



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. CHARITABLE FUNDRAISING AMENDMENT (INQUIRIES) BILL 2017

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

Right against self-incrimination

The Committee notes in section 41L(1) provides that a person is not excused from producing a record, document or thing, to give information or evidence or answers on the grounds of self-incrimination. The Committee also notes sections 41L(2) and 41R(6) provide safeguards to a person that compliance under this Part will not be admissible in evidence against a person in civil or criminal proceedings if the person objects at the time on the grounds of self-incrimination or the person was not warned at an appropriate time that they may object on the grounds of self-incrimination. Given these safeguards, the Committee makes no further comment.

Retrospectivity

The Committee notes that section 41C within Schedule 1 Division 2 of the Bill allows for an existing non-public inquiry to be reconstituted as a public inquiry as defined by the amended Part 3A of the Bill. This may have implications for witnesses or organisations which have previously provided information or evidence to an existing non-public inquiry that were not previously subject to the powers contained in the Bill. This is particularly the case as the Bill contains provisions that exclude the right against self-incrimination in certain circumstances. However, the Committee recognises the public policy reasons for such provisions so as to allow for more transparent examination of funds managed by charitable organisations through a public inquiry process. As such, the Committee makes no further comment on this issue.

2. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (AUDITING OF OUT-OF-HOME CARE PROVIDERS) BILL 2017

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

Right to privacy

The Committee notes that section 172H enables the Auditor-General to request information from required agencies and may inadvertently result in the production of personal and identifying information (for example, of staff, carers, or children and young persons in care) in circumstances where that information is not reasonably required to conduct the performance audit. The section therefore has the potential to trespass unduly on a person's right to privacy. The Committee refers this matter to the Parliament for its consideration.

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

Power to make regulations

Section 172E(4) as set out in Schedule 1 of the Bill provides that the regulations may make further provision for or with respect to performance audits under Part 8 of the Act. While regulations are disallowable pursuant to section 41 of the Interpretation Act 1987, and are therefore subject to some level of parliamentary scrutiny, the Committee nevertheless notes that the regulation-making power in question is quite broad. The Committee generally prefers that the parameters of a regulation-making power are more comprehensively set out in the principal legislation and refers this matter to Parliament for its consideration.

3. COAL MINE SUBSIDENCE COMPENSATION BILL 2017

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

Retrospective liability for compensation

The Committee notes that the Bill potentially places liability retrospectively to the proprietors of coal mines for any subsidence caused by an active coal mine before the introduction of the Bill. The Committee generally prefers that legislation not apply retrospectively. Retrospectivity is contrary to the rule of law that allows people knowledge of what the law is at any given time, so they may behave accordingly. However, the Committee acknowledges the policy reasons for such a provision, particularly to create a direct financial incentive to reduce future subsidence impacts on communities. In these circumstances, the Committee makes no further comment.

Access to lodge claim for compensation

The Committee notes that section 11 requires that all claims for compensation be lodged online only. The Committee is concerned whether this will unfairly disadvantage those claimants who do not have equal access to, or knowledge of, internet usage. However, the Committee notes the administrative convenience of processing online claims rather than paper forms - particularly as the Bill intends to improve the efficiency of claim turnaround time. In these circumstances, the Committee makes no further comment.

Privity of contract

The Committee notes that section 17 potentially encroaches on the privity of contract between parties. However, the Committee notes that the Bill is intended to protect the rights of claimants and property holders that have been affected by subsidence from active and non-active coal mines. As such, any privity of contract that was contrary to the Act may not be in the best interests of the claimant, particularly in cases where compensation is owed. In these circumstances, the Committee makes no further comment.

Compulsory acquisition of land without agreement

The Committee is concerned that the Bill allows the Chief Executive the wide power to purchase a claimant's property by compulsory acquisition and may sell, lease or otherwise dispose of this property. The Committee notes that the Chief Executive may only do this in circumstances where the claimant has not come to an agreement about the purchase of the land within a reasonable time, however, that the length of a reasonable time is determined by the Chief Executive. The Committee is concerned that this may constitute a trespass on personal rights and liberties and draws this to the attention of the Parliament.

Use of force

The Committee notes that Part 6 of the Bill permits the use of force that is reasonably necessary to enter premises under this Act. The Committee notes that the Bill does not outline what is meant by 'force' (and whether this includes physical force) or give an indication of when this may be 'reasonably necessary'. The Committee questions in what circumstances it is reasonably necessary to use force to enforce the Act, and what test – if any - may determine whether any such force used was 'reasonably necessary'. The Committee draws this to the attention of the Parliament for its consideration.

Trespass/Entering premises without consent

The Committee notes that section 43 permits authorised officers to enter premises without the consent of the occupiers provided reasonable notice is provided or it is an emergency. The Committee notes that the Bill does not outline what is considered 'reasonable notice' or an 'emergency' for the purposes of the section. The Committee is concerned that this grants authorised officers a wide power for entering premises without the consent of the occupiers. However, the Committee notes that the Bill limits this to entry to any reasonable time during the day, or at any other time that the premises are open for entry. In these circumstances, the Committee makes no further comment.

Production of documents without providing reasons

The Committee notes that section 45 provides that an authorised officer can require a person to produce documents or information. This section, however, does not outline that the authorised officer must provide reasons identifying the relevance of the documents or information required for production. It would be preferable that reasons are given for why the documentation or information is relevant to enforcing the Act. The Committee draws this to the attention of the Parliament.

Privilege against self-incrimination/Right to silence

The Committee notes that section 48 encroaches on the common law privilege against self-incrimination, which allows a person to refuse to answer any question or produce any document if to do so may tend to bring them into peril and the possibility of conviction. The Committee is concerned that this requires a person to provide documents that may incriminate themselves, particularly where this deals with criminal proceedings. The Committee refers this possible breach of privilege to the Parliament for its further consideration.

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

Limitations on review procedures

The Committee notes that the Bill limits the review procedures available to claimants and proprietors. The Committee is concerned that the Bill places harsh limitations on claimants for review procedures and does not expressly require the Chief Executive to provide reasons for refusing to review claims by claimants or proprietors. However, the Committee acknowledges that in circumstances where a request to review a claim has been refused, section 16 allows a claimant or proprietor to make an appeal to the Land and Environment Court against a determination of the claim. The Committee also notes that the Bill aims to reduce administrative inefficiencies in determining claims. In these circumstances, the Committee makes no further comment on this issue.

Disallowance of claims without determination

The Committee notes that Part 2 of the Bill contains provisions outlining that a failure to determine a claim within the approved time frame is to be taken as a disallowance of the claim. Part 2 also provides that a request to review a decision must occur within 3 months from the decision to disallow the claim. The Committee is concerned that a failure to determine a claim for lapse of time is to be considered a disallowance of the claim. It would be preferable that a determination is made in every case so that the claimant may be notified of the outcome of the claim and provided with reasons for the disallowance of the claim.

This is especially the case where there is a time constraint on claimants to apply for a review of a disallowance. The Committee notes that it is not clear from the Bill whether claimants of claims that have failed to be determined (and have consequently been disallowed) will receive notification within a reasonable time to provide a fair opportunity to request for review within the 3-month timeframe. The Committee draws this to the attention of the Parliament.

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. The Committee generally prefers legislation to commence on assent or a fixed date. However, the Committee notes that the Bill is implementing a number of regulatory changes to the compensation framework dealing with the impacts of coal mine subsidence, which involves changes to multiple Acts and government agencies. As such, the Committee notes the administrative convenience of the section and makes no further comment on the issue.

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

Provisions to be prescribed by the regulations

The Committee has identified several provisions that allow the regulations to determine certain aspects of the coal mine subsidence compensation scheme. The Committee acknowledges the administrative convenience of such provisions, especially in the case of smaller particulars of the compensation scheme regarding levels of rates, levies and contributions. However, the Committee is concerned that some matters may be better dealt with in the legislation, particularly provisions that provide certainty for definitions of certain terms relevant to compensation claims and where the regulations may create penalty notice offences. The Committee draws this to the attention of the Parliament.

4. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (STAGED DEVELOPMENT APPLICATIONS) BILL 2017

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the *Legislation Review Act 1987*.

5. TRANSPORT LEGISLATION AMENDMENT (AUTOMATED VEHICLE TRAILS AND INNOVATION) BILL 2017

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the *Legislation Review Act 1987*.

Part One – Bills

1. Charitable Fundraising Amendment (Inquiries) Bill 2017

Date introduced	3 August 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Matt Kean MP
Portfolio	Minister for Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Charitable Fundraising Act 1991* to enable public inquiries to be conducted under the Act.

BACKGROUND

2. The Minister, the Hon. Matt Kean MP, in his second reading speech stated the Bill would enhance the existing powers in the *Charitable Fundraising Act 1991* to inquire into fundraisers. The amendments concern the establishment and conduct of public inquiries under the principal Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right against self-incrimination

3. Section 41L(1) provides a person is not excused from the requirements under this Part to produce a record, document or thing, to give information or evidence or to answer a question on the grounds that the information provided may incriminate the person or make the person liable to a penalty.
4. The Committee notes section 41L(2) provides for certain safeguards against self-incrimination including that:
 1. the person objects at the time on the grounds of self-incrimination [section 41L(2)(a)] or
 2. the person was not warned at an appropriate time that they may object to producing any record, document or thing, or give information, evidence or an answer, on the grounds that it may incriminate the person [section 41L(2)(b)] and;
 3. No criminal or civil liability (apart from the provisions under the Act) attaches to a person for compliance or, purported compliance in good faith, with any requirement made under the Part. [section 41R(6)]

The Committee notes in section 41L(1) provides that a person is not excused from producing a record, document or thing, to give information or evidence or answers on the grounds of self-incrimination. The Committee also notes sections 41L(2) and 41R(6) provide safeguards to a person that compliance under this Part will not be admissible in evidence against a person in civil or criminal proceedings if the person objects at the time on the grounds of self-incrimination or the person was not warned at an appropriate time that they may object on the grounds of self-incrimination. Given these safeguards, the Committee makes no further comment.

Retrospectivity

5. Section 41C In Schedule 1 Division 2 of the Bill outlines provisions for the reconstitution of an existing non-public inquiry as a public inquiry. This section applies retrospectively to reconstitute any existing inquiry under the *Charitable Fundraising Act 1991* into a public inquiry with all accompanying powers contained in the Bill pertaining to the examination of witnesses and the production of documents.

The Committee notes that section 41C within Schedule 1 Division 2 of the Bill allows for an existing non-public inquiry to be reconstituted as a public inquiry as defined by the amended Part 3A of the Bill. This may have implications for witnesses or organisations which have previously provided information or evidence to an existing non-public inquiry that were not previously subject to the powers contained in the Bill. This is particularly the case as the Bill contains provisions that exclude the right against self-incrimination in certain circumstances. However, the Committee recognises the public policy reasons for such provisions so as to allow for more transparent examination of funds managed by charitable organisations through a public inquiry process. As such, the Committee makes no further comment on this issue.

2. Children and Young Persons (Care and Protection) Amendment (Auditing of Out-of-Home Care Providers) Bill 2017

Date introduced	3 August 2017
House introduced	Legislative Assembly
Member responsible	Ms Tania Mihailuk, MP
Shadow Portfolio	Family and Community Services

PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* to require the Auditor-General to conduct performance audits of non-government agencies that receive State government funding to arrange for children or young persons to be placed in out-of-home care.

BACKGROUND

2. The transfer of out-of-home care services from Family and Community Services (FACS) to the NGO sector commenced in 2012, following recommendations made in the Wood Special Commission of Inquiry into Child Protection Services in NSW, and later adopted by the then Government in the Keep Them Safe report.
3. According to the Member in her second reading speech, on 17 November 2016, the NSW Auditor-General's report on FACS recommended that "public confidence in government and its agencies would be enhanced if the New South Wales Auditor-General had the mandate to 'follow the dollar' into NGOs". Ms Mihailuk further noted that other jurisdictions in Australia provide their respective auditor-generals with a power to audit such agencies.
4. Ms Mihailuk also noted that the Bill will implement recommendations recently made in May 2017 by the General Purpose Standing Committee No. 2 in relation to its inquiry into the resourcing and effectiveness of the child protection system.

ISSUES CONSIDERED BY COMMITTEE

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

Right to privacy

5. Section 172H in the Bill empowers the Auditor-General or other authorised person to require an agency that is subject to a performance audit under Part 8 to 'produce, or cause to be produced, any material required for the performance audit'. The section further notes that that material may include 'any books, accounts, agreements, vouchers, letters or other documents kept or held by the designated agency that relates to any publicly funded placement function.' It is an offence to fail, without lawful excuse, to provide this information to the Auditor-General: section 172H(3).

6. The Committee notes that the power in section 172H is fairly unconstrained and may therefore result in the production of personal and identifying information (for example, of staff, carers, or children and young persons in care) to the Auditor-General in circumstances where that information is not reasonably required to conduct the performance audit. The Committee is therefore concerned that the power has the potential to trespass unduly on a person's right to privacy, in circumstances where the power to require material to be produced could be confined to material 'reasonably' required for the performance audit or 'reasonably' related to the relevant functions. The section could also, in certain circumstances, expressly exclude the requirement to produce personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*.

The Committee notes that section 172H enables the Auditor-General to request information from required agencies and may inadvertently result in the production of personal and identifying information (for example, of staff, carers, or children and young persons in care) in circumstances where that information is not reasonably required to conduct the performance audit. The section therefore has the potential to trespass unduly on a person's right to privacy. The Committee refers this matter to the Parliament for its consideration.

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

Power to make regulations

7. Section 172E(4) provides that the regulations may make further provision for or with respect to performance audits under Part 8 of the *Children and Young Persons (Care and Protection) Act 1998*.
8. The Committee notes that this regulation-making power with respect to performance-audits is quite broad, and therefore the provision may enable regulations which in effect constrain or limit the ability of the Auditor-General to undertake performance audits.

Section 172E(4) as set out in Schedule 1 of the Bill provides that the regulations may make further provision for or with respect to performance audits under Part 8 of the Act. While regulations are disallowable pursuant to section 41 of the *Interpretation Act 1987*, and are therefore subject to some level of parliamentary scrutiny, the Committee nevertheless notes that the regulation-making power in question is quite broad. The Committee generally prefers that the parameters of a regulation-making power are more comprehensively set out in the principal legislation and refers this matter to Parliament for its consideration.

3. Coal Mine Subsidence Compensation Bill 2017

Date introduced	1 August 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 make provision for the payment of compensation for damage caused by subsidence arising from coal mining.
2. The Bill repeals and replaces the *Mine Subsidence Compensation Act 1961* which contained a statutory scheme of compensation for coal mine subsidence and enacts a new scheme. The new scheme provides for the following:
 1. proprietors of active coal mines are liable to pay compensation for damage arising from subsidence caused by their coal mines and for related preventative or mitigative expenses,
 2. the Mine Subsidence Board is to be abolished after a transitional period and is to be replaced by Subsidence Advisory NSW which is established under the *Government Sector Employment Act 2013* as a Public Service agency,
 3. the Mine Subsidence Compensation Fund, to be renamed the Coal Mine Subsidence Compensation Fund (the Fund), will continue in existence and continue to be funded by levies paid by proprietors of active coal mines,
 4. the Chief Executive of Subsidence Advisory NSW is liable to pay compensation from the Fund for damage arising from subsidence caused by non-active coal mines and for related preventative or mitigative expenses,
 5. a process for making claims for compensation through Subsidence Advisory NSW is established and provision is made for reviews of, and appeals from, determinations relating to those claims,
 6. provisions of the *Mine Subsidence Compensation Act 1961* relating to approval of development within mine subsidence districts, the enforcement of the Act and functions and powers of the Mine Subsidence Board (now to be conferred on the Chief Executive of Subsidence Advisory NSW) are re-enacted and modified.

BACKGROUND

3. The Minister for Finance, Services and Property, in his second reading speech, stated that the Bill would repeal and replace the *Mine Subsidence Compensation Act 1961* (the "1961 Act"). The 1961 Act was introduced to protect property owners damaged by

subsidence from coal mining, including historic legacy coal mining, and created a subsidence coal-mining fund that was financed by the coal industry and not by property owners.

4. The Minister highlighted that among issues raised about the existing scheme were concerns that the mine subsidence compensation framework was outdated, that the mine subsidence board was not determining suitable compensation fairly or efficiently, and that a better balance was needed between the interest of mining operators and property owners.
5. Additionally, in October 2013, the NSW Independent Commission Against Corruption commenced an investigation into the Mine Subsidence Board. The Commission delivered its finding in 2016 and found evidence of serious fraud and corruption within the organisation, recommending changes to financial management, organisation processes, procurement practices and governance arrangements.
6. The Minister stated that the Government's reforms build on and strengthen the 1961 Act to incorporate the recommendations by the Commission. The Bill, together with a package of guidelines and regulatory changes, introduces a number of measures to ensure mining operators that are causing subsidence damage are accountable for associated financial and social impacts.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospective liability for compensation

7. Section 8 provides that compensation under this Bill is to be paid by the proprietor of the coal mine that caused the subsidence – in relation to compensation arising from an active coal mine. This change to make proprietors directly liable, rather than compensation being drawn from a collective fund, means that proprietors could potentially be directly liable for subsidence claims caused before the introduction of the new provisions.
8. Section 8(2) clarifies that the proprietor remains liable for damage from an active coal mine even if that person ceases to be a proprietor of an active coal mine, whether by reason of sale, transfer, or the coal mine ceasing to be active.
9. Section 8(3) also provides that a person who becomes a proprietor of an active coal mine (whether by reason of purchase, transfer or any other reason) is liable to pay compensation under the Act in relation to subsidence arising from the coal mine (whether occurring before or after that time).

The Committee notes that the Bill potentially places liability retrospectively to the proprietors of coal mines for any subsidence caused by an active coal mine before the introduction of the Bill. The Committee generally prefers that legislation not apply retrospectively. Retrospectivity is contrary to the rule of law that allows people knowledge of what the law is at any given time, so they may behave accordingly. However, the Committee acknowledges the policy reasons for such a provision, particularly to create a direct financial incentive to reduce future subsidence impacts on communities. In these circumstances, the Committee makes no further comment.

Access to lodge claim for compensation

10. Section 11 provides that a person may apply for compensation by lodging a claim through the website of Subsidence Advisory NSW in the manner and form approved by the Chief Executive.

The Committee notes that section 11 requires that all claims for compensation be lodged online only. The Committee is concerned whether this will unfairly disadvantage those claimants who do not have equal access to, or knowledge of, internet usage. However, the Committee notes the administrative convenience of processing online claims rather than paper forms - particularly as the Bill intends to improve the efficiency of claim turnaround time. In these circumstances, the Committee makes no further comment.

Privity of contract

11. Section 17 prevents persons from contracting out of the Act and states that the Act applies despite any contract of agreement to the contrary. The Committee notes that this encroaches on the privity of contract and the rights and obligations agreed upon between the parties

The Committee notes that section 17 potentially encroaches on the privity of contract between parties. However, the Committee notes that the Bill is intended to protect the rights of claimants and property holders that have been affected by subsidence from active and non-active coal mines. As such, any privity of contract that was contrary to the Act may not be in the best interests of the claimant, particularly in cases where compensation is owed. In these circumstances, the Committee makes no further comment.

Compulsory acquisition of land without agreement

12. Section 26 outlines provisions for the purchase of damaged improvements and effecting of remedial works by the Chief Executive. Subsection 26(1) outlines that the Chief executive may, instead of making a payment of compensation in respect of a claim under section 7(1) or (2)(b) in relation to a non-active coal mine, come to an agreement with the owner of the land for the purchase either the land, improvements, or any estate or interest in the land or improvements concerned.
13. Subsection 26(2) provides that if no agreement is reached within a reasonable time, as determined by the Chief Executive, then the Chief Executive may acquire the land by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* without regard to any damage caused by subsidence or by works to prevent or mitigate any such damage.
14. Subsection 26(5) provides that the Chief Executive may sell, lease or otherwise dispose of any property acquired by the Chief Executive under subsection (1) or (2).

The Committee is concerned that the Bill allows the Chief Executive the wide power to purchase a claimant's property by compulsory acquisition and may sell, lease or otherwise dispose of this property. The Committee notes that the Chief Executive may only do this in circumstances where the claimant has not come to an agreement about the purchase of the land within a reasonable time, however, that the length of a reasonable time is determined by the Chief

Executive. The Committee is concerned that this may constitute a trespass on personal rights and liberties and draws this to the attention of the Parliament.

Use of force

15. Section 40(2) provides that an authorised officer must not use any more force than is reasonably necessary to enter premises under this Act or to do anything for which entry is effected.

The Committee notes that Part 6 of the Bill permits the use of force that is reasonably necessary to enter premises under this Act. The Committee notes that the Bill does not outline what is meant by ‘force’ (and whether this includes physical force) or give an indication of when this may be ‘reasonably necessary’. The Committee questions in what circumstances it is reasonably necessary to use force to enforce the act, and what test – if any - may determine whether any such force used was ‘reasonably necessary’. The Committee draws this to the attention of the Parliament for its consideration.

Trespass/Entering premises without consent

16. Section 43 outlines provisions for the power of authorised officers to enter premises without the consent of the occupier of the premises. Subsection 43(3) outlines that an authorised officer must give the occupier reasonable notice of the intention to enter the premises, except where it would defeat the purpose of which entry is required or if it is an emergency.

The Committee notes that section 43 permits authorised officers to enter premises without the consent of the occupiers provided reasonable notice is provided or it is an emergency. The Committee notes that the Bill does not outline what is considered ‘reasonable notice’ or an ‘emergency’ for the purposes of the section. The Committee is concerned that this grants authorised officers a wide power for entering premises without the consent of the occupiers. However, the Committee notes that the Bill limits this to entry to any reasonable time during the day, or at any other time that the premises are open for entry. In these circumstances, the Committee makes no further comment.

Production of documents without providing reasons

17. Section 45 outlines provisions for an authorised officer to require a person to produce documents or information under Part 6 for the enforcement of the Act.

The Committee notes that section 45 provides that an authorised officer can require a person to produce documents or information. This section, however, does not outline that the authorised officer must provide reasons identifying the relevance of the documents or information required for production. It would be preferable that reasons are given for why the documentation or information is relevant to enforcing the Act. The Committee draws this to the attention of the Parliament.

Privilege against self-incrimination/Right to silence

18. Section 48(2) provides that a person is not excused from a requirement under this Act to provide documents or information or to answer a question on the ground that the

document, information or answer might incriminate the person or make the person liable to a penalty. The Committee notes that this provision encroaches on the common law privilege against self-incrimination that allows a person to refuse to answer any question or produce any document if to do so may tend to bring them into peril and the possibility of conviction.

19. Section 48(4) provides that any document provided by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
20. Section 48(5)(b) also provides that further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Act is not inadmissible on the ground that the document or information provided or answer given might incriminate the person.

The Committee notes that section 48 encroaches on the common law privilege against self-incrimination, which allows a person to refuse to answer any question or produce any document if to do so may tend to bring them into peril and the possibility of conviction. The Committee is concerned that this requires a person to provide documents that may incriminate themselves, particularly where this deals with criminal proceedings. The Committee refers this possible breach of privilege to the Parliament for its further consideration.

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

Limitations on review procedures

21. Section 15 outlines provisions for the review of claim determinations by the Secretary. Subsection 15(3)(ii) provides that upon receiving a request in relation to infrastructure, the Secretary may refuse to review the claim. The Committee notes that the Bill does not outline circumstances in which the Secretary may consider it appropriate to refuse a request for review. Subsection 15(5) also states that a claimant may not request more than one review in respect of any particular claim. Section 15 does not require that the Secretary provide reasons to the claimant.
22. Section 28(4) also provides that a proprietor of a coal mine may not request more than one review in respect of any particular direction.

The Committee notes that the Bill limits the review procedures available to claimants and proprietors. The Committee is concerned that the Bill places harsh limitations on claimants for review procedures and does not expressly require the Chief Executive to provide reasons for refusing to review claims by claimants or proprietors. However, the Committee acknowledges that in circumstances where a request to review a claim has been refused, section 16 allows a claimant or proprietor to make an appeal to the Land and Environment Court against a determination of the claim. The Committee also notes that the Bill aims to reduce administrative inefficiencies in determining claims. In these circumstances, the Committee makes no further comment on this issue.

Disallowance of claims without determination

23. Section 13(3) provides that a failure to determine a claim within the period referred to in the approved procedures, or a longer period of time as approved by the Chief Executive in a particular case, is taken to be a disallowance of the claim for the purposes of Part 2. The Committee notes that section 15(1) allows a claimant whose claim has been wholly or partly disallowed to request the Secretary in writing to review the decision. Section 15(2) provides that the request for review must be made within 3 months of the decision to disallow the claim.

The Committee notes that Part 2 of the Bill contains provisions outlining that a failure to determine a claim within the approved time frame is to be taken as a disallowance of the claim. Part 2 also provides that a request to review a decision must occur within 3 months from the decision to disallow the claim. The Committee is concerned that a failure to determine a claim for lapse of time is to be considered a disallowance of the claim. It would be preferable that a determination is made in every case so that the claimant may be notified of the outcome of the claim and provided with reasons for the disallowance of the claim.

This is especially the case where there is a time constraint on claimants to apply for a review of a disallowance. The Committee notes that it is not clear from the Bill whether claimants of claims that have failed to be determined (and have consequently been disallowed) will receive notification within a reasonable time to provide a fair opportunity to request for review within the 3-month timeframe. The Committee draws this to the attention of the Parliament.

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

24. Section 2 of the Bill states that the Act commences on a day or days to be appointed by proclamation.

The Committee notes that this Bill is to commence on a day or days to be appointed by proclamation. The Committee generally prefers legislation to commence on assent or a fixed date. However, the Committee notes that the Bill is implementing a number of regulatory changes to the compensation framework dealing with the impacts of coal mine subsidence, which involves changes to multiple Acts and government agencies. As such, the Committee notes the administrative convenience of the section and makes no further comment on the issue.

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

25. Section 4 provides that the definition of 'mine subsidence district' is within the meaning of Section 20 of the Bill. Section 20 provides that 'the regulations may declare an area to be a mine subsidence district. As the definition of a mine subsidence district directly

affects whether a compensation claim will be successful or not, it would be useful for the Act to outline a definition for this term so as not to unfairly disadvantage claimants.

26. Section 24(4) provides that regulations may make provision for or with respect to the Chief Executive for an exemption from Part 3 of the Act. Section 25 also provides that the regulations may exempt, or provide for the exemption, from the operation of any of the provisions of this Part any specified work or subdivision or class of work or subdivision or any specified person or class of persons, and subject to such conditions, as may be specified in the regulations. Given that the Bill does not outline circumstances that permit exemptions, other than subject to conditions granted by the Chief Executive, the Committee notes that these sections allow exemptions to be prescribed in the regulations without Parliamentary scrutiny.
27. Section 57 outlines provisions in relation to penalty notice offences. Subsection 57(2) provides that a penalty notice offence is an offence against this Act or that as prescribed by the regulations as a penalty notice offence. The Committee is concerned that this allows an offence, particularly an offence that may attract criminal proceedings, to be prescribed by the regulations without parliamentary scrutiny.

The Committee has identified several provisions that allow the regulations to determine certain aspects of the coal mine subsidence compensation scheme. The Committee acknowledges the administrative convenience of such provisions, especially in the case of smaller particulars of the compensation scheme regarding levels of rates, levies and contributions. However, the Committee is concerned that some matters may be better dealt with in the legislation, particularly provisions that provide certainty for definitions of certain terms relevant to compensation claims and where the regulations may create penalty notice offences. The Committee draws this to the attention of the Parliament.

4. Environmental Planning and Assessment Amendment (Staged Development Applications) Bill 2017

Date introduced	2 August 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Planning

PURPOSE AND DESCRIPTION

1. The purpose of the Bill is to amend the *Environmental Planning and Assessment Act 1979* to clarify the procedures for the assessment of staged development applications. Staged development applications are often lodged for complex residential, commercial, retail and hotel developments to obtain “in principle” approval for that development. The staging of development applications allows finer-grain details and operational impacts of a proposal to be detailed in future development applications relating to the site.
2. The Bill seeks to re-confirm the procedures for assessment of staged development applications following a recent decision of the Court of Appeal.

BACKGROUND

3. The Court of Appeal recently declared that a development consent granted by the Minister for Planning in relation to a site in Walsh Bay was invalid. The Minister had granted consent to a first stage concept development application for an integrated arts and cultural precinct which had been lodged by Arts NSW. The Court declared that the consent was invalid because the proposal was not a staged development application within the meaning of the *Environmental Planning and Assessment Act 1979*. The Court’s reasoning was that there must be at least two detailed proposals for separate parts of the site in order for a staged development application to meet the requirements of the Act. In contrast, the concept proposal in question was to be followed by only a single development application for the development of the whole site.
4. Accordingly, the stated purpose of the Bill is to restore the law to the way it previously operated and was understood before the Court of Appeal’s decision.
5. The new staged development application provisions introduced by the Bill are largely the same as the current provisions in the Act. However, there are two main changes in the Bill:
 - (a) to allow a concept development application to be followed by only a single application for the whole development site; and

- (b) to allow councils and other consent authorities to decide the most appropriate time to assess construction-related and other operational impacts.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the *Legislation Review Act 1987*.

5. Transport Legislation Amendment (Automated Vehicle Trails and Innovation) Bill 2017

Date introduced	1 August 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Melinda Pavey MP
Portfolio	Minister for Roads, Maritime and Freight

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to permit the Minister for Roads, Maritime and Freight to approve trials of highly or fully automated vehicles on the State's roads;
 - (b) to ensure that adequate insurance is in place to cover any personal injury or property damage that may arise during the course of a trial and;
 - (c) to provide that it is a function of Transport for NSW to develop policy and facilitate research and testing for the purposes of promoting innovative transport solutions.

BACKGROUND

2. The *Transport Legislation Amendment (Automated Vehicles Trails and Innovation) Bill 2017* amends the *Road Transport Act 2013 (NSW)* and the *Transport Administration Act 1988 (NSW)*.
3. In her second reading speech, the Minister stated the purpose of the Bill is to establish a legislative framework to provide safe testing of connected and highly automated vehicles technology in NSW. Further, the Bill is intended to provide an additional function to Transport for NSW to conduct research, develop policy and test applications of innovative, automatic and digital technologies.
4. The Minister noted the importance of developing a framework to test the reliability and safety of automated vehicles in which she stated:

‘It is crucial that automated vehicles are trialled in order to demonstrate the capability of the technology while increasing awareness and understanding and, most importantly, building trust and confidence in the public.’
5. The Minister further noted that the Bill supported the NSW Parliament Joint Standing Committee on Road Safety's recommendation of a phased approach.

‘A phased approach allows for trialling automated vehicles in a real-world context to identify risks that can be mitigated through the introduction of countermeasures,

including the design of a safety assurance framework to determine how the safety of automated vehicles should be assessed before they can operate legally on our roads.’

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the *Legislation Review Act 1987*.

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.