



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 44/56 – 10 OCTOBER 2017



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2016, 25p 30cm

Chair: Mr Michael Johnsen MP

10 October 2017

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 44 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 44 of 56

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

Contents

Membership	ii
Guide to the Digest	iii
Conclusions	iv
PART ONE – BILLS	8
1. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (ADDRESSING CLIMATE CHANGE) BILL 2017; LOCAL GOVERNMENT AMENDMENT (CLIMATE CHANGE) BILL 2017; AND PRESERVATION OF TREES AND PUBLIC SPACE (MISCELLANEOUS LEGISLATION AMENDMENT) BILL 2017*	8
2. VOLUNTARY ASSISTED DYING BILL 2017*	11
3. WORKERS COMPENSATION AMENDMENT (PROTECTION OF INJURED WORKERS) BILL 2017*	16
PART TWO – REGULATIONS	17
1. EDUCATION STANDARDS AUTHORITY AMENDMENT REGULATION 2017	17
2. GREYHOUND RACING AMENDMENT (SAVINGS AND TRANSITIONAL) REGULATION 2017	19
3. NATIONAL ENERGY RETAIL LAW (ADOPTION) AMENDMENT (DEREGULATION) REGULATION 2017	20
APPENDIX ONE – FUNCTIONS OF THE COMMITTEE	22

Membership

CHAIR	Mr Michael Johnsen MP, Member for Upper Hunter
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr James Griffin MP, Member for Manly Mr David Mehan MP, Member for The Entrance The Hon Shaoquett Moselmane MLC The Hon Gregory Pearce MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2096 / 02 9230 3382
FACSIMILE	02 9230 3309
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

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. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (ADDRESSING CLIMATE CHANGE) BILL 2017; LOCAL GOVERNMENT AMENDMENT (CLIMATE CHANGE) BILL 2017; AND PRESERVATION OF TREES AND PUBLIC SPACE (MISCELLANEOUS LEGISLATION AMENDMENT) BILL 2017*

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

2. VOLUNTARY ASSISTED DYING BILL 2017*

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

Right to life

The Committee acknowledges that the Bill may be seen to trespass on the right to life by enabling medical practitioners to assist patients to end their lives in certain circumstances.

The Committee recognises the wide-ranging views and discussions about matters associated with voluntary assisted dying. This includes that in providing legislative sanction to the premature loss of life, it may be regarded as a possible trespass to the right to life.

However, the Bill contains stringent protections to ensure that individuals can only access assisted dying in a limited set of circumstances. For example, where those individuals have decision-making capacity and are suffering from a terminal illness. There are also a number of other safeguards in the Bill. The primacy of the right to life is also recognised through the ability of a patient to rescind a request for assisted dying at any time for any reason.

Accordingly, the Committee's view is that the Bill does not unduly trespass on the right to life, appropriately balancing the right to life with an individual's right to make decisions about their body and their future. The Committee makes no further comment.

Age discrimination

Under the Bill, only individuals aged 25 years or over are able to access assisted dying under the Bill. This is distinct from the Victorian model, which grants access to assisted dying to anyone over the age of 18 years.

As 18 is the legal age of majority for most matters, the Committee notes the arbitrary age threshold, and notes that it may unfairly discriminate on adults under the age 25.

The Committee appreciates that there may be sound reasons for the higher age threshold, and refers this matter to Parliament for its further consideration.

Right to privacy and patient confidentiality generally

The Bill contains a number of provisions that may be seen to trespass on an individual's right to privacy and a patient's right to confidentiality.

For example, several provisions require medical records and other confidential information to be provided to the Voluntary Assisted Death Review Board for the purposes of conducting a review of each assisted death. The Bill also requires a primary medical practitioner to provide each examining practitioner with any relevant documents relating to previous examinations of the patient in connection with a request for assistance.

While the Committee acknowledges that these provisions may trespass on the right to privacy and patient confidentiality, the Committee notes the reasons on public policy grounds. The provisions seek to arm examining practitioners with enough information to make an informed assessment of a patient's eligibility and will also facilitate a comprehensive review of each assisted death by the Review Board. The Committee is of the view that the provisions are designed to promote the integrity of the assisted dying regime generally. In such circumstances, the Committee makes no further comment.

Breach of deceased patient's privacy

The Bill prohibits the unauthorised disclosure of information by the Review Board or its consultants. However, the Bill creates exceptions to this rule, including if the person from whom the information was obtained grants their consent.

Given the broad powers of the Review Board to obtain information from any person, and that the information is likely to relate to a deceased patient who is no longer in a position to grant consent, the Committee is concerned that the provision contains no other restrictions as to when such information may be lawfully disclosed. This may breach a deceased patient's privacy in circumstances where this is not justified. The Committee is also of the view that the disclosure of information relating to a deceased person must be sensitively managed given that that person is no longer able to provide their consent.

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

Right to receive payment for interpreting services

The Committee notes that the Bill provides for a prohibition against a primary medical practitioner providing assistance if a financial or other advantage is likely to be gained by an interested person as a result of the death of the patient. Interested persons are included as both medical practitioners and interpreters. Whereas the Bill provides that interested persons may receive reasonable payment of medical services, the Bill does not appear to provide a similar exception for the reasonable payment of interpreting services.

The Committee also notes that the proposed form in Schedule 1 contains a declaration by the interpreter that they will not gain any financial or other advantage "*other than a reasonable payment for interpreting services*".

Noting the seriousness of a potential breach of the Act by a primary medical practitioner if they provide assistance under this scheme, and the importance of consistency, the Committee would prefer that the clause makes clear that the receipt of an interpreting fee does not preclude a primary medical practitioner from lawfully providing assistance.

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

Ability of regulations to create penalties

Under the bill, the regulations may create offences punishable by a penalty not exceeding \$11,000. The Committee notes that it is reasonable for some lesser offences to be created in regulations and that regulatory instruments may be disallowed under section 41 of the Interpretation Act. Despite this, the Committee would prefer that offences attracting such a significant monetary penalty be created through legislation so as to be subject to a more appropriate level of parliamentary scrutiny.

3. WORKERS COMPENSATION AMENDMENT (PROTECTION OF INJURED WORKERS) BILL 2017*

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

PART TWO – REGULATIONS

1. EDUCATION STANDARDS AUTHORITY AMENDMENT REGULATION 2017

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

Right to privacy

Clause 5 of the *Education Standards Authority Amendment Regulation 2017* is proposed to be amended so that the Education Standards Authority is prescribed as an additional ‘relevant agency’. Clause 5 lists relevant agencies with which the Education Standards Authority can enter into an information sharing agreement. The information that can be exchanged is limited to certain categories of information including any information that assists in the exercise of functions of the Minister, Authority or relevant agency, and information containing data relating to the teaching workforce.

The Committee notes that the categories of information that can be exchanged are quite broad and that there are no privacy protections in the relevant section of the Act. The Committee is therefore concerned that the Regulation may trespass on an individual’s right to privacy without appropriate justification (for example, by sharing information regarding individual teachers). However, the proposed amendment simply adds one organisation to a long list of agencies which are already subject to such information sharing arrangements with the Authority. For this reason, the Committee makes no further comment.

2. GREYHOUND RACING AMENDMENT (SAVINGS AND TRANSITIONAL) REGULATION 2017

The regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made: s 9(1)(b)(iv) of the LRA

Amending Act with regulation/ Henry VII amendment

The Committee generally prefers regulations to not amend the principal Act. However given the administrative nature of the amendments to continue the functions of GRNSW and provisions relating to the welfare of greyhounds during the transitional period, the Committee makes no further comment

3. NATIONAL ENERGY RETAIL LAW (ADOPTION) AMENDMENT (DEREGULATION) REGULATION 2017

The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII amendment

This regulation amends the *National Energy Retail Law (Adoption) Act 2012* and has been implemented in accordance with the general regulation-making power under section 12 of the Act. However, the Committee prefers that amendments to the principal legislation be made by an amending Act, which allows for parliamentary scrutiny and maintains the sovereignty of the parliament. This is particularly concerning where the regulations amend provisions relating to key definitions.

The Committee notes that the amendments to the Act are consequential amendments resulting from the change to the regulations relating to the retail gas market and omits provisions that require gas suppliers to offer to provide gas to certain small customers at regulated prices and provide for the inclusion of those prices in pricing guidelines and a price comparator. The changes also require a Market Monitor to monitor and report on the performance and competitiveness of the retail gas market in NSW. In these circumstances, the Committee makes no further comment.

Part One – Bills

1. Environmental Planning and Assessment Amendment (Addressing Climate Change) Bill 2017; Local Government Amendment (Climate Change) Bill 2017; and Preservation of Trees and Public Space (Miscellaneous Legislation Amendment) Bill 2017*

Date introduced	21 September 2017
House introduced	Legislation Council
Minister responsible	Mr David Shoebridge
	Private members Bill*

Purpose and description

Environmental Planning and Assessment Amendment (Addressing Climate Change) Bill 2017

1. The object of this Bill is to ensure that climate change is taken into consideration when environmental planning instruments are made and when applications for development consent or approval are assessed.

Local Government Amendment (Climate Change) Bill 2017

2. The objects of this Bill are as follows:
 - (a) to require local councils to exercise their functions in a manner that furthers the State's ability to meet its targets to reduce greenhouse gas emissions and adapt to the implications of climate change for people, communities and ecosystems in the State,
 - (b) to require councils to prepare and implement 5-year climate change action plans detailing their policies and programs to reduce greenhouse gas emissions and adapt to climate change, and to report annually to the Minister on the implementation of those action plans,
 - (c) to authorise councils to make emission reduction pledges,

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (ADDRESSING CLIMATE CHANGE) BILL 2017; LOCAL GOVERNMENT AMENDMENT (CLIMATE CHANGE) BILL 2017; AND PRESERVATION OF TREES AND PUBLIC SPACE (MISCELLANEOUS LEGISLATION AMENDMENT) BILL 2017*

- (d) to allow councils to enter into environmental upgrade agreements relating to works that will reduce the hazard impact of floods or sea level rise on buildings and nearby land, or environmental processes, or both.

Preservation of Trees and Public Space (Miscellaneous Legislation Amendment) Bill 2017

3. The objects of this Bill are:

(a) to encourage the preservation of trees in urban areas:

- (i) by requiring urban councils to consider the impact of proposed development on the maintenance or enhancement of the mature tree canopy, and to consider the health of a tree that is proposed to be removed or damaged, and the environmental, social, health and financial benefits of preserving the tree, when determining development applications or other applications, and
- (ii) by requiring the Greater Sydney Commission to include in its district plans specific targets to increase the urban tree canopy, and to monitor the progress of councils in achieving those targets, and
- (iii) by providing for the regulations to create guidelines about suitable plantings to increase the urban tree canopy, and

- (b) to provide for the preservation of public green open space by allowing Parliament to disallow any sale, lease or other dealing with public green open space by a council, or any vesting of Crown land that is public green open space in a council, and by requiring any Crown land vested in a council to be retained as public green open space, or for the existing proportion of public green open space to be maintained.

BACKGROUND

4. These bills make amendments to several Acts with the intention of ensuring the protection of the environment, preservation of trees, and public open space in regards to environmental planning and assessment by local governments.
5. In his second reading speech, Mr Shoebridge MLC stated that the bills would empower local councils to act on climate change, protect our urban trees and minimise carbon emissions in all developments.
6. The Bills' focus on introducing measures to consider the implications of planning proposals and the need to reduce greenhouse gas emissions consistent with both State and Federal commitments, including mining developments. In particular, the bills strive to empower local governments to address the impact of climate change due to their unique position to understand the threat climate change poses to their area.
7. Although they are separate Bills, the *Environmental Planning and Assessment Amendment (Addressing Climate Change) Bill 2017*, the *Local Government Amendment (Climate Change) Bill 2017*, and the *Preservation of Trees and Public Space (Miscellaneous Legislation Amendment) Bill 2017* are cognate Bills. Therefore, all three bills have been considered in one report.

LEGISLATION REVIEW COMMITTEE

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (ADDRESSING CLIMATE CHANGE) BILL 2017; LOCAL GOVERNMENT AMENDMENT (CLIMATE CHANGE) BILL 2017; AND PRESERVATION OF TREES AND PUBLIC SPACE (MISCELLANEOUS LEGISLATION AMENDMENT) BILL 2017*

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. Voluntary Assisted Dying Bill 2017*

Date introduced	25 September 2017
House introduced	Legislative Council
Member responsible	The Hon. Trevor Khan MLC
	Private Members' Bill*

PURPOSE AND DESCRIPTION

1. The object of the Bill is to provide a legislative framework for the rights of terminally ill persons to request and receive assistance to end their lives voluntarily. Under the framework, certain terminally ill persons may be assisted by their medical practitioners and other qualified health practitioners to administer a substance to themselves.

BACKGROUND

2. The Bill is the product of a cross-party group of members, known as the NSW Parliamentary Working Group on Assisted Dying. The Working Group comprises the Hon. Trevor Khan MLC from the Nationals, the Hon. Lynda Voltz from Labor, Mr Lee Evans from the Liberals, Dr Mehreen Faruqi from The Greens and Mr Alex Greenwich, an Independent.
3. The Bill was the subject of public consultation and, according to the second reading speech, the current Bill represents the thirtieth draft.
4. In his second reading speech, the Hon. Trevor Khan indicated that the Bill follows the conservative Oregon model of voluntary assisted dying rather than the European models of voluntary euthanasia.
5. A similar bill entitled the *Voluntary Assisted Dying Bill 2017* is currently being considered by the Victorian Parliament.

ISSUES CONSIDERED BY COMMITTEE

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

Right to life

6. The Bill enables certain people with a terminal illness to end their lives with assistance. The Committee acknowledges that this may be seen to provide legislative sanction to the premature loss of life. In this regard, it respects the wide-ranging views and discussions concerning this sensitive issue.
7. However, the Committee recognises that there are numerous safeguards in the bill to protect against misuse of any voluntary assisted dying laws. These are designed to ensure, among other things, that an individual can only access assisted dying if they have the mental capacity to make an informed decision, and if their illness is terminal. The primacy of the right to life is also recognised through the ability of a patient who has requested assisted dying to rescind that request at any time for any reason whatsoever.

Close relatives also have the ability to seek judicial review of a request certificate on a number of grounds, including if the patient did not have the requisite decision-making capacity.

The Committee acknowledges that the Bill may be seen to trespass on the right to life by enabling medical practitioners to assist patients to end their lives in certain circumstances.

The Committee recognises the wide-ranging views and discussions about matters associated with voluntary assisted dying. This includes that in providing legislative sanction to the premature loss of life, it may be regarded as a possible trespass to the right to life.

However, the Bill contains stringent protections to ensure that individuals can only access assisted dying in a limited set of circumstances. For example, where those individuals have decision-making capacity and are suffering from a terminal illness. There are also a number of other safeguards in the Bill. The primacy of the right to life is also recognised through the ability of a patient to rescind a request for assisted dying at any time for any reason.

Accordingly, the Committee's view is that the Bill does not unduly trespass on the right to life, appropriately balancing the right to life with an individual's right to make decisions about their body and their future. The Committee makes no further comment.

Age discrimination

8. The Bill restricts requests for assisted dying to individuals aged 25 years or over. In contrast, the Victorian bill makes assisted dying available to anyone who is over the age of 18 years - the legal age of majority for most other matters.

Under the Bill, only individuals aged 25 years or over are able to access assisted dying under the Bill. This is distinct from the Victorian model, which grants access to assisted dying to anyone over the age of 18 years.

As 18 is the legal age of majority for most matters, the Committee notes the arbitrary age threshold, and notes that it may unfairly discriminate on adults under the age 25.

The Committee appreciates that there may be sound reasons for the higher age threshold, and refers this matter to Parliament for its further consideration.

Right to privacy and patient confidentiality generally

9. The Bill may be seen to trespass on the right to privacy and the right to doctor-patient confidentiality in a number of provisions.
10. For example, section 21 of the Bill requires a primary medical practitioner to provide to each examining practitioner the relevant documents relating to any previous examination of the patient in connection with a request for assistance. Relevant documents include any report of a previous examination and any written opinion of the former examining practitioner. The Committee notes that such a provision may be justified on public policy grounds given that it assists an examining practitioner to obtain

a complete and accurate picture of the patient's illness, decision-making capacity and request-making history. Although it does trespass on a patient's right to confidentiality, and may be seen to prejudice a patient's ability to receive a fair assessment from a new examining practitioner, the Committee is of the view that the provision constitutes another safeguard that will ensure that only those who meet all the requirements for assisted death will be eligible.

11. Section 34 of the Bill also requires a primary medical practitioner to provide a copy of a patient's relevant medical records to the Voluntary Assisted Death Review Board (the Review Board) within 14 days after an assisted death. This extends to medical records relating to the terminal illness of the patient generally.
12. Section 39 contains a much broader power for the Review Board to require a person to provide 'such information or records...relating to the assisted death as the Review Board may require for the purpose of conducting a review under this Part.'
13. While the Committee acknowledges that sections 34 and 39 may trespass on the right to patient confidentiality and privacy generally, the Committee's view is that these provisions are also justified given that the functions of the Review Board include monitoring and reviewing assisted deaths generally. The Bill makes clear that the Review Board must conduct a review of each assisted death, and may undertake a detailed review of information relating to assisted deaths in discharging its functions.

The Bill contains a number of provisions that may be seen to trespass on an individual's right to privacy and a patient's right to confidentiality.

For example, several provisions require medical records and other confidential information to be provided to the Voluntary Assisted Death Review Board for the purposes of conducting a review of each assisted death. The Bill also requires a primary medical practitioner to provide each examining practitioner with any relevant documents relating to previous examinations of the patient in connection with a request for assistance.

While the Committee acknowledges that these provisions may trespass on the right to privacy and patient confidentiality, the Committee notes the reasons on public policy grounds. The provisions seek to arm examining practitioners with enough information to make an informed assessment of a patient's eligibility and will also facilitate a comprehensive review of each assisted death by the Review Board. The Committee is of the view that the provisions are designed to promote the integrity of the assisted dying regime generally. In such circumstances, the Committee makes no further comment.

Breach of deceased patient's privacy

14. Section 43 of the Bill prohibits the unauthorised disclosure of information by the Review Board or its consultants. There are exceptions. For instance, such information may be disclosed 'with the consent of the person from whom the information was obtained.'
15. The Committee is concerned that this exception is unnecessarily broad for two reasons. First, the Review Board has fairly wide powers under the Bill to obtain information from any person relating to an assisted death, which may reasonably extend to third parties

including medical practitioners. Such information may concern a deceased patient who is no longer able to consent.

16. Second, the Committee also notes that, in circumstances where consent from the relevant third party is obtained, the clause does not restrict the circumstances in which a lawful disclosure may be made.

The Bill prohibits the unauthorised disclosure of information by the Review Board or its consultants. However, the Bill creates exceptions to this rule, including if the person from whom the information was obtained grants their consent.

Given the broad powers of the Review Board to obtain information from any person, and that the information is likely to relate to a deceased patient who is no longer in a position to grant consent, the Committee is concerned that the provision contains no other restrictions as to when such information may be lawfully disclosed. This may breach a deceased patient's privacy in circumstances where this is not justified. The Committee is also of the view that the disclosure of information relating to a deceased person must be sensitively managed given that that person is no longer able to provide their consent.

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

Right to receive payment for interpreting services

17. Section 14 of the Bill provides for a prohibition against a primary medical practitioner providing assistance to a patient if a financial or other advantage is to be gained by an interested person as a result of the death of the patient. This section identifies a number of interested persons, one of which is any interpreter required to be present at the signing of the request certificate. The list of interested persons also identifies a list of medical practitioners who are similarly prohibited from gaining a financial or other advantage.
18. Despite this prohibition, section 14 includes an express exception for interested persons who are able to receive a reasonable payment for medical services. No such exception exists for the reasonable payment for interpreting services under this or any other section.
19. Meanwhile, Schedule 1 includes a declaration by the interpreter that they will not gain any financial or other advantage (other than a reasonable payment for interpreting services). Despite this declaration forming part of the scheme and the implication that interpreters are permitted to receive such fees, there is no corresponding provision to providing legislative sanction for reasonable payment of interpreting services elsewhere in the Bill.

The Committee notes that the Bill provides for a prohibition against a primary medical practitioner providing assistance if a financial or other advantage is likely to be gained by an interested person as a result of the death of the patient. Interested persons are included as both medical practitioners and interpreters. Whereas the Bill provides that interested persons may receive

reasonable payment of medical services, the Bill does not appear to provide a similar exception for the reasonable payment of interpreting services.

The Committee also notes that the proposed form in Schedule 1 contains a declaration by the interpreter that they will not gain any financial or other advantage “*other than a reasonable payment for interpreting services*”.

Noting the seriousness of a potential breach of the Act by a primary medical practitioner if they provide assistance under this scheme, and the importance of consistency, the Committee would prefer that the clause makes clear that the receipt of an interpreting fee does not preclude a primary medical practitioner from lawfully providing assistance.

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

Ability of regulations to create penalties

20. Clause 45 of the Bill enables the regulations to create offences punishable by a penalty not exceeding \$11,000. This is a significant monetary penalty and for this reason, the Committee is of the view that the creation of such penalties should occur in the principal legislation so as to be subject to a greater level of parliamentary scrutiny.

Under the bill, the regulations may create offences punishable by a penalty not exceeding \$11,000. The Committee notes that it is reasonable for some lesser offences to be created in regulations and that regulatory instruments may be disallowed under section 41 of the Interpretation Act. Despite this, the Committee would prefer that offences attracting such a significant monetary penalty be created through legislation so as to be subject to a more appropriate level of parliamentary scrutiny.

3. Workers Compensation Amendment (Protection of Injured Workers) Bill 2017*

Date introduced	21 September 2017
House introduced	Legislative Assembly
Member Responsible	Mr Clayton Barr MP
	Private Members Bill*

PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend the *Workers Compensation Act 1987* through four key provisions:
 - to remove restrictions on a worker’s entitlement to make a “journey claim” (a claim to receive compensation for a personal injury received on a journey between the worker’s home or other place of abode and his or her place of employment);
 - to remove restrictions on what constitutes as suitable employment for the purposes of a worker’s entitlement to weekly compensation by way of income support and remove the five-year cut-off period for weekly payments of compensation to injured workers;
 - to remove a provision which limits the payment of an injured worker’s expenses for medical, hospital and rehabilitation treatment and services to treatment and services provided within 12 months after a claim for compensation is made or within 12 months after weekly payments cease and;
 - Amends the offence for an employer to dismiss, an injured worker, at any time because the worker is not fit for employment as a result of the injury.

BACKGROUND

2. The *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1988*, combined, establish and provide for a workplace injury management and workers compensation system in NSW. The Government passed significant changes to the Act in 2012 which this Bill, in part, seeks to undo.

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*.

Part Two – Regulations

1. Education Standards Authority Amendment Regulation 2017

Date published	7 July 2017
Disallowance date	12 October 2017
Minister responsible	The Hon. Robert Stokes MP
Portfolio	Education

PURPOSE AND DESCRIPTION

1. The object of the Regulation is to prescribe Education Services Australia Limited as a relevant agency, being an agency with whom the NSW Education Standards Authority may enter into an information sharing arrangement.
2. The Regulation is made under the *Education Standards Authority Act 2013*, including sections 16 and 24 (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

Right to privacy

3. The Regulation amends clause 5 of the *Education Standards Authority Amendment Regulation 2017* to prescribe another ‘relevant agency’, which can enter into an information sharing arrangement with the Education Standards Authority for the purposes of sharing or exchanging any information held by the Authority or the agency.
4. Section 16 of the *Education Standards Authority Act 2013* provides that the information to be shared under such an arrangement is limited to certain information. This includes any information that assists in the exercise of functions of the Minister or Authority or of the relevant agency and data relating to the teaching workforce.
5. The Committee notes that clause 5 already lists a number of ‘relevant agencies’, including the Australasian Teacher Regulatory Authorities and the Australian Institute for Teaching and School Leadership Limited.

Clause 5 of the *Education Standards Authority Amendment Regulation 2017* is proposed to be amended so that the Education Standards Authority is prescribed as an additional ‘relevant agency’. Clause 5 lists relevant agencies with which the Education Standards Authority can enter into an information sharing agreement. The information that can be exchanged is limited to certain categories of information including any information that assists in the exercise

of functions of the Minister, Authority or relevant agency, and information containing data relating to the teaching workforce.

The Committee notes that the categories of information that can be exchanged are quite broad and that there are no privacy protections in the relevant section of the Act. The Committee is therefore concerned that the Regulation may trespass on an individual's right to privacy without appropriate justification (for example, by sharing information regarding individual teachers). However, the proposed amendment simply adds one organisation to a long list of agencies which are already subject to such information sharing arrangements with the Authority. For this reason, the Committee makes no further comment.

2. Greyhound Racing Amendment (Savings and Transitional) Regulation 2017

Date published	30 June 2017
Disallowance date	12 October 2017
Minister responsible	The Hon. Paul Toole MP
Portfolio	Racing

PURPOSE AND DESCRIPTION

1. The *Greyhound Racing Act 2017* repealed the *Greyhounds Racing Prohibition Act 2016* which commenced on 1 July 2017. In his second reading speech, the Minister for Racing, the Hon. Paul Toole MP noted the Act would provide the foundations and governance structures for a “sustainable greyhound racing industry with highest animal welfare and integrity standards in the country”.
2. The *Greyhound Racing Amendment (Savings and Transitional) Regulation 2017* includes additional savings and transitional provisions consequential to the enactment of the *Greyhounds Racing Act 2017*. The transition period commenced on 3 July 2017 until the repeal of the former Act.
3. Under the former Act, Greyhounds Racing New South Wales (GRNSW) was responsible for the control, supervision and regulation of greyhound racing.

ISSUES CONSIDERED BY COMMITTEE

The regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made: s 9(1)(b)(iv) of the LRA

Amending Act with regulation/ Henry VII amendment

4. There are a number of provisions within the regulation which amend the *Greyhound Racing Act 2017*. This is with respect to the continuation of GRNSW’s functions and provisions relating to the welfare of greyhounds during the transition period.
5. The Committee prefers that amendments to an Act are in the form of a Bill and passed through Parliament, rather than in regulations.

The Committee generally prefers regulations to not amend the principal Act. However given the administrative nature of the amendments to continue the functions of GRNSW and provisions relating to the welfare of greyhounds during the transitional period, the Committee makes no further comment

3. National Energy Retail Law (Adoption) Amendment (Deregulation) Regulation 2017

Date published	23 June 2017
Disallowance date	12 October 2017
Minister responsible	The Hon. Don Harwin MLC
Portfolio	Energy and Utilities

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *National Energy Retail Law (Adoption) Act 2012* and the *National Energy Retail Law (Adoption) Regulation 2013* as follows:
 - (a) to omit provisions that require gas suppliers to offer to provide gas to certain small customers at regulated prices and provide for the inclusion of those prices in pricing guidelines and a price comparator,
 - (b) to require a Market Monitor (currently the Independent Pricing and Regulatory Tribunal) to monitor and report on the performance and competitiveness of the retail gas market in New South Wales for small customers,
 - (c) to enable special reviews to be carried out by the Market Monitor into retail prices and profit margins in the retail gas market in New South Wales for small customers, including a special review of the period from 1 July 2016 to 30 June 2017,
 - (d) to make consequential amendments, including omitting provisions specifying requirements for regulated customers and the retailers who are regulated offer retailers.
2. This Regulation is made under the *National Energy Retail Law (Adoption) Act 2012*, including section 12 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII amendment

3. This regulation amends Schedule 1 of the *National Energy Retail Law (Adoption) Act 2012* to accommodate for changes to the regulations regarding provisions about gas suppliers and regulated customers and retailers who are regulated offer retailers.

This regulation amends the *National Energy Retail Law (Adoption) Act 2012* and has been implemented in accordance with the general regulation-making power under section 12 of the Act. However, the Committee prefers that amendments to the principal legislation be made by an amending Act, which allows for parliamentary scrutiny and maintains the sovereignty of the parliament. This is particularly concerning where the regulations amend provisions relating to key definitions.

The Committee notes that the amendments to the Act are consequential amendments resulting from the change to the regulations relating to the retail gas market and omits provisions that require gas suppliers to offer to provide gas to certain small customers at regulated prices and provide for the inclusion of those prices in pricing guidelines and a price comparator. The changes also require a Market Monitor to monitor and report on the performance and competitiveness of the retail gas market in NSW. In these circumstances, the Committee makes no further comment.

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.