through linked entities of a unit trust scheme or company for the purposes of determining whether the scheme or company is a landholder, and
- ix to extend an existing anti-avoidance measure (which ensures that certain land holdings transferred from a unit trust scheme or company within 12 months of a

person acquiring an interest in the scheme or company are counted when determining whether the scheme or company is a landholder) so that the measure covers agreements for the sale or transfer of land holdings, and

- x to prevent the avoidance of liability for landholder duty by the use of arrangements that include combined put and call options (as an alternative to an agreement for sale or transfer), and
 - xi to make further provision to prevent a person who enters into an agreement to purchase shares or units in a landholder avoiding landholder duty by opting to defer registration of the purchase, and
 - xii to extend existing exemptions from duty connected with transfers between family members of land used for primary production to (among other things) cover transfers from a self managed superannuation fund where a member of the fund and the person to whom the land is transferred are family members, and
 - xiii to provide for an exemption from duty connected with transfers of property between superannuation funds that are required to be made under transitional arrangements relating to the Commonwealth's MySuper reforms, and
 - xiv to make further provision for the test to be applied in determining the amount of duty that a person is liable to pay as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature, and
 - xv to extend the circumstances in which a trustee and another trustee, a natural person and a trustee, and a private company and a trustee are treated as being "associated" for the purposes of liability for duty, by tracing through to sub-trusts, and
 - xvi to make other minor and consequential amendments,
- (b) to amend the *Land Tax Management Act 1956* to require a Government entity that leases land to make the lessee aware that the lessee can be liable for land tax on the land,
- (c) to amend the *Payroll Tax Act 2007*:
- i to provide that certain wages paid by employment agents who on-hire their common law employees to clients of the agents are exempt from payroll tax if wages paid by the clients to their own employees are "exempt wages", and
 - ii to exempt from payroll tax wages paid under the Supporting Leave for Living Organ Donors Programme, and
 - iii to update other provisions of that Act,
- (d) to amend various Acts to permit disclosures to the Australian Charities and Not-for-profits Commission.

BACKGROUND

2. The Bill amends several Acts relating to the taxes and duties functions of the Office of State Revenue. The Minister, in his Second Reading Speech, advised that many of the amendments are minor or housekeeping amendments and will keep tax laws effective and current:

This will improve equity by ensuring clients in similar circumstances have similar outcomes, combat tax avoidance practices by ensuring taxpayer liabilities are consistent with the policy intent of the legislation, reduce red tape by removing uncertainty, increase harmonisation with other States and Territories where possible, and improve administrative simplicity.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

3. The Bill amends the following Acts to allow information obtained in the course of the work under the legislation to be disclosed to the Australian Charities and Not-for-profits Commission:
 - (a) *First Home Owner Grant (New Homes) Act 2000*,
 - (b) *Regional Relocations Grants (Skills Incentive) Act 2011*,
 - (c) *Small Business Grants (Employment Incentive) Act 2015*, and
 - (d) *Taxation Administration Act 1996* (see Schedule 4 of the Bill).
4. In each of these Acts, there is a general presumption that such information is not to be disclosed, except in certain circumstances such as to organisations or persons specifically mentioned in the legislation, with the consent of the person the information relates to, or as otherwise authorised by law. An unauthorised disclosure can result in a maximum penalty of \$11,000.
5. The Australian Charities and Not-for-profits Commission is an independent national regulator of charities which is established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

The Bill will permit the Office of State Revenue to disclose information obtained in the course of work under certain taxes and grants legislation to the Australian Charities and Not-for-profits Commission (the Commonwealth Commission). Such information is currently subject to limited disclosure. Therefore, inappropriate disclosure could impact on the right to privacy.

However, the Committee notes that some information about grants and taxes is likely to be relevant to the regulation of the charities and not-for-profits sector. In addition, the NSW Office of State Revenue will need to comply with the broader NSW privacy laws when disclosing personal information. Likewise, the Commonwealth Commission will need to comply with similar Commonwealth privacy laws in how it collects, uses, discloses and otherwise

manages the personal information it receives. For these reasons, the Committee makes no further comments.

Part Two - Regulations

1. Liquor Amendment Regulation 2016

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Liquor Regulation 2008* to implement miscellaneous reforms arising out of the Callinan and other liquor law reviews. The reforms include relaxing the existing “lock out” and “last drinks” restrictions in the case of live entertainment venues in the Kings Cross and Sydney CBD entertainment precincts.

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of association

2. In Digest 34/55, tabled on 25 March 2013, the Committee highlighted clause 53K of the *Liquor Regulation 2008*, which provides that any individual wearing clothing, jewellery, or accessories of a number of motor-cycle related organisations must not be permitted to enter licensed premises in the Kings Cross precinct.
3. Clause 53ZG of the *Liquor Regulation 2008* outlines similar restrictions in relation to certain licensed premises in the Sydney CBD.
4. The *Liquor Amendment Regulation 2016* amends clauses 53K and 53ZG to change the names of some of the organisations subject to the exclusion (see Schedule 1, clauses [9] and [15]).

Excluding individuals from premises based on identifying clothing, jewellery or accessories may trespass on personal rights and liberties, including freedom of association. However, the Committee notes that affected individuals would still be permitted to enter the licensed premises if the identifying clothing, jewellery or accessories are not worn. The Committee therefore makes no further comments.

The regulation may have an adverse impact on the business community:

s 9(1)(b)(ii) of the LRA

Extension of temporary freeze on licences

5. The *Liquor Amendment Regulation 2016* extends the temporary freeze relating to licences and other authorisations for premises from 19 February 2017 to 1 June 2018 (see Schedule 1, clause [19]).
6. The existing freeze places restrictions on certain premises in the Sydney CBD entertainment precinct such as:
 - (a) granting new licences;

- (b) granting extended trading authorisations;
- (c) varying or revoking licence conditions;
- (d) granting certain other kinds of authorisations;
- (e) approving licence removals;
- (f) changing the boundaries of premises;
- (g) licence conditions imposed by the Secretary; and
- (h) granting development consent (see *Liquor Act 2007*, Part 4, Division 1A).

Extending the timeframe for existing restrictions relating to the trading of licensed premises may have an adverse impact on the business community. However, the Committee notes that the extension is for slightly more than fifteen months and that the restrictions are part of broader measures relating to public health and safety associated with alcohol-fuelled violence. The Committee therefore makes no further comments.

New premises subject to lock out and liquor sales cessation restrictions

7. The *Liquor Amendment Regulation 2016* makes sixteen named premises in the Sydney CBD subject to the lockout and liquor sales cessation restrictions (see Schedule 1, clause [20]).

Adding additional premises to the list of those subject to lock out and liquor sales cessation restrictions may have an adverse impact on the business community. However, the Committee notes the broader public health and safety objectives associated with the restrictions and therefore makes no further comments.

Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- 1 The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - i trespasses unduly on personal rights and liberties, or
 - ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - iv inappropriately delegates legislative powers, or
 - v insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- 2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations

- 1 The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - i that the regulation trespasses unduly on personal rights and liberties,
 - ii that the regulation may have an adverse impact on the business community,
 - iii that the regulation may not have been within the general objects of the legislation under which it was made,
 - iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- 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.