



PARLIAMENT OF NEW SOUTH WALES

## 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. FOOD AMENDMENT (SEAFOOD COUNTRY OF ORIGIN LABELLING) BILL 2017\*

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

### 2. GAMING MACHINES AMENDMENT (TRANSPARENCY) BILL 2017\*

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

### 3. JUSTICE LEGISLATION AMENDMENT BILL (NO 2) 2017

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

##### *Right to privacy, increase in police powers*

The Committee is concerned that a police officer may require a person to disclose their identity will infringe on an individual's right to privacy. The Committee also notes that this represents an enhancement of police powers in sensitive matters. However, the Committee notes the policy implications in relation to the serious nature of terrorist acts, the infringement of disclosing personal information for the purposes of identification is not unreasonable under the circumstances. The Committee makes no further comment.

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

##### *Ill-defined defined powers to detain persons who are not mentally ill or mentally disordered*

The Bill proposes to include a new section 43(1B) in the *Bail Act 2013* to provide that a police officer of or above the rank of sergeant at a mental health facility may make a bail decision for an offence.

The Committee is concerned that the provision permits police officers an additional arbitrary power to decide upon the location of detainment for persons refused bail. This is particularly concerning as mental health facilities are not intended to hold or detain persons who are not mentally ill and may not be equipped or adequately trained to do so. This also raises the issue of whether the mental health facility and their staff are capable of fulfilling duties that accompany the detainment of persons refused bail, including the legislative duty to notify Custody Notification Service whenever an Aboriginal person is taken into custody to ensure the provision of basic civil liberties such as access to legal representation. Although this measure has been intended for practical reasons, the additional police power to make this decision is arbitrary and the Committee is concerned that detained persons would more appropriately be held in correctional service facilities by professionally trained correctional officers.

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

##### *Commencement by proclamation*

The Committee is generally concerned where Acts provide the Executive with unfettered control over the commencement of an Act. The Committee prefers legislation to commence on assent or a fixed date. However, as the Act implements a number of administrative and procedural changes across various Acts, the Committee makes no comment.

#### 4. LOCAL LAND SERVICES AMENDMENT BILL 2017

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

###### *Commencement by proclamation*

The Committee is generally concerned where Acts provide the Executive with unfettered control over the commencement of an Act. The Committee prefers legislation to commence on assent or a fixed date. However, as the Act implements a number of governance and funding changes within the principal Act and other Acts, the Committee makes no further comment.

#### 5. PARRAMATTA PARK TRUST AMENDMENT (WESTERN SYDNEY STADIUM) BILL 2017

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

###### *Ambiguity over future use of public land*

The Committee notes that section 9A(3) permits the land swapped from Trust to Venues NSW to be transferred as an estate in fee simple. The Committee notes that this permits Venues NSW the unfettered freedom to transfer or dispose of the land as it sees fit, which does not guarantee it will remain public land and can be sold at a later date. The Committee also notes that the Bill omits subsection 13(2) from the principal Act that requires the Minister to consult the Treasurer in relation to the use of the land and the terms and conditions of any proposed lease. It is questionable whether this land may be sold off to a private owner rather than being retained for public use.

The Committee acknowledges that the land in question is the site of the former Parramatta Swimming Centre and to be replaced by a new aquatic leisure centre in the Mays Hill District in an area of land of greater size than the previous public pool site. Notwithstanding this, it is the responsibility of the Committee to identify Bills that may result in the loss of any public land. As such, the Committee draws this to the attention of the Parliament.

#### 6. RETAIL TRADING AMENDMENT (BOXING DAY) BILL 2017

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

#### 7. ROAD TRANSPORT AMENDMENT (DRIVER LICENCE DISQUALIFICATION) BILL 2017

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

###### *Wide discretion*

A number of provisions in the Bill enable a court to disqualify a person from driving for longer than the default period of disqualification. Those provisions do not list any considerations which guide the exercise of this discretion. The ability to drive to work or TAFE is very important, particularly for those living in regional and rural areas. For this reason, the

Committee would prefer that the Bill include matters which should be taken into account by a court when deciding to impose a longer period of disqualification. The Court draws this to the attention of Parliament.

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

*Ability to appeal decision of Local Court*

The Bill empowers a local court to lift a licence disqualification if a driver has not been convicted of an offence during the relevant period. However, the Bill also provides that such decisions cannot be appealed under the *Crimes (Appeal and Review) Act 2001*. While the Division does not limit the power of a Court to otherwise annul, quash, set aside or vary a licence disqualification, the Committee is concerned by the restrictions on appealing decisions under section 221B given the importance of being able to drive to work or TAFE, particularly in rural areas. For this reason, the Committee draws this matter to the attention of Parliament.

8. SUMMARY OFFENCES AMENDMENT (FULL-FACE COVERINGS PROHIBITION) BILL 2017

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

*Religious freedom and freedom of expression*

The Bill prohibits a person from wearing a face covering in a public place without reasonable excuse. A cultural or religious belief is not a reasonable excuse for the purposes of the section. The Bill also notes that a 'public place does not include a church', but does not refer to other places of worship such as a mosque. This means that face coverings worn for religious purposes may be worn in a church to the exclusion of other religious institutions. The Committee is concerned that the section unduly trespasses on the religious and cultural freedom of individuals, without appropriate justification. The Committee therefore refers this matter to Parliament for further consideration.

*Narrow meaning of 'reasonable excuse'*

A face covering can be worn with reasonable excuse. However, 'reasonable excuse' is defined very narrowly. Firstly, the definition of 'reasonable excuse' lists very few purposes for which a face covering may be worn. Secondly, the definition requires that the wearing of the face covering 'is reasonably necessary in all of the circumstances.' The narrow definition of 'reasonable excuse' has potential to trespass on a number of personal rights, including freedom of expression and freedom of political communication. The Committee refers this to Parliament for its consideration.

*Onus of Proof*

The Bill requires a defendant to prove that they had a reasonable excuse for wearing a face covering in a public place, reversing the onus of proof. The Committee notes this may impact the presumption of innocence. However, once the prosecution has proven elements of the offence it is reasonable for the defendant to prove reasonable excuse. Therefore, the Committee makes no further comment.

PART TWO - REGULATIONS

1. LAW ENFORCEMENT CONDUCT COMMISSION REGULATION 2017

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



*Privacy of personal DNA information*

The regulations outline several provisions that permit the Chief Commissioner to require fingerprinting of the officer or applicant, or any business associate, key personnel, or personal associate of the officer or applicant. The Committee notes that this covers a wide variety of people, including employers, business partners, employees, company directors or secretaries, spouses, children, family members and social associates of the officer or applicant.

The Committee is concerned that this may encroach on the right to privacy of personal information, particularly where biometric information such as fingerprinting is required. The Committee notes that fingerprints are only taken for the purpose of security checks of officers or applicants to be officers of the LECC. However, it is not clear in what circumstances the LECC would require fingerprinting information from associates of officers or applicants.

Additionally, although the regulations specify that fingerprint information is to be destroyed within 6 months of the application being determined, it appears that this information is retained if the applicant becomes an officer, and is then only destroyed within 6 months of the person ceasing to be an officer. This information continues to be retained if the former officer is the subject of an investigation by the Commission within 6 months of ceasing to be an officer, and until any such investigation and arising legal proceedings are completed. This means that biometric information, including the biometric information of friends, family members and children under the age of 18, could potentially be retained for an unspecified number of years during and after the person is an officer of the Commission. It is unclear why this information is required to be retained for the entire length of the officer's service at the Commission.

The Committee notes that the Commission is subject to the *Privacy and Personal Information Protection Act 1998* and the *Public Interest Disclosure Act 1994* in terms of how complaints and information are handled. All information that is retained should thus have a legal basis and legitimate purpose. Even withstanding this, the Committee refers this to the Parliament for further consideration of the requirement and retention of biometric information, including the biometric information of children under 18 years, in unspecified circumstances and for an unspecified amount of time.

## Part One – Bills

### 1. Food Amendment (Seafood Country of Origin Labelling) Bill 2017\*

Date introduced	14 September 2017
House introduced	Legislative Assembly
Member responsible	Mr David Mehan MP
	*Private Members Bill

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to require persons who sell seafood to the public for immediate consumption (including at a restaurant or takeaway food shop) to display information about the country of origin of that seafood.

#### BACKGROUND

2. In his second reading speech, Mr Mehan outlined that the purpose of the Bill is to better inform consumers about the origin of their seafood, particularly in circumstances where consumers mistakenly believe their fish is locally sourced. Mr Mehan stated that this would support the local professional fishing industry in NSW.
3. This Bill was introduced in response to a recommendation made by the Legislative Council General Purpose Standing Committee No. 5 into the Government's Commercial Fisheries Business Adjustment Program. That Committee recommended that the Government 'complete its consultation on a country of origin labelling scheme for seafood sold for immediate consumption and commence implementation of a labelling scheme with any necessary funding by December 2017'; and, 'consider the creation of a New South Wales seafood label as part of the planned community awareness program'.
4. The Bill also satisfies the new country-of-origin food labelling system commenced under the Australian Consumer Law – the *Country of Origin Food Labelling Information Standard 2016*. Under that standard, from 1 July 2018 most food offered for retail sale in Australia will be required to carry or display country-of-origin labelling. In line with this standard, this Bill also proposes to commence on 1 July 2018 to allow reasonable time for retailers and businesses to organise such labelling.

#### ISSUES CONSIDERED BY COMMITTEE

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

## 2. Gaming Machines Amendment (Transparency) Bill 2017\*

Date introduced	14 September 2017
House introduced	Legislative Council
Member responsible	Mr Justin Field
	Private Members Bill*

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Gaming Machines Act 2001* to require the publication, at regular intervals, of certain information relating to the operation of gaming machines at each hotel or club in respect of which a gaming machine entitlement is held.

### BACKGROUND

2. In his second reading speech, Mr Field outlined that the Bill requires the of release specific information about revenue gathered by electronic gaming machines from each local government area – information that is not currently available under the freedom of information laws. Mr Field stated that providing communities with local up-to-date data about gaming machine losses would assist them in assessing the social impact of these machines.

### ISSUES CONSIDERED BY COMMITTEE

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

### 3. Justice Legislation Amendment Bill (No 2) 2017

Date introduced	14 September 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 make various amendments to a number of Acts and Regulations within, or with provisions relating to matters within, the Justice portfolio:

#### BACKGROUND

2. In his second reading speech, the Attorney-General noted the bill would 'update and improve the operation of the NSW justice system by improving the efficiency and operation of legislation affecting the courts and other Justice Portfolio agencies.'
3. Legislation of this nature forms part of the periodic review of legislation within the Justice portfolio that amends a number of minor and miscellaneous amendments to Acts and regulations.

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Right to privacy, increase in police powers*

4. The proposed amendment to section 16(1) - (3) and 26T of the *Terrorism (Police Powers) Act 2002* provides that a police officer may require a person whose identity is unknown to the officer to disclose their identity if there are reasonable grounds to suspect the person. This is an enhancement of the current provision that a police officer may only 'request' the disclosure of an identity to a power to 'require' it. As such, the Committee is aware that this represents an increase in police powers.
5. A failure or refusal to comply with the direction without reasonable excuse may result in a maximum penalty of 50 penalty units or 12 months imprisonment or both. [section 16[2]]

**The Committee is concerned that a police officer may require a person to disclose their identity will infringe on an individual's right to privacy. The Committee also notes that this represents an enhancement of police powers in sensitive matters. However, the Committee notes the policy implications in relation to the serious nature of terrorist acts, the infringement of disclosing personal information for the purposes of identification is not unreasonable under the circumstances. The Committee makes no further comment.**

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

*Ill-defined powers to detain persons who are not mentally ill or mentally disordered*

6. The Bill proposes to include a new section 43(1B) in the *Bail Act 2013*. This will provide that a police officer of or above the rank of sergeant at a mental health facility may make a bail decision for an offence. This is in circumstances where the person accused of the offence is detained in the mental health facility for mental assessment and is found to be not a mentally ill person or mentally disordered person.
7. In his second reading speech, the Attorney-General noted 'It is sometimes necessary for police officers to detain persons overnight before they can be brought before the court at the first available opportunity' which is specified under section 46 of the *Bail Act 2013*.
8. The Committee notes the parameters around these bail provisions, including to provide legal counsel once the bail decision has been made (section 45) and review the bail decisions made a police office by a senior officer (section 47).
9. While the Committee notes section 43(2) of the *Bail Act 2013* provides that a police officer already has powers to make bail decisions, the Committee is concerned the ill-defined scope of police officers to make bail determinations may infringe on an individual's rights and liberties. In the particular instance of detaining an individual in a mental health facility when they are not found to be a mentally-ill or mentally disordered person under the *Mental Health Act 2007*.

**The Bill proposes to include a new section 43(1B) in the *Bail Act 2013* to provide that a police officer of or above the rank of sergeant at a mental health facility may make a bail decision for an offence.**

**The Committee is concerned that the provision permits police officers an additional arbitrary power to decide upon the location of detainment for persons refused bail. This is particularly concerning as mental health facilities are not intended to hold or detain persons who are not mentally ill and may not be equipped or adequately trained to do so. This also raises the issue of whether the mental health facility and their staff are capable of fulfilling duties that accompany the detainment of persons refused bail, including the legislative duty to notify Custody Notification Service whenever an Aboriginal person is taken into custody to ensure the provision of basic civil liberties such as access to legal representation. Although this measure has been intended for practical reasons, the additional police power to make this decision is arbitrary and the Committee is concerned that detained persons would more appropriately be held in correctional service facilities by professionally trained correctional officers.**

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

*Commencement by proclamation*

10. Clause 2 provides that schedules 1.2[2] and [3], 1.3 [4]-[6], 1.6[1], [7] – [13], 1.10, 1.17[2] and Schedules 1.3 [1] are to be commence on a day or days to be appointed by proclamation.

**The Committee is generally concerned where Acts provide the Executive with unfettered control over the commencement of an Act. The Committee prefers legislation to commence on assent or a fixed date. However, as the Act implements a number of administrative and procedural changes across various Acts, the Committee makes no comment.**

## 4. Local Land Services Amendment Bill 2017

Date introduced	12 September 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Lands and Forestry

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Local Land Services Act 2013* (the Act) as follows:
  - (a) To separate the governance role of the Local Lands and Services (LLS) with the day-to-day management of LLS assigned to the Chief Executive Officer and the central board would determine the general policies and strategic direction.
  - (b) Expand the funding framework for pest management to be available for managing all priority pest animals and not just locusts.

### BACKGROUND

2. The LLS Board provides a range of services and advice to farmers, landholders and communities across rural and regional NSW to improve primary production. The organisation is made up of 11 regions and each region is overseen by a local board to ensure services are delivered regionally and tailored to each community, industry and landscape.
3. In his second reading speech, the Minister noted two key purposes of the Bill. The first is to strengthen the governance of Local Land Services to ensure effective service delivery for regional and rural communities. The second is to improve pest management outcomes by ensuring funds can be targeted to regional pest priorities.
4. In the current framework, the Chair of the central board has the dual role of setting the strategic direction and managing the day-to-day operations of the Local Land Services. The Minister noted the dual roles “impose competing demands and impeded the chair’s ability to effectively deliver these responsibilities.”
5. The Bill proposes to separate the dual functions by appointing a Chief Executive Officer to manage the day-to-day operations of Local Land Services. The central board of the Local Land Services would determine the general policies, strategic direction and whether these policies are applicable to local board functions.
6. The Bill also proposes changes to the funding framework for managing pest animals in regional and rural areas.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by proclamation*

7. Clause 2 provides that Schedules 1[2], [3], [6]-[9], [11], [12], [15]-[21], [23], [25] and 2.2 would commence on a day or days to be appointed by proclamation.

**The Committee is generally concerned where Acts provide the Executive with unfettered control over the commencement of an Act. The Committee prefers legislation to commence on assent or a fixed date. However, as the Act implements a number of governance and funding changes within the principal Act and other Acts, the Committee makes no further comment.**



## 5. Parramatta Park Trust Amendment (Western Sydney Stadium) Bill 2017

Date introduced	13 September 2017
House introduced	Legislative Council
Minister responsible	The Hon. Don Harwin MLC
Portfolio	Resources, Energy and Utilities

### PURPOSE AND DESCRIPTION

1. This bill seeks to amend the *Parramatta Park Trust Act 2001* (the principal Act).
2. The objects of this Bill are:
  - (a) to enable land to be swapped between the Parramatta Park Trust (the Trust) and Venues NSW for purposes associated with the Western Sydney Stadium, and
  - (b) to enable the Trust, with the approval of the Minister, to lease trust lands for the purposes of, or for purposes connected with, the operation and maintenance of an aquatic leisure centre for a term that does not exceed 50 years.

### BACKGROUND

3. In his second reading speech, the Minister noted that the Bill seeks to amend the principal Act that had allowed for Parramatta Park to grant a 50-year lease (commencing from 1957). When this lease ended in 2007, the former swimming pool lease continued as a periodic month-by-month lease. This Bill proposes amendments to grant another 50-year lease to secure a new aquatic leisure centre that was announced by the Government on 31 March 2017.
4. The Bill also provides for certain land to be swapped between the trust and Venues NSW for purposes associated with access to the Western Sydney Stadium for the public and venue operators.

### ISSUES CONSIDERED BY COMMITTEE

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

#### *Ambiguity over future use of public land*

5. The proposed section 9A outlines provisions for the land swap between Trust and Venues NSW. Subsection 9A(3) states that land transferred by an order under this section is vested in the Trust or Venues NSW as an estate in fee simple. A fee simple estate provides the owner with an unfettered freedom to dispose of the land at will.
6. The Bill also proposes omitting subsections 13(2), (3) and (8) from the principal Act. Subsection 13(2) requires the Minister to consult the Treasurer in relation to the use of the land and terms and conditions of any proposed lease.

**The Committee notes that section 9A(3) permits the land swapped from Trust to Venues NSW to be transferred as an estate in fee simple. The Committee notes that this permits Venues NSW the unfettered freedom to transfer or dispose of the land as it sees fit, which does not guarantee it will remain public land and can be sold at a later date. The Committee also notes that the Bill omits subsection 13(2) from the principal Act that requires the Minister to consult the Treasurer in relation to the use of the land and the terms and conditions of any proposed lease. It is questionable whether this land may be sold off to a private owner rather than being retained for public use.**

**The Committee acknowledges that the land in question is the site of the former Parramatta Swimming Centre and to be replaced by a new aquatic leisure centre in the Mays Hill District in an area of land of greater size than the previous public pool site. Notwithstanding this, it is the responsibility of the Committee to identify Bills that may result in the loss of any public land. As such, the Committee draws this to the attention of the Parliament.**

## 6. Retail Trading Amendment (Boxing Day) Bill 2017

Date introduced	12 September 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Industrial Relations

### Purpose and description

1. The object of this Bill is to amend the *Retail Trading Act 2008* to remove the sunset on 1 December 2017 of provisions that allow shops and banks to open on Boxing Day and that allow banks to open on the Bank Holiday and certain public holidays. Shops and banks may open on those days only if they are staffed by persons who have freely elected to work on those days.

### Background

2. In 2015, the *Retail Trading Amendment Act* was introduced to permit state-wide Boxing Day trading for 2015 and 2016. These amendments allowed all shops and branches to open on Boxing Day, provided that the staff had freely elected to work on this day. Prior to this, only some retailers were permitted to work on Boxing Day. In his second reading speech, the Minister noted that this change allowed local shops and local workers to trade and earn extra income.
3. The legislation required a review to take place after 1 February 2017. The review found that Boxing Day 2015 and 2016 was one of the most popular shopping days of the Christmas-New Year period; that it did not detract from retailing activity on trading days following Christmas; and more than half of retail employees want trading on Boxing Day to continue.
4. Based on these findings, the Bill was introduced to permanently allow shops and banks to be open on Boxing Day and allow banks to be open on the Bank Holiday and certain public holidays aside from restricted trading days, provided that the staff have freely elected to work.
5. The Committee noted that the Percy Allan report found that two fifths of respondents to a survey of retail workers felt coerced to work on the Boxing Day holiday.

### Issues considered by committee

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

## 7. Road Transport Amendment (Driver Licence Disqualification) Bill 2017

Date introduced	12 September 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The Bill is designed to amend the *Road Transport Act 2013*, primarily in relation to driver licence disqualifications.
2. The Bill confers on the Local Court the power to remove outstanding driver licence disqualification periods and abolishes the habitual traffic offender scheme.
3. It also seeks to provide greater clarity and flexibility around the period of licence disqualification for unauthorised driving offences and reduces the maximum periods of imprisonment that may be imposed. However, it creates additional sanctions for unauthorised driving offences and for recidivist unauthorised drivers.

### BACKGROUND

4. In 2013 the Legislative Assembly's Law and Safety Committee tabled a report on driver licence disqualification reform and identified a number of problems. These included that long disqualification periods were not necessarily effective and that the current laws may also disproportionately disadvantage certain groups, including Aboriginal people and those living in regional and rural areas.
5. The Government responded to the Committee's report in 2014 and largely agreed with the recommendations. In his second reading speech, the Attorney General stated that the Bill will implement the Government's response through six key reforms.
6. The aim of the reforms is to create a fairer and more balanced system by providing an incentive for people to return to lawful driving and to punish serious driving offenders.

### ISSUES CONSIDERED BY COMMITTEE

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

#### *Wide discretion*

7. The Bill contains a number of provisions that afford the Court a wide discretion to impose a lengthy period of disqualification. However, those provisions do not provide guidance as to how that discretion should be exercised.

8. For example, the Bill proposes sections 116 (7) (which relates to drag racing) and section 205A(b) (which relates to unauthorised driving offences). These sections allow a court, if it thinks fit, to order a shorter or longer period of disqualification. Section 206B(5) also allows a court to order that a period of disqualification ends on a specified day, but does not guide how this discretion should be exercised.

**A number of provisions in the Bill enable a court to disqualify a person from driving for longer than the default period of disqualification. Those provisions do not list any considerations which guide the exercise of this discretion. The ability to drive to work or TAFE is very important, particularly for those living in regional and rural areas. For this reason, the Committee would prefer that the Bill include matters which should be taken into account by a court when deciding to impose a longer period of disqualification. The Court draws this to the attention of Parliament.**

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

*Ability to appeal decision of Local Court*

9. Section 221B of the Bill empowers the local court to lift a licence disqualification if the driver has not been convicted of an offence over a relevant period. However, section 221B(8) of the Bill provides that decisions of the Local Court cannot be appealed under the *Crimes (Appeal and Review) Act 2001*.
10. Section 221B(11) provides that nothing in the Division limits any power that a court has apart from this division to annul, quash, set aside or vary a licence disqualification.

**The Bill empowers a local court to lift a licence disqualification if a driver has not been convicted of an offence during the relevant period. However, the Bill also provides that such decisions cannot be appealed under the *Crimes (Appeal and Review) Act 2001*. While the Division does not limit the power of a Court to otherwise annul, quash, set aside or vary a licence disqualification, the Committee is concerned by the restrictions on appealing decisions under section 221B given the importance of being able to drive to work or TAFE, particularly in rural areas. For this reason, the Committee draws this matter to the attention of Parliament.**

## 8. Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2017

Date introduced	14 September 2017
House introduced	Legislative Council
Member responsible	Reverend The Hon Fred Nile MLC
Portfolio	Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of the Bill is to make it an offence (maximum penalty of \$550) for a person, without reasonable excuse, to wear a face covering while in a public place. A face covering is defined as any article of clothing or other thing (such as a helmet) that hides the face of a person in a way that conceals the person's identify. The Bill provides that a person's religious or cultural belief does not constitute a reasonable excuse for the purposes of the proposed offence. The prohibition does not extend to the wearing of face coverings in churches or other places of worship.
2. The Bill also makes it an offence (maximum penalty of \$1,100) to compel another person, by means of a threat, to commit the proposed offence of wearing a face covering in a public place.

### BACKGROUND

3. A substantially similar Bill was introduced in the previous Parliament in 2014. At the time, in his second reading speech, Rev. the Hon. Fred Nile MLC indicated that a number of countries including Belgium and France had passed legislation containing provisions similar to those in the Bill.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Religious freedom and freedom of expression*

4. The Bill prohibits a person from wearing a face covering in a public place without reasonable excuse. A face covering is broadly defined to include any article of clothing or other thing (such as a helmet) that hides a person's face in a way that conceals the identity of the person.
5. A religious or cultural belief is not a reasonable excuse.
6. The Bill also notes that 'public place does not include a church.' Other places of worship, such as a mosque, are not listed.

**The Bill prohibits a person from wearing a face covering in a public place without reasonable excuse. A cultural or religious belief is not a reasonable excuse for the purposes of the section. The Bill also notes that a 'public place**

**does not include a church', but does not refer to other places of worship such as a mosque. This means that face coverings worn for religious purposes may be worn in a church to the exclusion of other religious institutions. The Committee is concerned that the section unduly trespasses on the religious and cultural freedom of individuals, without appropriate justification. The Committee therefore refers this matter to Parliament for further consideration.**

*Narrow meaning of 'reasonable excuse'*

7. A reasonable excuse includes if the wearing of the face covering is 'reasonably necessary in all of the circumstances' for:

- the lawful pursuit of the person's occupation;
- participation in a lawful entertainment, recreation or sport; and
- other purposes which may be prescribed.

**A face covering can be worn with reasonable excuse. However, 'reasonable excuse' is defined very narrowly. Firstly, the definition of 'reasonable excuse' lists very few purposes for which a face covering may be worn. Secondly, the definition requires that the wearing of the face covering 'is reasonably necessary in all of the circumstances.' The narrow definition of 'reasonable excuse' has potential to trespass on a number of personal rights, including freedom of expression and freedom of political communication. The Committee refers this to Parliament for its consideration.**

*Onus of Proof*

8. The Bill provides that the onus of proof of reasonable excuse lies on the defendant in any proceedings. By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence.

**The Bill requires a defendant to prove that they had a reasonable excuse for wearing a face covering in a public place, reversing the onus of proof. The Committee notes this may impact the presumption of innocence. However, once the prosecution has proven elements of the offence it is reasonable for the defendant to prove reasonable excuse. Therefore, the Committee makes no further comment.**

## Part Two - Regulations

### 1. Law Enforcement Conduct Commission Regulation 2017

Date published	16 June 2017
Disallowance date	21 September 2017
Minister responsible	The Hon. Tory Grant MP
Portfolio	Police

#### PURPOSE AND DESCRIPTION

1. The object of this Regulation is to make provision in relation to the following:
  - (a) the security checks of officers of the Law Enforcement Conduct Commission (“the LECC”), of applicants seeking engagement as officers of the Commission and of persons associated with those officers or applicants,
  - (b) the disclosure by officers of the Law Enforcement Conduct Commission of pecuniary and other interests of those officers and of persons associated with those officers,
  - (c) the issue of identity cards.
2. This Regulation is made under the *Law Enforcement Conduct Commission Act 2016* (“the parent Act”), including sections 191 and 197 (the general regulation-making power).

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Privacy of personal DNA information*

3. Part 2 of the regulation outlines provisions for security checks of officers, applicants, or any other person who is associated with the officer or applicant. These security checks include providing personal information including the disclosure of certain information (under section 5), the production of certain documents (under section 6), and requirement of fingerprint information (under section 7).
4. Section 4 defines an associated person as any business associate, key personnel or personal associate in relation to the officer or applicant. Section 4(2) defines business associates as including employers, partners of a partnership, employees, and those in contractual relationships with the officer or applicant. Key personnel are defined as including directors, secretaries and shareholders of the company. Of particular concern, a personal associate is defined as including the individual’s spouse, any child who is under the age of 18 years that is the child of the individual or individual’s



spouse, or any other persons within the individual's household or family or with whom the individual associates socially.

5. Section 7 of Part 2 outlines that "the Chief Commissioner may require an officer of the Commission or an applicant to furnish to the Chief Commissioner an imprint of the officer's or applicant's fingerprints". Subsection 7(2) states that "if the officer or applicant is a company or partnership engaged or to be engaged under section 21(2)(c) of the Act, the Chief Commissioner may require the officer or applicant to furnish to the Chief Commissioner an imprint of the fingerprint of any specified associate of the company or any specified associate of a partner in the partnership". Section 21(2)(c) of the Act permits the Commission to engage persons as consultants to the Commission or to perform services for it.
6. Subsection 7(3) provides that fingerprints obtained by the Chief Commissioner are to be destroyed within 6 months after the officer ceases to be an officer, however subsection 7(5) permits the Commissioner to retain the fingerprint of an officer, or any associate of an officer, if the officer is under investigation by the Commission when the officer ceases to be an officer or becomes subject to an investigation by the Commission within 6 months after ceasing to be an officer. Subsection 7(6) states that in these circumstances, the Commission may only retain the fingerprint for such further period as is necessary to complete the investigation and any legal proceedings arising from the investigation.

**The regulations outline several provisions that permit the Chief Commissioner to require fingerprinting of the officer or applicant, or any business associate, key personnel, or personal associate of the officer or applicant. The Committee notes that this covers a wide variety of people, including employers, business partners, employees, company directors or secretaries, spouses, children, family members and social associates of the officer or applicant.**

**The Committee is concerned that this may encroach on the right to privacy of personal information, particularly where biometric information such as fingerprinting is required. The Committee notes that fingerprints are only taken for the purpose of security checks of officers or applicants to be officers of the LECC. However, it is not clear in what circumstances the LECC would require fingerprinting information from associates of officers or applicants.**

**Additionally, although the regulations specify that fingerprint information is to be destroyed within 6 months of the application being determined, it appears that this information is retained if the applicant becomes an officer, and is then only destroyed within 6 months of the person ceasing to be an officer. This information continues to be retained if the former officer is the subject of an investigation by the Commission within 6 months of ceasing to be an officer, and until any such investigation and arising legal proceedings are completed. This means that biometric information, including the biometric information of friends, family members and children under the age of 18, could potentially be retained for an unspecified number of years during and after the person is an officer of the Commission. It is unclear why this information is required to be retained for the entire length of the officer's service at the Commission.**

**The Committee notes that the Commission is subject to the *Privacy and Personal Information Protection Act 1998* and the *Public Interest Disclosure Act 1994* in terms of how complaints and information are handled. All information that is retained should thus have a legal basis and legitimate purpose. Even withstanding this, the Committee refers this to the Parliament for further consideration of the requirement and retention of biometric information, including the biometric information of children under 18 years, in unspecified circumstances and for an unspecified amount of time.**

# 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.