



## Legislation Review Committee

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

CHAIR	Mr Michael Johnsen MP, Member for Upper Hunter
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr Greg Aplin MP, Member for Albury 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
E-MAIL	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# 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. CRIMES AMENDMENT (INTIMATE IMAGES) BILL 2017

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

##### *Ownership of Property*

The proposed sections 91Q and 91O make it an offence to intentionally or recklessly distribute an intimate image of another person without their consent and allows the Court to order that the offending person take reasonable actions to remove the intimate image. The Committee notes that this regulates the property rights of the recipient of an intimate image and restricts the management of that property. However, as the property has been distributed in circumstances that a person would reasonably expect to be afforded privacy, the Committee considers that introducing criminal consequences for certain actions relating to the management of this type of property is appropriate and makes no further comment on the issue.

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

##### *Commencement by proclamation*

The Committee generally prefers legislation to commence on assent or a fixed date. The Committee notes that Clause 2 of the Bill provides that the Act will commence by proclamation. As this Bill creates a series of offences, commencement by assent or a fixed date provides certainty to those affected by the provisions in the Bill.

### 2. ELECTRONIC TRANSACTIONS LEGISLATION AMENDMENT (GOVERNMENT TRANSACTIONS) BILL 2017

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

##### *Certainty*

The Committee notes that the proposed amendment to the *Roads Transport Act 2013* to provide for a trial of digital driver licenses permits the digital driver licence trial to end 12 months after the commencement of the amendment or on any other day specified by the Minister. The Committee generally prefers legislation to provide certainty for persons to which the provisions apply. However, participants of the digital licence trial are still required to carry their physical driver license throughout the trial period. In these circumstances, the provision is reasonable and the Committee makes no further comment.

#### **Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

##### *Scrutiny*

Schedule 1 of the Bill amends various Acts and regulations to allow the electronic service by email or by other means that may be prescribed by the regulations. The Committee generally

prefers that provisions of the Act be included in the Act itself rather than the regulations. The Committee notes that the effect of these provisions may allow for the service of notices in a manner that was not subject to Parliamentary scrutiny.

### 3. FIREARMS AND WEAPONS LEGISLATION BILL 2017

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

##### *Commencement by proclamation*

The Committee notes that this Bill is to commence on a day or days to be appointed by proclamation. Given that this Bill provides for new offences, the Committee prefers that certainty is provided as to when these new laws come into effect.

### 4. HOME BUILDING AMENDMENT (COMPENSATION REFORM) BILL 2017

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

##### *Limitation of claim period*

The Committee notes that Schedule 1[33] precludes insurance claims for the cessation of work or failure to commence if less than 12 months have passed. This could detrimentally affect the interests of stakeholders who are required to wait 12 months to be eligible for insurance cover. The Committee draws this to the Parliament's attention.

##### *Confidentiality*

Schedule 1[29], [69]-[70] and [72] authorises the release of particulars, personal information and health information to or by a body under the principal Act. The Committee notes that this may involve the release of information that a person would reasonably expect to be confidential. However, as the Bill provides that the disclosure of this information is only for the purpose of assisting in the administration or execution of the principal Act, the Committee makes no further comment on this issue.

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

##### *Inconsistency*

The Committee notes that the Bill enables the regulations to make provisions about when claims may be lodged that may be inconsistent with other provisions in the same Part of the principal Act. The Committee has a preference against provisions that are inconsistent with the principal Act or that provide for ill-defined powers. The Committee draws this inconsistency to the attention of the Parliament.

##### *Wide-ranging powers*

The Committee notes that there are a number of provisions in Schedule 1[61] that permit the Authority to make decisions in relation to licenses for reasons that it thinks fit, which may be considered an ill-defined and wide-ranging power. However, the Committee notes that the proposed section 105N(2) requires the Authority to give reasons for its decisions, and the proposed section 105Q provides for administrative review of the Authority's decisions. In these circumstances, the Committee makes no further comment.

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

*Clarity*

The Committee notes that the proposed section 104C(2) within Schedule 1[60] permits the regulations for alternative indemnity insurance to apply provisions of the principal Act ‘with necessary’ modifications to or in respect of alternative indemnity insurance. The Committee notes that it is not clear whether this section intends to modify the alternative indemnity products or make modifications to the Act itself. The Committee has a preference against regulations that can modify the application of the provisions of the principal legislation, and prefers clarity of provisions that attempt to do this. The Committee draws this to the attention of Parliament.

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

*Commencement by proclamation*

The Committee generally prefers legislation to commence on assent or a fixed date. The Committee notes that Clause 2 of the Bill provides that the Act will commence by proclamation. The Committee notes that the Bill is implementing a number of regulatory changes which alter the structure and administration of home building insurance by the State Insurance Regulatory Authority. The Committee considers that this flexibility to its commencement is desirable and makes no further comment on the issue.

5. MINING AND PETROLEUM LEGISLATION AMENDMENT BILL 2017

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

*Property*

The Committee notes that the proposed new section 6 of the *Mining Act 1992* operates to prohibit persons from carrying out designated ancillary mining activity without authorisation. The Committee notes that requiring persons to obtain authorisation before carrying out designated ancillary mining activity may be incompatible with property rights. However, the Committee notes that the government licenses mining activity in NSW and as this clause is consistent with that policy makes no further comment.

*Privacy*

The Committee notes that publishing copies of enforceable undertaking may affect an individual’s right to property. However, given the prescriptive purpose of enforceable undertakings, the Committee makes no further comment on this issue.

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

*Guidelines*

The Committee notes that a decision-maker in relation to applications for ancillary mining activities is to have regard to the guidelines issued by the Secretary. The Committee has a preference for including the criteria for the granting of licenses to be included in principal legislation.

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

*Matters in the regulations*



The Committee notes that schedule 1[2] prohibits the unauthorised carrying out of designated ancillary mining activities, but provides for the regulations to make exemptions. The Committee considers that exemptions to a legislative scheme are more appropriately included in the principal legislation so that the Parliament can properly scrutinise those exemptions. The Committee refers this regulation making power to the Parliament for its reference.

6. PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT (CRIMINAL CHARGES AND CONVICTIONS) BILL 2017

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

*Retrospectivity*

The Committee notes that the Bill retrospectively affects the payment of a pension in relation to members or former members charged with or convicted of serious offences. However, the Committee notes the intention of the Bill is to correct an anomaly whereby members are currently able to protect their pensions by resigning from office before charges are laid. In the circumstances, the Committee makes no further comment.

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

*Review by Parliamentary Remuneration Tribunal*

The Committee notes that the operation of clause 3 of the Bill prevents the operation of section 4 of the principal Act, specifically the requirement that the Parliamentary Remuneration Tribunal approve the amendment. This has the effect of removing the review function of the Tribunal. Given the object of the Bill, the Committee makes no further comment.

PART 2 - REGULATIONS

1. HOLIDAY PARKS (LONG-TERM CASUAL OCCUPATION) REGULATION 2017

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

*Clarity and consistency*

The Committee notes that the 'what happens when this agreement ends' clause of the Terms to be taken to be in every occupation agreement (Schedule 1 of the parent Act) does not anticipate the powers of the park owner outlined in this regulation. The Committee refers to Parliament whether this is reasonable in the circumstances.

## Part One - Bills

# 1. Crimes Amendment (Intimate Images) Bill 2017

Date introduced	24 May 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman MP
Portfolio	Attorney-General

### Purpose and description

1. The object of this Bill is to amend the *Crimes Act 1900* (“the principal Act”) to create new offences to address the non-consensual sharing of intimate images (also known as ‘revenge porn’). The Bill provides that it will be an offence for a person to intentionally record or distribute, or threaten to record or distribute, an intimate image of another person without that person’s consent.

### Background

2. The Bill is in response to two recent Parliamentary Inquiries, the Committee on Children and Young People’s Inquiry into the Sexualisation of Children and the Inquiry by the Legislative Council Standing Committee on Law and Justice entitled “Remedies for the serious invasion of privacy in New South Wales”. Recommendations included that the NSW Government introduce a statutory cause of action for serious invasions of privacy based on the model detailed in the 2014 report by the Australian Law Reform Commission entitled “Serious Invasions of Privacy in the Digital Era”.
3. The Attorney outlined that the Bill is consistent with the statement of the Commonwealth’s Law, Crime and Community Safety Council which agrees to the National Statement of Principles Relating to the Criminalisation of the Non-Consensual Sharing of Intimate Images.
4. In his Second Reading speech, the Attorney noted that the purpose of the amendment is to provide protection to victims “where the non-consensual recording of the intimate image was done with motives of revenge, or to humiliate the victim, or to attempt to control their behaviour”. The Attorney indicated that the Bill addresses the gap in the law that previously only criminalised filming a person engaged in a private act if the filming was done for the purposes of sexual arousal or sexual gratification.

### Issues considered by committee

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

##### *Ownership of Property*

5. The proposed section 91Q makes it an offence to intentionally or recklessly distribute an intimate image of another person without their consent. “Distribute” is defined broadly

to include sending, supplying, transmitting, communicating or making available for viewing or access by another person whether in person or by electronic, digital or any other means.

6. The proposed section 91S provides that the Court may order rectification for a person to take reasonable actions to remove, retract, recover, delete or destroy an intimate image recorded or distributed by the person.
7. The Committee notes that the Bill creates regulations to restrict the distribution of an intimate image that has been shared with the recipient of that image and places restrictions on the property rights attached to that image.

**The proposed sections 91Q and 91O make it an offence to intentionally or recklessly distribute an intimate image of another person without their consent and allows the Court to order that the offending person take reasonable actions to remove the intimate image. The Committee notes that this regulates the property rights of the recipient of an intimate image and restricts the management of that property. However, as the property has been distributed in circumstances that a person would reasonably expect to be afforded privacy, the Committee considers that introducing criminal consequences for certain actions relating to the management of this type of property is appropriate and makes no further comment on the issue.**

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

*Commencement by proclamation*

8. Clause 2 of the Bill provides that the Act will commence on a day or days to be appointed by proclamation. This delegates to the executive the power to commence the Act on a day or days of its choosing.

**The Committee generally prefers legislation to commence on assent or a fixed date. The Committee notes that Clause 2 of the Bill provides that the Act will commence by proclamation. As this Bill creates a series of offences, commencement by assent or a fixed date provides certainty to those affected by the provisions in the Bill.**

## 2. Electronic Transactions Legislation Amendment (Government Transactions) Bill 2017

Date introduced	24 May 2017
House introduced	Legislative Council
Minister responsible	The Hon. Don Harwin MLC
Portfolio	Resources, Energy and Utilities

### Purpose and description

1. The Bill makes amendments to various Acts and regulations to provide for the electronic service and publication of documents, the use of electronic forms, and amends the *Road Transport Act 2013* to provide for a trial of digital driver licences.
2. The objects of this Bill are as follows:
  - (a) to provide for a trial of digital driver licences,
  - (b) to facilitate the service of documents by email,
  - (c) to allow for the use of approved forms in the place of statutory declarations,
  - (d) to provide for the online publication of public notices, announcements and advertisements,
  - (e) to postpone the commencement of certain provisions of the *Strata Schemes Management Act 2015*,
  - (f) to make other minor or consequential amendments.

### Background

3. In his Second Reading speech, the Minister stated that the main purpose of the Bill is to enable digital transactions between the Government and citizens, businesses or other organisations where they are not currently permitted or permission is unclear.
4. The Minister outlined that the Bill supports the Government's commitment to continually deliver faster, more convenient and more efficient services to the public through digital channels. It seeks to make sure that digital transactions and processes are an option across a wider range of government operations.

## Issues considered by committee

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

### *Certainty*

5. The proposed section 61 within Schedule 5 of the Bill provides that the digital driver licence trial ends 12 months after the day on which this Part commences or any other day that may be specified by the Minister.

**The Committee notes that the proposed amendment to the *Roads Transport Act 2013* to provide for a trial of digital driver licenses permits the digital driver licence trial to end 12 months after the commencement of the amendment or on any other day specified by the Minister. The Committee generally prefers legislation to provide certainty for persons to which the provisions apply. However, participants of the digital licence trial are still required to carry their physical driver license throughout the trial period. In these circumstances, the provision is reasonable and the Committee makes no further comment.**

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

### *Scrutiny*

6. Schedule 1 of the Bill amends various Acts and regulations to allow notices and other documents to be served by sending the notice or other document to an email address specified by the intended recipient or by other means that may be prescribed by the regulations.

**Schedule 1 of the Bill amends various Acts and regulations to allow the electronic service by email or by other means that may be prescribed by the regulations. The Committee generally prefers that provisions of the Act be included in the Act itself rather than the regulations. The Committee notes that the effect of these provisions may allow for the service of notices in a manner that was not subject to Parliamentary scrutiny.**

## 3. Firearms and Weapons Legislation Bill 2017

Date introduced	24 May 2017
House introduced	Legislative Council
Minister responsible	The Hon. Niall Blair MLC
Portfolio	Primary Industries, Regional Water, Trade and Industry

### Purpose and description

1. This Bill amends the *Firearms Act 1996*, the *Weapons Prohibition Act 1988* and other laws to make further provision in respect of the categorisation of firearms, firearms and weapons amnesties, ammunition controls, licenses and permits, and administrative arrangements.
2. The Bill also amends sections of the *Criminal Procedure Act 1986* that are consequential on the proposed new offences concerning the remote controlled possession and use of firearms.

### Background

3. Following the Port Arthur Massacre in 1996, the original National Firearms Agreement (NFA) was drafted. This framework provided for the categorisation of all firearms as well as providing for the fundamental aspects of the regulation of firearms.
4. Following the Martin Place Siege in 2014, the Joint Commonwealth-New South Wales review recommended an update to the 'technical' elements of the NFA.
5. This Bill will give effect to the updated NFA, a National Firearms Amnesty and miscellaneous firearms and weapons amendments. The Bill also makes other related changes.

### Issues considered by committee

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

##### *Conviction without charge*

6. Schedule 1 [43] of the Bill proposes to insert a provision at section 51I of the *Firearms and Weapons Legislation Act 1996* to make it offence to possess or use firearms by remote control. Section 51I(1) will make it offence to possess or use a firearm unless authorised by permit and, similarly, section 51I(2) will make it an offence to use a pistol or prohibited firearm unless authorised by permit.
7. The maximum penalty for a conviction under section 51I(1) is five years imprisonment, whereas the maximum penalty for a conviction under section 51I(2) is 14 years imprisonment.

8. The Bill proposes to insert a further provision at section 51(4) that, where a person is charged under section 51(2) but found not guilty, the jury may still convict the person of an offence under section 51(1). This is notwithstanding whether the person has been charged with an offence under section 51(1) or not.
9. The Committee notes the effect of this provision may be to deny the accused an opportunity to defend themselves against the charges specifically set out under section 51(1). In such circumstances, this may be seen as a breach of procedural fairness and run counter to the norms of a fair trial.
10. The Committee also recognises that sections 51(1) and section 51(2) relate to substantially similar offences with only technical differences. Principally, these differences are whether the firearm in question is an ordinary 'firearm' under the section 3 definitions of the Act, or a 'pistol or prohibited firearm'. In turning on a technicality, the Committee appreciates that it may be appropriate for a jury to find for an alternative conviction if it is satisfied that a remote control firearm was possessed or used but not satisfied that the firearm in question was 'prohibited'.

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

##### *Commencement by proclamation*

11. Section 2 provides that this Act is to commence on a day or days to be appointed by proclamation. As this Bill provides for new offences, as well as a number of regulations concerning the use and possession of firearms, including amnesties, the Committee prefers that certainty is provided as to when these new laws come into effect.

**The Committee notes that this Bill is to commence on a day or days to be appointed by proclamation. Given that this Bill provides for new offences, the Committee prefers that certainty is provided as to when these new laws come into effect.**

## 4. Home Building Amendment (Compensation Reform) Bill 2017

Date introduced	24 May 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Finance, Services and Property

### Purpose and description

1. The object of this Bill is to amend the *Home Building Act 1989* (“the principal Act”) and other legislation with respect to insurance and alternative cover in relation to residential building work, licensing of insurers and alternative indemnity cover providers.

### Background

2. The Bill establishes a new framework for home building compensation. In his Second Reading speech, the Minister stated that the reforms “introduce a modern, fit-for-purpose home building compensation scheme” that will maintain consumer protection for homeowners for non-completion of building work.
3. The Bill confirms the role of the State Insurance Regulatory Authority (“the Authority”) as the independent regulator of the scheme with powers to issue insurance guidelines in relation to premiums, market practices, claims handling, prudential standards, contracts of insurance, underwriting and builder eligibility to buy cover. Under this scheme, license holders will only be able to charge premiums approved by the Authority.

### Issues considered by committee

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

##### *Limitation of claim period*

4. Schedule 1[33] inserts section 103B(2AA) which specifies that a claim cannot be made under a construction period insurance contract for loss incurred as a result of failure to commence or cessation of work for a period of fewer than 12 months.

**The Committee notes that Schedule 1[33] precludes insurance claims for the cessation of work or failure to commence if less than 12 months have passed. This could detrimentally affect the interests of stakeholders who are required to wait 12 months to be eligible for insurance cover. The Committee draws this to the Parliament’s attention.**

##### *Confidentiality*

5. Schedule 1[29] authorises a licensed provider or licensed insurer to disclose particulars to the Authority for the purposes of the register despite the *Privacy and Personal Information Protection Act 1998*.



6. Schedule 1[69]-[70] and 1[72] authorises the disclosure of personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) or health information (within the meaning of the *Health Records and Information Privacy Act 2002*) to or by a body under the principal Act to assist in the administration or execution of the principal Act.

**Schedule 1[29], [69]-[70] and [72] authorises the release of particulars, personal information and health information to or by a body under the principal Act. The Committee notes that this may involve the release of information that a person would reasonably expect to be confidential. However, as the Bill provides that the disclosure of this information is only for the purpose of assisting in the administration or execution of the principal Act, the Committee makes no further comment on this issue.**

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

*Inconsistency*

7. Schedule 1[42] enables the regulations to make provisions about when claims may be lodged that may be inconsistent with other provisions in the same Part of the principal Act.

**The Committee notes that the Bill enables the regulations to make provisions about when claims may be lodged that may be inconsistent with other provisions in the same Part of the principal Act. The Committee has a preference against provisions that are inconsistent with the principal Act or that provide for ill-defined powers. The Committee draws this inconsistency to the attention of the Parliament.**

*Wide-ranging powers*

8. The proposed section 105N(2) under Schedule 1[61] permits the Authority to “cancel a license for any reason it thinks fit”. The proposed sections 105F(2)(g), 105F(3)(d) and 105P(1)(b) also permits the Authority to make decisions in regards to licenses for reasons that it thinks fit.

**The Committee notes that there are a number of provisions in Schedule 1[61] that permit the Authority to make decisions in relation to licenses for reasons that it thinks fit, which may be considered an ill-defined and wide-ranging power. However, the Committee notes that the proposed section 105N(2) requires the Authority to give reasons for its decisions, and the proposed section 105Q provides for administrative review of the Authority’s decisions. In these circumstances, the Committee makes no further comment.**

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

*Clarity*

9. Schedule 1[60] includes the proposed section 104C which regulates alternative indemnity insurance. Section 104C(2) provides that the regulations may apply provisions of the Act (including relevant offences) that apply to or in respect of current or former contracts of insurance, with necessary modifications, to or in respect of alternative indemnity products.

The Committee notes that the proposed section 104C(2) within Schedule 1[60] permits the regulations for alternative indemnity insurance to apply provisions of the principal Act 'with necessary' modifications to or in respect of alternative indemnity insurance. The Committee notes that it is not clear whether this section intends to modify the alternative indemnity products or make modifications to the Act itself. The Committee has a preference against regulations that can modify the application of the provisions of the principal legislation, and prefers clarity of provisions that attempt to do this. The Committee draws this to the attention of Parliament.

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

*Commencement by proclamation*

10. Clause 2 of the Bill provides that the Act will commence on a day or days to be appointed by proclamation. This delegates to the executive the power to commence the Act on a day or days of its choosing.

The Committee generally prefers legislation to commence on assent or a fixed date. The Committee notes that Clause 2 of the Bill provides that the Act will commence by proclamation. The Committee notes that the Bill is implementing a number of regulatory changes which alter the structure and administration of home building insurance by the State Insurance Regulatory Authority. The Committee considers that this flexibility to its commencement is desirable and makes no further comment on the issue.

## 5. Mining and Petroleum Legislation Amendment Bill 2017

Date introduced	24 May 2017
House introduced	Legislative Council
Minister responsible	The Hon. Don Harwin MLC
Portfolio	Resources

### Purpose and description

1. The object of this Bill is to amend the *Mining Act 1992* (“the Mining Act”), the *Mining Regulation 2016* (“the Mining Regulation”) and the *Petroleum (Onshore) Act 1991* (“the Petroleum Act”) as follows:
  - (a) to clarify how ancillary mining activities (currently known as “mining purposes”) that are carried out in connection with mining leases and mineral claims are to be regulated under the Mining Act,
  - (b) to make further provision in relation to the giving of enforceable undertakings under the Mining Act and the Petroleum Act and the enforcement of those instruments,
  - (c) to make further provision in relation to offences under the Mining Act and the Petroleum Act regarding the furnishing of false or misleading information,
  - (d) to make other miscellaneous amendments regarding the administration and enforcement of the Mining Act and the Petroleum Act.

### Background

2. Following the 2015 amendments to the legislative framework governing the resources sector, the Minister outlined that this Bill has been introduced to enhance environmental protections, strengthen compliance and enforcement powers and improve the rigour of the titles administration framework.

### Issues considered by committee

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

##### *Property*

3. Schedule 1[2] inserts a new section 6 in the *Mining Act 1992*. Section 6 provides that persons must not undertake a designated ancillary mining activity without authorisation. Such persons are required to act in a manner that is in accordance with their mining lease and must ensure the designated ancillary mining activity is within the claim area. The Bill provides that exemptions to this scheme may be included in the regulations.

**The Committee notes that the proposed new section 6 of the *Mining Act 1992* operates to prohibit persons from carrying out designated ancillary**

mining activity without authorisation. The Committee notes that requiring persons to obtain authorisation before carrying out designated ancillary mining activity may be incompatible with property rights. However, the Committee notes that the government licenses mining activity in NSW and as this clause is consistent with that policy makes no further comment.

#### *Privacy*

4. Schedule 1[16] provides that the Secretary must publish, and make public, a copy of each enforceable undertaking accepted by the secretary under section 378ZFB of the *Mining Act 1992*. Schedule 3[4] inserts a similar clause in section 125ZJ of the *Petroleum (Onshore) Act 1991*.

The Committee notes that publishing copies of enforceable undertaking may affect an individual's right to property. However, given the prescriptive purpose of enforceable undertakings, the Committee makes no further comment on this issue.

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

#### *Guidelines*

5. Schedule 1[7] of the Bill inserts a new subsection 63(6) in the *Mining Act 1992*, which provides that a decision-maker with respect to an application for mining lease for an ancillary mining activity is to have regard to guidelines issued by the Secretary.

The Committee notes that a decision-maker in relation to applications for ancillary mining activities is to have regard to the guidelines issued by the Secretary. The Committee has a preference for including the criteria for the granting of licenses to be included in principal legislation.

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

#### *Matters in the regulations*

6. Schedule 1[2] prohibits the unauthorised carrying out of designated ancillary mining activities, but provides for the regulations to make exemptions.

The Committee notes that schedule 1[2] prohibits the unauthorised carrying out of designated ancillary mining activities, but provides for the regulations to make exemptions. The Committee considers that exemptions to a legislative scheme are more appropriately included in the principal legislation so that the Parliament can properly scrutinise those exemptions. The Committee refers this regulation making power to the Parliament for its reference.

## 6. Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill 2017

Date introduced	23 May 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Premier

### Purpose and description

1. At present, a member of Parliament elected before the closure of the Parliamentary Contributory Superannuation Scheme in 2007 is disqualified from receiving any pension under that Scheme if the person ceases to be a member:
  - (a) because of a conviction for a serious offence, or
  - (b) while proceedings for a serious offence are pending and is later convicted of the offence.
2. A serious offence is an infamous crime or an offence punishable by imprisonment for life or for a term of 5 years or more (including, by the operation of section 21 (3) of the *Interpretation Act 1987*, a common law offence).
3. The object of this Bill is to amend the *Parliamentary Contributory Superannuation Act 1971* (the principal Act) to provide for the same disqualification from receiving a pension if the person is charged with and convicted of a serious offence after ceasing to be a member for conduct that occurred while the person was a member.
4. In addition, the Bill amends the *Crimes (Sentencing Procedure) Act 1999* to provide that a court, when sentencing a member or former member of Parliament for a serious offence, must not take into account, as a mitigating factor in sentencing, the loss of the person's entitlement to a parliamentary pension because of the conviction for the offence.

### Background

5. In the second reading speech, the Premier noted that: 'Former members should only be entitled to a publicly funded pension if they have discharged their parliamentary duties lawfully and acted as law-abiding citizens during their term in office.' The Premier went on to say: 'There is no reason why a member convicted of a serious offence committed during their time in office should be in a better or worse position simply because of whether and when they resigned. This bill closes the loophole in the current Act.'

## Issues considered by committee

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

#### *Retrospectivity*

6. Part 3 of the principal Act relates to members' entitlement to pensions. Section 19AA relates to members and former members charged with or convicted of serious offences and the impact this has on their receipt of a parliamentary pension.
7. Schedule 1[1] of the Bill provides for a new sub-section 19AA (1) in the principal Act. 19AA(1)(b) outlines that the section applies to a person who ceased to be a member. Schedule 1[12] inserts a new clause in Schedule 1 in the principal Act, outlining that the amendments extend to any serious offence committed before the commencement of the amendments, to any conviction before the commencement of the amendments and to a person who ceased to be a member before the commencement of those amendments.

**The Committee notes that the Bill retrospectively affects the payment of a pension in relation to members or former members charged with or convicted of serious offences. However, the Committee notes the intention of the Bill is to correct an anomaly whereby members are currently able to protect their pensions by resigning from office before charges are laid. In the circumstances, the Committee makes no further comment.**

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

#### *Review by Parliamentary Remuneration Tribunal*

8. Section 4 of the principal Act provides:

It is not lawful for the Legislative Assembly to originate or pass any vote, resolution or Bill for the amendment of this Act unless a certificate approving the amendment made by the vote, resolution or Bill has been first issued by the Parliamentary Remuneration Tribunal, or any successor of the Tribunal, during the Session in which the vote, resolution or Bill is proposed to be passed.

9. Clause 3 of the Bill outlines that section 4 of the principal Act does not apply to or in respect of this Act.

**The Committee notes that the operation of clause 3 of the Bill prevents the operation of section 4 of the principal Act, specifically the requirement that the Parliamentary Remuneration Tribunal approve the amendment. This has the effect of removing the review function of the Tribunal. Given the object of the Bill, the Committee makes no further comment.**

## Part 2 - Regulations

### 1. Holiday Parks (Long-term Casual Occupation) Regulation 2017

Date published	28 April 2017
Disallowance date	22 June 2017
Minister responsible	The Hon. Matt Kean MP
Portfolio	Innovation and Better Regulation

#### Purpose and description

1. The object of this Regulation is to repeal and remake, without substantial amendment, the *Holiday Parks (Long-term Casual Occupation) Regulation 2009*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.
2. This Regulation provides for how a park owner is to deal with goods that are left uncollected on a vacated site in the park and other savings and formal matters.
3. This Regulation is made under the *Holiday Parks (Long-term Casual Occupation) Act 2002* (the parent Act), including sections 34 (1) (b) and 51 (the general regulation-making power).
4. The Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

#### Issues considered by committee

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

##### *Clarity and consistency*

5. Schedule 1 of the parent Act provides the terms that are taken to be in every occupation agreement. Clause 6 outlines 'What happens when this agreement ends'. The term taken to be included is

The occupant can stay on the site at the same occupation fee (or at an increased fee if the fee is increased in accordance with this agreement) and otherwise under the same terms unless or until this agreement is ended in accordance with this agreement

Clause 6 also provides space to 'fill in what else will happen when the time for this agreement ends'.

6. This regulation provides that if an occupant has vacated the site and the agreement has been terminated, goods become 'uncollected goods' (clause 5). Goods can include a

relocatable home (clause 4). Within 7 days the park owner must give the occupant written notice that the goods have been stored, and if it is a moveable dwelling, a statement that the park owner intends to apply to the Tribunal for an order authorising the removal, destruction, disposal or sale of the moveable dwelling [clause 7(1), 7(2)(g)]. The park owner is then to apply to the Tribunal after waiting 30 days.

7. The park owner is also empowered to remove, destroy or otherwise dispose of perishables, and other items that would cost more to remove, store and sell than the goods are worth. The park owner may do this within two days of termination if the occupant has vacated the site (clause 5).

**The Committee notes that the ‘what happens when this agreement ends’ clause of the Terms to be taken to be in every occupation agreement (Schedule 1 of the parent Act) does not anticipate the powers of the park owner outlined in this regulation. The Committee refers to Parliament whether this is reasonable 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:
  - (c) to consider any Bill introduced into Parliament, and
  - (d) 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.