



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

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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. LIQUOR AMENDMENT (REVIEWS) BILL 2017

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

Liability

The Committee is concerned that the effect of Schedule 1[44], which transfers disciplinary action from the licensed premises to the individual licensee or manager, will extend the personal liability of employees in these roles. Under these changes it is also possible for licensed premises to overcome remedial action by terminating the employment of the licensee or manager.

The proposed section 144H allows the Authority to impose further licence conditions on licensed premises that are found to have a practice of terminating licensees and managers for the primary purpose of avoiding remedial action. However, this does not provide any protection for licensees or managers who have already had their employment terminated, or who are disadvantaged by these disciplinary strikes when seeking new employment.

Extension of 'freeze period'

The Committee notes that the effect of Schedule 1[7] to extend the freeze period may have a negative effect on the stakeholders of the licensed premises to which the freeze period applies. However, given the Bill alleviates restrictions on venue capacity and development consent for licenced premises, and the aims of the principal legislation, the Committee makes no further comment.

2. LOCAL GOVERNMENT AMENDMENT (AMALGAMATION REFERENDUMS) BILL 2017*

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

Implementation of results of plebiscite

Schedule 1[1](5) allows for the Minister to reverse the council amalgamation upon the results of the plebiscite even if the majority of the electors did not vote for this outcome. As it is not compulsory to vote in a plebiscite, it is possible that the result of the plebiscite may not accurately reflect the wishes of the electors in the affected council area. The Committee refers to Parliament for its consideration whether failing to implement the results of a plebiscite is an undue trespass on personal rights and liberties on the grounds that the democratic expression of the electors has not been given effect.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Accountability of the Minister

The Bill outlines that it is the duty of the Minister to use his or her best endeavours to give effect to the result of the plebiscite without providing for measures that the Minister must take or exhaust to achieve this. The Bill also does not provide for a review of the measures taken by Minister in their endeavours to give effect to the result of the plebiscite. The

Committee notes that this may make it difficult to hold the Minister accountable in the case where their endeavours were unsuccessful in giving effect to the results of the plebiscite.

3. PROTECTION OF THE ENVIRONMENT LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2017

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

Retrospectivity

The Committee is concerned when provisions in legislation are drafted to have retrospective effect. However, the operation of Schedule 1 [9] of this Bill will replace a similar existing provision. In these circumstances, the Committee makes no further comment.

Schedule 3 [16] references the proposed amendment to section 216(6) of the *Protection of the Environment Operations Act*. That proposed amendment has the effect of increasing the time during which some summary proceedings may be commenced – from one year to three years. The similar provision outlined in Schedule 4 [9] with respect to section 25(5) of the *Radiation Control Act* increases the time within which proceedings may commence from 12 months to two years.

However, given that the aim of the principal legislation is the protection of the environment, the Committee provides no further comment on the retrospective introduction of an increase in time within which summary proceedings may be commenced.

Community consultation and education

The Committee notes that the effect of repealing the legislation that establishes the Environment Protection Community Consultation Forums and the NSW Council of Environment Education has the effect of terminating these forums and this Council. Notwithstanding the ongoing nature of the advisory committees, the Committee notes that the termination of the forums and the Council may have deleterious consequences in relation to community consultation and education.

Remuneration and compensation

The Committee notes that the effect of this Bill is to terminate the tenure of all members of the Environment Protection Community Consultation Forums, as well as the NSW Council of Environment Education. The Committee also notes that the Bill removes any common law right to compensation arising from the repeal of the legislation establishing those forums and the Council. However, given the members of these forums and Council were only entitled to be paid such allowances as determined by the Minister from time to time under Schedule 2 [5] of the *Protection of the Environment Administration Act 1991*, the Committee makes no further comment on this issue.

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

Commencement by proclamation

The Committee has a preference for Acts to commence either on assent or on a specified day. However, given the administrative arrangements required in relation to the subject matter provided for in Schedule 3 [1], [2], [4], [9], [11]–[13], [15] and [17], the Committee makes no further comment.

PART TWO – REGULATIONS

1. CONVEYANCING (GENERAL) AMENDMENT (LPI AUTHORISED TRANSACTION) REGULATION 2017

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

Ambiguity

The Committee is concerned that the effect of Schedule 1[3] and Schedule 1[13] to exclude the listed required documentation from the Regulation creates uncertainty about the correct documentation to accompany the lodgement of conveyancing forms. The effect of Schedule 1[14] to remove the dollar amounts of the fees payable also creates ambiguity of the cost of administrative services under the Regulation.

The Committee notes that these provisions create ambiguity about how to correctly comply with the Regulation and draws this to the attention of the Parliament.

Certainty

The Committee notes that the removal of this clause makes it uncertain whether the fees are to be paid to the Registrar-General, a separate government body or to a private operator. The Committee draws this lack of certainty to the attention of the Parliament.

Part One – Bills

1. Liquor Amendment (Reviews) Bill 2017

Date introduced	10 May 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Minister for Racing

Purpose and description

1. The object of this Bill is to amend the *Liquor Act 2007* (“the principal Act”) and other gaming and liquor legislation to implement miscellaneous reforms arising out of the Callinan review and various departmental reviews. Some of the reforms arising out of the reviews were implemented by the *Liquor Amendment Regulation 2016* and this Bill continues the implementation of those reforms.

Background

2. In December 2016, the NSW Government announced that a package of liquor reforms would be introduced in response to the recommendations of the Independent Liquor Review by former High Court Justice Ian Callinan, as well as a number of departmental reviews.
3. The measures contained in this Bill
 - administer changes to the three-strikes disciplinary scheme,
 - provide the Independent Liquor and Gaming Authority (“the Authority”) with regulatory functions over licensed premises,
 - enable the consolidation of the Kings Cross precinct with provisions relating to the Sydney CBD Entertainment precinct,
 - extend the freeze on the granting of liquor licenses, and
 - make fees and charges payable to the Secretary of the Department of Industry.
4. In his Second Reading speech, the Minister outlined that the amendments to the three strikes disciplinary scheme to apply to individual managers and licences rather than the licensed premises are intended to prevent diminishing the value of the venue property or negatively impacting financial loan arrangements.

Issues considered by committee

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

Liability

5. Schedule 1[44] of the Bill amends Part 9A of the principal Act to allow disciplinary strikes to be attached to individual licensees and managers rather than against the licensed premises.
6. The proposed section 144H provides that licensed premises that are found to have a practice of terminating licensees and managers for the primary purpose of avoiding remedial action will be subject to further license conditions imposed by the Authority.
7. The proposed section 144B(2) provides that references made in Part 9A to licensees or managers of a licensed premises include references to former licensees or managers.

The Committee is concerned that the effect of Schedule 1[44], which transfers disciplinary action from the licensed premises to the individual licensee or manager, will extend the personal liability of employees in these roles. Under these changes it is also possible for licensed premises to overcome remedial action by terminating the employment of the licensee or manager.

The proposed section 144H allows the Authority to impose further licence conditions on licensed premises that are found to have a practice of terminating licensees and managers for the primary purpose of avoiding remedial action. However, this does not provide any protection for licensees or managers who have already had their employment terminated, or who are disadvantaged by these disciplinary strikes when seeking new employment.

Extension of 'freeze period'

8. Schedule 1[7] amends section 47A to extend the 'freeze period' of prescribed precincts until 1 June 2018.

The Committee notes that the effect of Schedule 1[7] to extend the freeze period may have a negative effect on the stakeholders of the licensed premises to which the freeze period applies. However, given the Bill alleviates restrictions on venue capacity and development consent for licenced premises, and the aims of the principal legislation, the Committee makes no further comment.

2. Local Government Amendment (Amalgamation Referendums) Bill 2017*

Date introduced	11 May 2017
House introduced	Legislative Assembly
Member responsible	The Hon. Robert Borsak MLC
	*Private Member's Bill

Purpose and description

1. The object of this Bill is to amend the *Local Government Act 1993* (“the principal Act”) to require plebiscites for the reversal of local government areas amalgamated in 2016, and to require referendums to allow further proposed local government amalgamations.

Background

2. In 2016, the Government created 20 new councils and recommended the amalgamation of a further 14 councils into five local government areas.
3. The measures in this Bill provide for a plebiscite for the reversal of the existing amalgamated local government areas, and require a referendum before allowing further proposed local government amalgamations.
4. A referendum is a vote in which enrolled voters of an electorate are required to vote on a certain issue. Electors are entitled to have the opportunity to inform themselves about the issue and the results of the referendum are binding upon the Government.
5. A plebiscite is a vote in which enrolled voters may vote to support or oppose a proposed action on an issue. Unlike a referendum, the Government is not bound by the result of a plebiscite.

Issues considered by committee

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

Implementation of results of plebiscite

6. Schedule 1 [1](5) provides that the Minister must use his or her best endeavours to give effect to the wishes of the majority of the electors as expressed by the votes of the plebiscite, even if the majority of the electors did not vote for the amalgamation to be reversed.

Schedule 1[1](5) allows for the Minister to reverse the council amalgamation upon the results of the plebiscite even if the majority of the electors did not vote for this outcome. As it is not compulsory to vote in a plebiscite, it is possible that the result of the plebiscite may not accurately reflect the wishes of the electors in the affected council area. The Committee refers to Parliament for its consideration whether failing to implement the results of a plebiscite is

an undue trespass on personal rights and liberties on the grounds that the democratic expression of the electors has not been given effect.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Accountability of the Minister

7. Schedule 1 [1](5) outlines that it is the duty of the Minister to use his or her best endeavours to give effect to the wishes of the majority of electors of each former area as expressed by the votes of the plebiscite. However the Bill does not provide what these endeavours may include, or avenues that the Minister must exhaust when endeavouring to give effect to the result of the plebiscite.

The Bill outlines that it is the duty of the Minister to use his or her best endeavours to give effect to the result of the plebiscite without providing for measures that the Minister must take or exhaust to achieve this. The Bill also does not provide for a review of the measures taken by Minister in their endeavours to give effect to the result of the plebiscite. The Committee notes that this may make it difficult to hold the Minister accountable in the case where their endeavours were unsuccessful in giving effect to the results of the plebiscite.

3. Protection of the Environment Legislation Miscellaneous Amendments Bill 2017

Date introduced	10 May 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Gabrielle Upton MP
Portfolio	Environment

Purpose and description

1. The objects of this Bill are as follows:
 - (a) to amend the *Contaminated Land Management Act 1997* to extend the application of Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* to the exercise of powers by authorised officers under *the Contaminated Land Management Act 1997*. Chapter 7 deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles,
 - (b) to amend the *Protection of the Environment Administration Act 1991* to abolish Environment Protection Community Consultation Forums and the New South Wales Council on Environmental Education, and to make consequential amendments,
 - (c) to amend the *Protection of the Environment Operations Act 1997*:
 - i to require notices of reviews of licences to be published on the EPA's website and to provide for the dates of publication of the notices to be recorded in public registers, and
 - ii to provide for licences to transport trackable waste to expire after a specified period not longer than 5 years and to provide that these licences can be renewed, and
 - iii to repeal supervisory licences in respect of putrescible waste facilities, and
 - iv to give the EPA the power to require that GPS tracking devices be fitted to trailers, and
 - v to permit authorised officers to enter premises by means of an unmanned vehicle, vessel or aircraft (such as a drone) but only if it is operated by or under the authority of an authorised officer, and
 - vi to increase the time within which proceedings for certain offences may be commenced,
 - (d) to amend the *Radiation Control Act 1990*:
 - i to give the Land and Environment Court, instead of the District Court, jurisdiction to hear appeals against decisions of the EPA and, instead of the Supreme Court, jurisdiction to hear proceedings for offences under the Act or the regulations and

- proceedings for orders to remedy or restrain breaches of the Act or regulations, and
 - ii to provide that offences may be prosecuted by the EPA or persons acting on behalf of the EPA, without the need for the Minister's consent, and
 - iii to increase the maximum penalties that may be imposed by the Local Court for offences, and
 - iv to increase the time within which proceedings for offences may be commenced,
- (e) to make consequential amendments to the *Land and Environment Court Act 1979* to allow the Land and Environment Court:
- i to hear appeals against the serving of a notice under section 18 of the *Radiation Control Act 1990* to remedy or avoid a contravention of that Act or appeals against certain decisions of the EPA under section 36A of that Act, and
 - ii to hear proceedings for offences against the *Radiation Control Act 1990*.

Background

2. In her second reading speech, the Minister explained that the Bill furthers the Government's commitment to improve the efficiency and effectiveness of environmental legislation – particularly in relation to penalising non-compliance.

Issues considered by committee

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

Retrospectivity

3. Schedule 1 [7] of the Bill provides for the application of Chapter 7 of the *Protection of the Environment Operations Act 1997* in connection with the *Contaminated Land Management Act 1997* and its regulations. Schedule 1 [9] provides that the application of Chapter 7 extends to the exercise of powers in connection with an investigation commenced before the commencement of the proposed sections of this Bill.

The Committee is concerned when provisions in legislation are drafted to have retrospective effect. However, the operation of Schedule 1 [9] of this Bill will replace a similar existing provision. In these circumstances, the Committee makes no further comment.

4. Schedule 3 [16] of the Bill outlines that the amendment to section 216(6) of the *Protection of the Environment Operations Act* extends to offences under sections 120 or 144AB that are alleged to have been committed before the date of commencement of the amendment. A similar provision is inserted by way of Schedule 4 [9] with respect to the *Radiation Control Act*.

Schedule 3 [16] references the proposed amendment to section 216(6) of the *Protection of the Environment Operations Act*. That proposed amendment has the effect of increasing the time during which some summary proceedings may be commenced – from one year to three years. The similar provision outlined in Schedule 4 [9] with respect to section 25(5) of the *Radiation Control Act* increases the time within which proceedings may commence from 12 months to two years.

However, given that the aim of the principal legislation is the protection of the environment, the Committee provides no further comment on the retrospective introduction of an increase in time within which summary proceedings may be commenced.

Community consultation and education

5. Schedules 2 [3] – [5] of this Bill repeals the legislation that establishes the Environment Protection Community Consultation Forums and the NSW Council of Environment Education.

The Committee notes that the effect of repealing the legislation that establishes the Environment Protection Community Consultation Forums and the NSW Council of Environment Education has the effect of terminating these forums and this Council. Notwithstanding the ongoing nature of the advisory committees, the Committee notes that the termination of the forums and the Council may have deleterious consequences in relation to community consultation and education.

Remuneration and compensation

6. As outlined above, schedules 2 [3] – [5] of this Bill terminate the Environment Protection Community Consultation Forums and the NSW Council of Environment Education. Schedule 2 [18] provides that any member of those forums or that Council is not entitled to any remuneration or compensation because of the loss of that office.

The Committee notes that the effect of this Bill is to terminate the tenure of all members of the Environment Protection Community Consultation Forums, as well as the NSW Council of Environment Education. The Committee also notes that the Bill removes any common law right to compensation arising from the repeal of the legislation establishing those forums and the Council. However, given the members of these forums and Council were only entitled to be paid such allowances as determined by the Minister from time to time under Schedule 2 [5] of the *Protection of the Environment Administration Act 1991*, the Committee makes no further comment on this issue.

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

Commencement by proclamation

7. The Bill provides for the Act to commence on the date of assent, except with respect to Schedule 3 [1], [2], [4], [9], [11]–[13], [15] and [17] which are to commence on a day or days to be appointed by proclamation.

The Committee has a preference for Acts to commence either on assent or on a specified day. However, given the administrative arrangements required in relation to the subject matter provided for in Schedule 3 [1], [2], [4], [9], [11]–[13], [15] and [17], the Committee makes no further comment.

Part Two – Regulations

1. Conveyancing (General) Amendment (LPI Authorised Transaction) Regulation 2017

Date published	24 March 2017
Disallowance date	25 May 2017
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Finance, Services and Property

Purpose and description

1. The object of this Regulation is to amend the *Conveyancing (General) Regulation 2013* (“the Regulation”) as a consequence of the enactment of the *Land and Property Information NSW (Authorised Transaction) Act 2016*. The Regulation:
 - i repeals provisions relating to matters to be dealt with under lodgement rules made under the Real Property Act 1900, and
 - ii provides for a mechanism for the adjustment for inflation of prescribed fees under the Conveyancing Act 1919, and
 - iii reduces certain prescribed fees so that they are expressed exclusive of GST and sets out a per hour or part hour amount for certain prescribed fees that previously were amounts determined by the Registrar-General.

Issues considered by committee

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

Ambiguity

2. Schedule 1[2] and [3] amends Clauses 4 and 6 to remove a stated list of required documents that are to accompany a notice of resumption. The amendment now requires that a notice of resumption meet the requirements of Form 1 as set out in Schedule 2. Schedule 2 does not specify the accompanying supporting evidence that is to be provided.
3. Schedule 1[13] omits references the proposed new Schedule 1 which outlines the matters for which fees are payable and expresses the fee amount in fee units. These fee units are expressed in decimal amounts and no clear dollar amount is listed within the Regulation.
4. Schedule 1[4]-[6] and [9] amends the Regulation to remove the list of required materials and supporting documents in relation to the lodgement of conveyancing forms. Schedule 1[14] removes Schedules 3-8 of the Regulation, which outline the

required materials and supporting documents in relation to the lodgement of instruments and deposited plans.

The Committee is concerned that the effect of Schedule 1[3] and Schedule 1[13] to exclude the listed required documentation from the Regulation creates uncertainty about the correct documentation to accompany the lodgement of conveyancing forms. The effect of Schedule 1[14] to remove the dollar amounts of the fees payable also creates ambiguity of the cost of administrative services under the Regulation.

The Committee notes that these provisions create ambiguity about how to correctly comply with the Regulation and draws this to the attention of the Parliament.

Certainty

5. Schedule 1[11] removes Clause 42 of the Regulation that states that fees are to be payable to the Registrar-General.

The Committee notes that the removal of this clause makes it uncertain whether the fees are to be paid to the Registrar-General, a separate government body or to a private operator. The Committee draws this lack of certainty to the attention of the Parliament.

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:
 - vi that the regulation trespasses unduly on personal rights and liberties,
 - vii that the regulation may have an adverse impact on the business community,
 - viii that the regulation may not have been within the general objects of the legislation under which it was made,
 - ix 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,

- x that the objective of the regulation could have been achieved by alternative and more effective means,
 - xi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - xii that the form or intention of the regulation calls for elucidation, or
 - xiii 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.