PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 45/56 – 17 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, 53p 30cm

Chair: Mr Michael Johnsen MP

17 October 2017

ISSN 1448-6954

1. Legislation Review Committee – New South Wales
2. Legislation Review Digest No. 45 of 56
I Title.
II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 45 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”.

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Membership

CHAIR	Mr Michael Johnsen MP, Member for Upper Hunter
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr 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. ABORIGINAL LANGUAGES 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. CRIME (HIGH RISK OFFENDERS) AMENDMENT BILL 2017

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

Freedom of movement/association

The Bill expands the reach of extended supervision orders by allowing such orders to be imposed in relation to a broader range of offenders. This includes those who have committed serious offences (rather than only a serious sex offence or a serious violence offence) and those who have committed a relevant offence under Commonwealth law.

Extended supervision orders, which provide for community supervision of offenders who have committed serious offences, can have a number of quite onerous conditions. Such conditions potentially trespass on an offender's right to freedom of movement and freedom of association, among other freedoms. However, the Committee is of the view that the provision is justified as the ability to impose such orders is still reserved for the most serious of offences. The Court must also be satisfied to a high degree of probability that the risk of the offender committing another serious offence is unacceptable unless the order is imposed. Accordingly, the Committee makes no further comment.

Right to liberty

The Bill allows the Court to defer the operation of an extended or interim supervision order by up to 7 days and then to order the continued detainment of the offender in order to facilitate arrangements for supervision in the community. While this trespasses on an offender's right to liberty following the conclusion of their custodial sentence, the Committee notes that the provision is justified in the circumstances given its practical purpose and that the period is relatively short.

The Bill applies a new test to the grant of continuing detention orders in respect of certain offenders. In short, the current test requires the Court to consider whether there is an unacceptable risk that the offender will commit a further offence and, usually, whether the offender can be adequately supervised in the community. The Bill proposes to remove this second requirement in light of concerns raised in the statutory review regarding the utility of the test, including in respect of certain offenders who repeatedly breach supervision orders and cycle in and out of detention.

The Committee notes that detaining offenders beyond the expiry of their custodial sentence may be seen to breach an offender's right to liberty. However, the Committee also acknowledges that there may be good reasons for the change in the test, including reasons nominated in the statutory review. For example, while some offenders may able to be adequately supervised such that any anticipated or actual breach is detected and acted upon,

for some offenders who repeatedly breach such orders and cycle in and out of imprisonment, this may not be an effective use of resources or adequately protect the community.

However, a number of stakeholders have also raised concerns that the new test may result in continuing detention orders becoming more common and no longer an option of last resort. Although the Committee notes the policy reasons for the new test, given the fundamental nature of the right to liberty, the Committee draws the new test to Parliament's attention.

Right to a fair hearing

In determining whether to make an extended supervision order, the Court has to consider a number of factors, including the offender's conduct and their participation in rehabilitation programs. Under the Bill, the paramount consideration for the Court would be the safety of the community. The Committee notes that this broadly-worded requirement may be seen to trespass on the right of an offender to a fair hearing by elevating one consideration above many others.

However, the Committee is of the view that the amendment does not unduly trespass on the right of an offender to a fair hearing as the Court is still required to take into account a broad range of factors. Moreover, in the case of serious offenders, there may be good policy reasons as to why community safety should be prioritised. As such, the Committee makes no further comment.

Right to privacy/confidentiality

The Bill amends the Principal Act so that the Attorney General can now also require a person to provide information regarding the financial circumstances of certain offenders. The Attorney General can already require a person to provide information relating to the behaviour or physical or mental condition of the offender. The Committee notes that this may unduly trespass on an offender's right to privacy. While there may be good policy reasons why information as to an offender's financial circumstances is required, the Committee notes that 'financial circumstances' may be unnecessarily broad. The Committee would prefer that the Bill articulates the scope of information required and circumstances in which such information can be required. The Committee draws this matter to Parliament's attention.

The Bill provides that certain expert reports concerning offenders who are subject to an application for an extended supervision order or continuing detention order may be disclosed in certain circumstances. For example, such reports can be disclosed by the State to a corrective services officer or other person responsible for the treatment or risk assessment of the offender, solely for use in providing rehabilitation, care or treatment. The Court can also decide to use such expert reports in certain proceedings.

While the disclosure may breach an offender's right to privacy and confidentiality, the Committee notes that the reports can only be disclosed in a limited set of circumstances for a designated purpose.

Although the use of an expert report prepared for another purpose may be seen to also prejudice the right of an offender to a fair trial, the Committee observes that such reports may also only be used in limited circumstances. For example, the report can only be used if a Court determines that the proceedings are closely related to the original proceedings for which the report was obtained and it is in the public interest, among other factors. Accordingly, the Committee makes no further comment.

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

Commencement by proclamation

The Committee generally prefers that legislation commence on a fixed date or by assent to provide certainty to those affected by the Bill's provisions. The Committee draws this to the attention of the Parliament for its further consideration.

3. CRIMES (SENTENCING PROCEDURE) AMENDMENT (SENTENCING OPTIONS) BILL 2017

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

Personal liberties and privacy

The Committee notes that the Bill provides for the creation of intensive correction orders, community correction orders, and conditional release orders that enable a court to impose conditions on offenders that may impact on personal liberties. This includes a home detention condition, an electronic monitoring condition, and a curfew condition. Other conditions which may be imposed on all orders include place restriction and non-association with particular persons. These conditions impact on the right to privacy and freedom of movement.

However, the Committee recognises that orders of this nature exist as an alternative to imprisonment, and that courts have been given appropriate discretion to impose or not impose conditions as they see fit. While it is incumbent to identify matters that may impact on personal rights and liberties, the Committee appreciates that the imposition of conditions on offenders under these orders may be reasonable in the circumstances. The Committee makes no further comment.

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

Regulation-making powers

The Committee notes that the Bill provides for the regulation-making power for the administration of intensive correction orders, community correction orders, and conditional release orders. This power enables regulations to be made with respect to conditions regarding supervision requirements, home detention, electronic curfews, and community service work. Each of these conditions will impact on the liberty and privacy of the offender subject to the order. In this respect, the broad scope of the regulation-making power may be regarded as an inappropriate delegation of legislative power. The Committee also recognises that schemes of this nature will require periodic regulations for administrative efficiency. The Committee makes no further comment

4. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SYDNEY DRINKING WATER CATCHMENT) BILL 2017

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

Consents not subject to challenge

The Bill prevents challenge to any development consent granted before the commencement of the amending Act, and to which the EP&A Act and the Sydney Water Drinking SEPP applied. It prevents challenge to any such development consent on the ground that it was not granted in accordance with the EP&A Act and the Sydney Water Drinking SEPP. The Committee notes that

the Sydney Water Drinking SEPP covers matters other than the water quality test. These matters, such as the requirement for concurrence, may have otherwise given rise to a ground on which the consent could be challenged.

The Committee is concerned that the Bill removes the ability of third parties to commence Court proceedings to challenge certain development consents on what may otherwise be legitimate grounds. While there may be good policy reasons for this approach in this instance, the Committee draws this matter to the Parliament's attention.

Legislative interference with judicial action

The proposed amendments will effectively restore the initial findings of the Land and Environment Court by validating the consent for the Springvale mine development.

As these issues have gone through the courts, the amendments appear to be a legislative fettering of the judicial process. By passing this Bill after the Court of Appeal's decision and potentially pre-empting a further decision of the courts to invalidate the consent, the Bill is detrimental to the applicants who have spent time and incurred expense in bringing this action. The Committee considers that, notwithstanding the merits of the Bill, the process itself may be unfair on the applicants.

The Committee is also mindful of the public interest in the Springvale mine extension. The Committee makes no further comment.

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

SEPPs not disallowable

The Bill amends the EP&A Act so that a State environmental planning policy that requires a development to have a neutral or beneficial effect on water quality 'may deal with the application of that test in the case of proposed development that extends or expands existing development.' While the meaning of this amendment may not be entirely clear, the Committee understands that the purpose of the amendment is to allow the Sydney Drinking Water SEPP to apply the water quality test in a different way to certain classes of development, such as when a mine is extended or expanded.

The Committee is concerned that the nature of the modified test will not be subject to an appropriate level of parliamentary scrutiny. This is because SEPPs are environmental planning instruments, and therefore are not subject to the usual disallowance processes that apply to regulations. The Committee refers this matter to Parliament for its further consideration.

5. FAIR TRADING AMENDMENT (TICKET SCALPING AND GIFT CARDS) BILL 2017*

The Committee has not identified any issues under section 8A of the *Legislation Review Act 1987.*

6. FISHERIES MANAGEMENT AMENDMENT (ABORIGINAL FISHING) BILL 2017

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

Unfettered discretion of Minister to sell fishing assets

The Bill includes a provision that allows the Minister to sell any fishing asset held by the Fisheries Administration Ministerial Corporation under an Aboriginal fishing assistance program and exercise any other functions of the owner of a fishing asset. Fishing assets may include shares, operating equipment or any other thing prescribed by the regulations. Although the Bill outlines that the Minister must consult with the relevant Aboriginal advisory committee for the *acquisition* of fishing assets, the Bill does not require the Minister to consult with the Aboriginal advisory council when it comes to the *sale* of these assets.

The Committee is concerned that this may give insufficiently defined powers to the Minister to make decisions in relation to assets belonging to Aboriginal fishing assistance programs. This may not accord with the intention of the Bill to empower the Aboriginal community to make decisions about programs to foster Aboriginal cultural fishing. The Committee draws this issue to the attention of the Parliament.

7. HEALTH PRACTITIONER REGULATION AMENDMENT BILL 2017

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

Privacy of health practitioners

Schedule 2, Clause 7 of the Bill provides that the Health Care Complaints Commission must make public details of a complaint against a registered health practitioner where a complaint against them has been proved or admitted in whole or in part, or where their registration has been cancelled or suspended due to disciplinary action. The Committee notes that this could interfere with the privacy and professional reputation of the health practitioner concerned.

The Committee also notes that the integrity of the health complaints scheme rests of making the public aware of unsatisfactory conduct or professional misconduct by particular health care practitioners. In addition, these provisions are substantially in effect already, and the amendments are simply an update to these existing provisions. The Committee makes no further comment.

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

Reference to legislation in another jurisdiction

Schedule 1 of the Bill amends the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which itself makes a number of references to the Queensland equivalent of that Act. With respect to the health practitioner regulation, NSW legislation refers to Queensland legislation which validly applies to NSW, and where changes to Queensland legislation automatically apply in NSW.

The Committee recognises that the effect of this is that NSW law is being amended by another jurisdiction without the benefit of the Parliament of NSW being able to scrutinise the amending legislation.

The Committee also notes that in order to achieve national harmonisation in some regulatory fields, it is generally required that one jurisdiction hosts model legislation which other jurisdictions will adopt through references to it. In addition, these changes are the subject of a lengthy review process and the nature of cooperative federalism sometimes requires an approach like this for streamlining legislative efficiency. The Committee makes no further comment.

8. JUSTICE LEGISLATION AMENDMENT (COMMITTALS AND GUILTY PLEAS) BILL 2017

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

Procedural fairness to accused

The Committee recognises that the Bill outlines a number of provisions that are intended to increase the efficiency of the criminal justice system and afford procedural fairness to the accused. This includes the new requirement to serve the accused with a brief of evidence, a charge certificate simplifying the relevant charges, and the establishment of case conferences to facilitate early guilty pleas. In regard to these new frameworks, the Committee has identified some provisions that may impact procedural fairness afforded to the accused.

Under subsection 95(2), a Magistrate may commit an accused person for sentence before a charge certificate is filed, or where a charge certificate has been filed but not case conference has been held. This is concerning as a charge certificate is intended for the benefit of informing the accused of the relevant offences that are to be proceeded with by the prosecution. Additionally, a case conference is intended to facilitate the provision of additional material or other information that may be reasonably necessary to enable the accused person to determine whether or not to plead guilty to one or more offences. A case conference may also facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts. Absence of a charge certificate or case conference before committing an accused person to sentence may affect the procedural fairness afforded to the accused.

This may be particularly problematic in cases of unrepresented persons who have not had the opportunity to view a charge certificate. However, the Committee recognises that section 98 provides a safeguard against this and states that a Magistrate must not commit the accused for trial or sentence if they are unrepresented unless they have had reasonable opportunity to obtain legal representation.

Onus of proof

The Bill states that the burden of establishing that grounds exist for the sentencing discount lies on the offender and must be proved on the balance of probabilities. Although it is required that the accused be provided with a brief of evidence and a charge certificate, the elements of the charges may not have necessarily been proved by the prosecution at this pre-trial stage. To place the burden on the accused to prove that they are eligible for a sentencing discount for the charges put by the prosecution at the pre-trial stage, including the burden of establishing that grounds exist for a sentencing discount for any different offences that are not the subject of proceedings, may affect the presumption of innocence.

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

Commencement by proclamation

The Committee generally prefers that legislation commence on a fixed date or by assent to provide certainty to those affected by the Bill's provisions. In this case, the Bill enacts several provisions across different Acts in relation to procedures for indictable criminal offences – reserved for offences of a serious nature. As the amendments provide an opportunity for early guilty pleas and sentence reduction, it is important that the commencement date be clear for

procedural fairness to be afforded to the accused, for the benefit of the victims, and for the administrative convenience of the prosecution in preparing and serving the necessary evidence upon the accused. The Committee draws this to the attention of the Parliament for its further consideration.

9. PAROLE LEGISLATION AMENDMENT BILL 2017

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

Ill-defined circumstances for refusal of re-integration detention order

Subsection 124E provides the State Parole Authority may refuse to make a re-integration home detention order, for a reason it thinks fit, despite a favourable assessment report. The Committee is concerned the subsection does not define the circumstances in which an application may be refused, thereby creating uncertainty which may infringe on an applicant's potential appeal. However, given that section 135 specifies a general duty for the Parole Authority in relation to the release of offenders with a focus on the public safety, the policy implications of the Bill and the safeguards provided within the *Crimes (Administration of Sentences) Act 1999*, the Committee makes no further comment.

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

Commencement by proclamation

The Committee generally prefers legislation to commence on assent or a fixed date. However, given the amount of administrative changes to be implemented across various Acts, the Committee makes no further comment.

10. PLASTIC SHOPPING BAGS (PROHIBITION ON SUPPLY BY RETAILERS) BILL 2017 (NO 2)*

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

PART TWO – REGULATIONS

1. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT REGULATION 2017

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

Freedom of association and communication

Under the Regulation, the governor of a correctional centre can bar restricted associates from visiting certain correctional centres. The governor can also direct inmates not to send or receive correspondence to or from a restricted associate, and has complementary powers to open, inspect and confiscate any such correspondence. Restricted associates are those people with whom an inmate has been directed not to associate or make contact with under an extended supervision order under the *Crimes (High Risk Offenders) Act 2006*, but only if that order has been suspended, expired, or is yet to commence.

The Committee notes that this aspect of the Regulation may be seen to trespass on the freedom of association and freedom of communication of persons, including both inmates and restricted associates. However, the Committee is of the view that the Regulation does not

unduly trespass on these rights, including because it is likely that the inmate would be subject to similar or identical restrictions under an extended supervision order if they were not incarcerated.

2. FIREARMS REGULATION 2017

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

Broad police powers to inspect a deceased firearm dealer's property and inventory

The Committee is concerned the broad inspection powers to search and inspect private premises, inventory and records may infringe on the deceased's right to privacy. However, the Committee notes the policy implications of ensuring the safe storage of firearms and weapons in respect to public safety, the infringement is reasonable and makes no further comment.

3. PESTICIDES REGULATION 2017

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Substantial increase to licence application fees

The Regulation significantly increases the licence application fees payable in respect of those carrying out prescribed pesticide work. The fees increase over a 6 year period, so that a licence fee of $196 which is payable until 1 July 2018, becomes a fee of $425 from 1 July 2022 onwards. A number of the submissions made in response to the regulatory impact statement note this substantial fee increase. While the increase is staggered over time, the Committee nevertheless notes that the increase may have an adverse impact on those professionals who carry out pesticide work.

4. SYDNEY WATER REGULATION 2017

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

Restrictions on freedom of movement and enjoyment

The Regulation now prohibits entry to controlled areas. A note in the Regulation indicates that a 'controlled area' is an area of land declared to be a controlled area under the *Sydney Water Act 1994*. Such a prohibition only applied in respect of the Prospect Reservoir controlled area under the previous regulation. While the provision has potential to trespass on an individual's freedom of movement and enjoyment, the Committee is of the view that the provision is justified on public policy grounds. As it is important that the physical and environmental security of Sydney's water resources is preserved and controlled, the Committee makes no further comment.

The form or intention of the regulation calls for elucidation: s 9(1)(b)(vii) of the LRA

No definition of 'controlled area'

'Controlled area' is not defined in the Regulation. While a note in the Regulation clarifies its meaning, the definition does not form part of the Regulation itself by virtue of clause 3(2). As the Regulation creates a number of new offences relating to controlled areas, the Committee would prefer if this term was defined separately in the Regulation.

5. WEAPONS PROHIBITION REGULATION 2017

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

Ability to receive a weapons permit

Under the Regulation, the Commissioner has a broad power to refuse to issue a weapons permit if it is contrary to the public interest. The Committee notes that this wide-ranging power was not present in the previous regulation. The Committee generally prefers that similar provisions list factors which should be taken into account when deciding what is in the public interest. However, the Committee understands that, in the context of weapon control, there may be sound policy reasons as to why the Commissioner should have a residual and wide-ranging power to refuse to issue a weapons permit. Accordingly, the Committee makes no further comment.

Right to possess property

The Commissioner can issue a permit to a person who has inherited a prohibited weapon if the heirloom is also of genuine sentimental value. The Regulation includes a new provision which prevents a person from holding more than one prohibited weapon – heirloom permit at any one time. The Committee notes that this may trespass on a person's right to possess property. However, the Committee notes that the right to property must also be balanced against other considerations, such as the risk that a prohibited weapon will be stolen or misused by a third party. The Committee understands that there may also be other good policy reasons why only a single permit should be issued for a prohibited weapon – heirloom, and therefore makes no further comment.

Broad police powers to inspect a deceased weapon dealer's property and inventory

The Committee is concerned the broad inspection powers to search and inspect private premises, inventory and records may infringe on a deceased weapon dealer's right to privacy. However, the Committee acknowledges the policy reasons for ensuring the safe storage of firearms and weapons, the infringement is reasonable and makes no further comment.

Part One – Bills

1. Aboriginal Languages Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Council
Minister responsible	The Hon. Sarah Mitchell MLC
Portfolio	Aboriginal Affairs

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

   (a) to acknowledge that Aboriginal languages are part of the culture and identity of Aboriginal people, and

   (b) to establish an Aboriginal Languages Trust governed by Aboriginal people that will facilitate and support Aboriginal language activities to reawaken, nurture and grow Aboriginal languages, and

   (c) to require the development of a strategic plan for the growth and nurturing of Aboriginal languages.

BACKGROUND

2. This Bill is a part of the Aboriginal Language and Culture Nests initiative to foster Aboriginal languages in Aboriginal communities, schools, and the wider community. This initiative is part of a broader strategic plan – Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) - that arose out of the Ministerial Taskforce on Aboriginal Affairs in 2012.

3. The Bill is also in response to the Inquiry into Reparations for the Stolen Generations 2016. Recommendation 24 of the inquiry urged the Government to consider increasing the number of Aboriginal Language and Culture Nests under its OCHRE strategy. In her second reading speech, the Minister stated that the Committee had heard 'firsthand how the loss of connection to culture and language caused trauma to the members of the Stolen Generations'. In particular, it was heard from Aboriginal leaders that the reconnection with their lost languages created a great healing power.

4. The Minister also cited the recent 2016 census data that found only 1 in 10 First Peoples spoke their language at home, and almost all first language speakers lived outside capital cities. However, in New South Wales, this figure has risen from 1200 in 2011 to 1800 in 2016. The Bill intends to foster the shared history of the First Peoples and the Heritage of the State by preserving these languages.

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. Crime (High Risk Offenders) Amendment Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman SC MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The *Crime (High Risk Offenders) Amendment Bill 2017* (the Bill) is cognate with the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017* and the *Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017*.

2. The Bill makes a number of amendments to the *Crimes (High Risk Offenders) Act 2006* (the Principal Act), including:

   (a) removing the distinction between two categories of high risk offender;

   (b) clarifying that the scheme applies to an offender sentenced to an imprisonment for a serious offence to be served by way of full-time detention or intensive correction in the community, but not an offender given a suspended sentence or whose sentence is quashed; and

   (c) changing the test to be applied by the Supreme Court in deciding whether or not to make a continuing detention order in respect of a high risk offender. The new test is that the Court can make an order if satisfied that the risk of the offender committing another serious offence would be unacceptable unless the order is imposed.

BACKGROUND

3. The Principal Act establishes a scheme for the making of extended supervision orders and continuing detention orders in relation to high risk sex offenders and high risk violent offenders. The categories are based on whether the offender has been sentenced to imprisonment following conviction for a serious sex or violence offence.

4. Generally speaking, extended supervision orders allow for the supervision of an offender in the community, while continuing detention orders allow for the continued imprisonment of an offender.

5. According to the second reading speech, the Bill implements reforms arising from a statutory review of the Principal Act which was conducted by the Department of Justice in 2016-17.

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of movement/association

6. The Bill proposes to alter the circumstances in which the Supreme Court can impose an order for supervision in the community of a person (an 'extended supervision order') on certain categories of offenders who have committed serious offences. Previously, extended supervision orders could only be made in respect of either high risk violent offenders or high risk sex offenders. The amendments may therefore capture a greater number of offenders, particularly those who have a history of both sex and violence offences.

7. Section 11 of the Principal Act lists a number of conditions which the Court can attach to an extended supervision order, including restrictions on association and employment. The Court can also impose conditions permitting a corrective services officer to enter an offender's residence for any purpose and to access any computer possessed by the offender.

8. The Bill expands the definition of 'serious sex offence' and 'offence of a sexual nature' to list multiple Commonwealth offences, including those relating to child sex tourism. This also enables orders to be imposed on a broader range of offenders.

The Bill expands the reach of extended supervision orders by allowing such orders to be imposed in relation to a broader range of offenders. This includes those who have committed serious offences (rather than only a serious sex offence or a serious violence offence) and those who have committed a relevant offence under Commonwealth law.

Extended supervision orders, which provide for community supervision of offenders who have committed serious offences, can have a number of quite onerous conditions. Such conditions potentially trespass on an offender's right to freedom of movement and freedom of association, among other freedoms. However, the Committee is of the view that the provision is justified as the ability to impose such orders is still reserved for the most serious of offences. The Court must also be satisfied to a high degree of probability that the risk of the offender committing another serious offence is unacceptable unless the order is imposed. Accordingly, the Committee makes no further comment.

Right to liberty

9. Sections 10 and 10C of the Bill allow the Court to defer the operation of an extended or interim supervision order by up to 7 days to allow for arrangements to be made for the supervision of the offender in the community. The Court may then order that the offender continues to be detained after the expiry of their custodial sentence.

The Bill allows the Court to defer the operation of an extended or interim supervision order by up to 7 days and then to order the continued detainment of the offender in order to facilitate arrangements for supervision in the community. While this trespasses on an offender's right to liberty following the conclusion of their custodial sentence, the Committee notes that the provision

is justified in the circumstances given its practical purpose and that the period is relatively short.

10. The Bill also alters the test applied by the Court to the grant of continuing detention orders. The current test has two limbs. Firstly, a detention order can only be granted if there is an unacceptable risk that the offender will commit a further serious offence in the absence of supervision. Secondly, the Court has to be satisfied that the offender has either breached the order or circumstances have altered since the making of the relevant supervision order and those circumstances mean that adequate supervision of the offender cannot be provided under a supervision order.

11. Following the recommendations of the statutory review, the Bill changes this test by removing the second limb in some cases; that is, the Court no longer has to consider the possibility that the offender may be adequately supervised in the community. A number of stakeholders expressed concern that by not being required to consider the possibility that an offender could be supervised in the community, more offenders would become subject to a continuing detention order and it would no longer be an option of last resort. The second reading speech also acknowledges that the new test may result in more offenders receiving a continuing detention order rather than an extended supervision order.

The Bill applies a new test to the grant of continuing detention orders in respect of certain offenders. In short, the current test requires the Court to consider whether there is an unacceptable risk that the offender will commit a further offence and, usually, whether the offender can be adequately supervised in the community. The Bill proposes to remove this second requirement in light of concerns raised in the statutory review regarding the utility of the test, including in respect of certain offenders who repeatedly breach supervision orders and cycle in and out of detention.

The Committee notes that detaining offenders beyond the expiry of their custodial sentence may be seen to breach an offender's right to liberty. However, the Committee also acknowledges that there may be good reasons for the change in the test, including reasons nominated in the statutory review. For example, while some offenders may able to be adequately supervised such that any anticipated or actual breach is detected and acted upon, for some offenders who repeatedly breach such orders and cycle in and out of imprisonment, this may not be an effective use of resources or adequately protect the community.

However, a number of stakeholders have also raised concerns that the new test may result in continuing detention orders becoming more common and no longer an option of last resort. Although the Committee notes the policy reasons for the new test, given the fundamental nature of the right to liberty, the Committee draws the new test to Parliament's attention.

Right to a fair hearing

12. The Bill amends section 9 of the Principal Act, which lists the factors that must be considered by the Court when deciding to make an extended supervision order. It is proposed that the Court treat the safety of the community as the paramount consideration. The Court also has to consider other factors, including the offender's

conduct and participation in rehabilitation programs, and the statistical likelihood of offenders of that type reoffending.

In determining whether to make an extended supervision order, the Court has to consider a number of factors, including the offender's conduct and their participation in rehabilitation programs. Under the Bill, the paramount consideration for the Court would be the safety of the community. The Committee notes that this broadly-worded requirement may be seen to trespass on the right of an offender to a fair hearing by elevating one consideration above many others.

However, the Committee is of the view that the amendment does not unduly trespass on the right of an offender to a fair hearing as the Court is still required to take into account a broad range of factors. Moreover, in the case of serious offenders, there may be good policy reasons as to why community safety should be prioritised. As such, the Committee makes no further comment.

Right to privacy/confidentiality

13. The Bill amends section 25 of the Principal Act to enable the Attorney General to require persons to provide information regarding the financial circumstances of an offender. An offender is a person who has at any time been imprisoned for a serious sex offence or serious violence offence. The provision currently allows the Attorney General to require information relating to the behaviour or physical or mental condition of the offender. Failure to comply is an offence.

The Bill amends the Principal Act so that the Attorney General can now also require a person to provide information regarding the financial circumstances of certain offenders. The Attorney General can already require a person to provide information relating to the behaviour or physical or mental condition of the offender. The Committee notes that this may unduly trespass on an offender's right to privacy. While there may be good policy reasons why information as to an offender's financial circumstances is required, the Committee notes that 'financial circumstances' may be unnecessarily broad. The Committee would prefer that the Bill articulates the scope of information required and circumstances in which such information can be required. The Committee draws this matter to Parliament's attention.

14. The Bill inserts section 25D, which empowers the State to disclose certain expert reports concerning an offender who is the subject of an application for a supervision order or detention order. Such expert reports can be disclosed to a corrective services officer or any other person responsible for the supervision, treatment or risk assessment of the offender, for use solely in providing rehabilitation, care or treatment of the offender. They may also be disclosed to any person in connection with the exercise of the person's functions under the Principal Act.

15. The Court can also decide to use such expert reports in certain proceedings, if those proceedings are closely related to the original proceedings for which the report was obtained and it is in the public interest, among other factors.

The Bill provides that certain expert reports concerning offenders who are subject to an application for an extended supervision order or continuing

detention order may be disclosed in certain circumstances. For example, such reports can be disclosed by the State to a corrective services officer or other person responsible for the treatment or risk assessment of the offender, solely for use in providing rehabilitation, care or treatment. The Court can also decide to use such expert reports in certain proceedings.

While the disclosure may breach an offender's right to privacy and confidentiality, the Committee notes that the reports can only be disclosed in a limited set of circumstances for a designated purpose.

Although the use of an expert report prepared for another purpose may be seen to also prejudice the right of an offender to a fair trial, the Committee observes that such reports may also only be used in limited circumstances. For example, the report can only be used if a Court determines that the proceedings are closely related to the original proceedings for which the report was obtained and it is in the public interest, among other factors. Accordingly, the Committee makes no further comment.

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

Commencement by proclamation

16. Section 2 of the Bill provides that the amendments are to commence on a day or days to be appointed by proclamation.

The Committee generally prefers that legislation commence on a fixed date or by assent to provide certainty to those affected by the Bill's provisions. The Committee draws this to the attention of the Parliament for its further consideration.

3. Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman QC MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to improve the availability and nature of community-based sentencing options that are among the options for courts when sentencing offenders.

2. In dealing with sentencing options, the Bill:

   (a) Abolishes suspended sentences, good behaviour bonds, community service orders and home detention orders, and

   (b) Enhances intensive correction orders (including permitting home detention conditions to be imposed), and

   (c) Creates community correction orders and conditional release orders (to replace community service orders and good behaviour bonds).

3. The Bill also contains provisions about sentencing domestic violence offenders, and other matters, including savings and transitional provisions and consequential amendments to other Acts.

4. This Bill is cognate with the *Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017* and the *Crimes (High Risk Offenders) Amendment Bill 2017.*

BACKGROUND

5. The reforms established by the Bill stem from the Law Reform Commission's comprehensive report into sentencing in 2013. That report identified some issues in community-based sentences, particularly where it was not achieving desired results. As such, the Bill replaces the current community-based sentences with a new range of community sentencing options.

ISSUES CONSIDERED BY COMMITTEE

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

Personal liberties and privacy

6. Schedule 1 of the Bill provides for a number of additional conditions that a court is able to impose on offenders who are the subject of an intensive correction order (section 73A), community correction order (section 89), or conditional release order (section 99).

These orders have been created as alternatives to imprisonment but provide structure and supervision around offenders as a means of maximising offender rehabilitation and improving community safety.

7. In particular, conditions that can be set under these provisions include a home detention condition, an electronic monitoring condition, and a curfew condition. These conditions place restrictions on an offender's freedom to move, affecting their liberty, as well as placing them under significant surveillance, affecting their privacy.

8. The Committee notes that these conditions have considerable impact on personal privacy and liberty. Ordinarily, the Committee would have concerns about the scope of these powers as an undue trespass on personal rights and liberties. However, the Committee is also mindful of the reasons for the conditions. Importantly, orders of this nature are intended as an alternative to imprisonment, and are relatively less onerous on personal rights and liberties on the offender as a result. The Committee also recognises that community safety is the paramount consideration that underpins legislation of this nature, and appreciates that schemes designed to improve offender rehabilitation assist both the offender and the community-at-large.

9. Nonetheless, it is incumbent on the Committee to identify these matters as it falls within its legislative remit.

The Committee notes that the Bill provides for the creation of intensive correction orders, community correction orders, and conditional release orders that enable a court to impose conditions on offenders that may impact on personal liberties. This includes a home detention condition, an electronic monitoring condition, and a curfew condition. Other conditions which may be imposed on all orders include place restriction and non-association with particular persons. These conditions impact on the right to privacy and freedom of movement.

However, the Committee recognises that orders of this nature exist as an alternative to imprisonment, and that courts have been given appropriate discretion to impose or not impose conditions as they see fit. While it is incumbent to identify matters that may impact on personal rights and liberties, the Committee appreciates that the imposition of conditions on offenders under these orders may be reasonable in the circumstances. The Committee makes no further comment.

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

Regulation-making powers

10. Schedule 3 of the Bill provides for the regulation-making power for the administration of intensive correction orders (section 82), community correction orders (section 107B), and conditional release orders (section 108B). In particular, the regulations are able to make provision for or with respect to supervision requirements, home detention, electronic monitoring, curfews, and community services work.

11. Given the issue identified above that orders of this nature can have impacts on personal liberty and privacy, the Committee recognises that the regulations could compound these impacts. In these circumstances, it may be that these provisions are an

inappropriate delegation of legislative power from the Parliament – with its capacity to review before enactment – to the executive, with fewer opportunities for parliamentary scrutiny. This is especially important given the broad scope of the regulation-making powers. Despite this, the Committee also recognises that the effective administration of these orders will require appropriate regulations to be made periodically. The Committee makes no further comment.

The Committee notes that the Bill provides for the regulation-making power for the administration of intensive correction orders, community correction orders, and conditional release orders. This power enables regulations to be made with respect to conditions regarding supervision requirements, home detention, electronic curfews, and community service work. Each of these conditions will impact on the liberty and privacy of the offender subject to the order. In this respect, the broad scope of the regulation-making power may be regarded as an inappropriate delegation of legislative power. The Committee also recognises that schemes of this nature will require periodic regulations for administrative efficiency. The Committee makes no further comment

4. Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Bill 2017

Date introduced	10 October 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Planning

PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (Sydney Drinking Water SEPP):

   (a) to clarify the application of the water quality test for the proposed continuation of development under an existing development consent in the Sydney drinking water catchment, and

   (b) to validate the development consent granted on 21 September 2015 for the Springvale mine extension, and to validate any other development consent that would have been valid under the test as so clarified.

2. The Committee notes that the Bill was passed by both houses on 12 October 2017.

BACKGROUND

3. The EP&A Act currently in effect provides that the Sydney Drinking Water SEPP, which is a planning policy, can prohibit a consent authority from granting consent to a development application (DA) relating to any part of the Sydney drinking water catchment unless satisfied that the development would have a neutral or beneficial effect on the quality of water.

4. According to the explanatory notes accompanying the Bill, the practice of consent authorities considering DAs relating to mines has been not to refuse consent on the basis of the neutral or beneficial test. Consent is only refused on this basis if the extension or expansion of the development would have an additional adverse impact that would have been caused by continuing the development under the existing DA.

5. The Planning Assessment Commission (the PAC) previously approved the Springvale mine extension (the Springvale consent) using this approach. The approach of the PAC was upheld by the Land and Environment Court, but has recently been overturned by the Court of Appeal in *4nature Incorporated v Centennial Springvale Pty Ltd* [2017] NSWCA 191. The Court in that case is said to have found that the consent authority could not have regard to any impact under a development consent that has expired.

Accordingly, such consent authorities have to refuse consent if the continued development is likely to have any adverse impact on the quality of water.

6. The Bill seeks to amend section 34B of the EP&A Act to restore the approach previously adopted to certain DAs, including mining DAs. The Bill also seeks to validate the Springvale consent and any mining lease granted in reliance on that consent, as well as any other development consent granted in similar circumstances.

ISSUES CONSIDERED BY COMMITTEE

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

Consents not subject to challenge

7. The Bill prevents challenge to any development consent granted before the commencement of the amending Act, and to which the Sydney Water Drinking SEPP applied. The Bill prevents such challenges on the ground that the consent in question was not granted in accordance with the EP&A Act and the Sydney Water Drinking SEPP.

8. The Committee notes that the Sydney Water Drinking SEPP covers matters other than the water quality test, including a requirement that the relevant regulatory authority grant concurrence to certain forms of development. Before granting concurrence, the regulatory authority is bound to take into account a number of listed factors.

The Bill prevents challenge to any development consent granted before the commencement of the amending Act, and to which the EP&A Act and the Sydney Water Drinking SEPP applied. It prevents challenge to any such development consent on the ground that it was not granted in accordance with the EP&A Act and the Sydney Water Drinking SEPP. The Committee notes that the Sydney Water Drinking SEPP covers matters other than the water quality test. These matters, such as the requirement for concurrence, may have otherwise given rise to a ground on which the consent could be challenged.

The Committee is concerned that the Bill removes the ability of third parties to commence Court proceedings to challenge certain development consents on what may otherwise be legitimate grounds. While there may be good policy reasons for this approach in this instance, the Committee draws this matter to the Parliament's attention.

Legislative interference with judicial action

9. The Bill also declares the Springvale consent valid, to the extent of any invalidity, potentially pre-empting a decision by the Courts to invalidate the consent. The proposed amendments will effectively restore the approach of the Land and Environment Court by validating the consent for the Springvale mine development.

The proposed amendments will effectively restore the initial findings of the Land and Environment Court by validating the consent for the Springvale mine development.

As these issues have gone through the courts, the amendments appear to be a legislative fettering of the judicial process. By passing this Bill after the Court of

Appeal's decision and potentially pre-empting a further decision of the courts to invalidate the consent, the Bill is detrimental to the applicants who have spent time and incurred expense in bringing this action. The Committee considers that, notwithstanding the merits of the Bill, the process itself may be unfair on the applicants.

The Committee is also mindful of the public interest in the Springvale mine extension. The Committee makes no further comment.

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

SEPPs not disallowable

10. The Bill amends section 34B of the EP&A Act to provide that a State environmental planning policy that requires a development to have a neutral or beneficial effect on water quality (such as the Sydney Drinking Water SEPP) 'may deal with the application of that test in the case of proposed development that extends or expands existing development.'

11. The Committee observes that the meaning of 'may deal with the application of that test…' may not be clear. However, the Committee understands that the proposed amendment enables the Sydney Drinking Water SEPP to apply the water quality test in a different way to certain proposed development, such as the extension or expansion of a mine.

The Bill amends the EP&A Act so that a State environmental planning policy that requires a development to have a neutral or beneficial effect on water quality 'may deal with the application of that test in the case of proposed development that extends or expands existing development.' While the meaning of this amendment may not be entirely clear, the Committee understands that the purpose of the amendment is to allow the Sydney Drinking Water SEPP to apply the water quality test in a different way to certain classes of development, such as when a mine is extended or expanded.

The Committee is concerned that the nature of the modified test will not be subject to an appropriate level of parliamentary scrutiny. This is because SEPPs are environmental planning instruments, and therefore are not subject to the usual disallowance processes that apply to regulations. The Committee refers this matter to Parliament for its further consideration.

5. Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017*

Date introduced	11 October 2017
House introduced	Legislative Council
Member responsible	The Hon. Matt Kean MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend *the Fair Trading Act 1987* and t*he Fair Trading Regulation 2012* to provide fairer access to the sale of sporting and entertainment event tickets, provide greater protections for consumers in respect to the supply of tickets and the expiry dates for gift cards.

BACKGROUND

2. The Bill amends the *Fair Trading Act 1987* and the *Fair Trading Regulation 2012* to provide for greater consumer protections in respect to the sale of sporting and entertainment event tickets and gift card expiry dates. The Bill also prohibits the use of ticketing bots and advertisements which promote the resale of tickets above the allowable resale mark-up cap.

3. As the Bill was introduced in the Legislative Council, the Hon. Scot McDonald MLC introduced the Bill on behalf of the Hon. Matt Kean MP.

4. In his second reading speech, the Hon. Scot McDonald MLC noted the bill focused on five major aspects: prohibiting price gouging, prohibiting the use of software to bypass security measures of ticketing websites to purchase tickets, improving the transparency of the ticket sales and resales market and enforceability of prohibitions by NSW Fair Trading and industry participants.

5. Mr McDonald notes the Bill allows for the resale of tickets however caps the allowable mark-up price to 'the cost of the ticket plus ten percent'. The Bill also introduces penalties for breaches of prohibitions with a maximum penalty of 200 penalty units for individuals and 1,000 penalty units for corporations.

ISSUES CONSIDERED BY COMMITTEE

The Committee has not identified any issues under section 8A of the *Legislation Review Act 1987.*

6. Fisheries Management Amendment (Aboriginal Fishing) Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Fisheries Management Act 1994* to enable payments to be made out of the Aboriginal Fishing Trust Fund established under that Act and to provide assistance to Aboriginal communities in relation to cultural fishing and commercial fishing activities.

2. The assistance is proposed to be provided through grants and loans, and the acquisition of fishing assets for the use and benefit of Aboriginal communities.

3. This Bill also makes ancillary and consequential amendments.

BACKGROUND

4. This Bill is in response to the 2016 inquiry into commercial fishing in New South Wales by the Legislative Council's General Purpose Standing Committee No 5. The Committee's report recommended that the Minister for Primary Industries ensure that the Aboriginal Commercial Fishing Trust be operational by July 2017 and be broadly representative of the industry and include Aboriginal and recreational fishers.

5. In his second reading speech, Mr Toole stated that the intention of the Bill is to make the trust fund operational so that it will be of benefit future generations, and foster and recognise the important part fishing plays in the cultural and economic life of Aboriginal communities.

ISSUES CONSIDERED BY COMMITTEE

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

Unfettered discretion of Minister to sell fishing assets

6. The new section 237B outlines provisions relating to Aboriginal fishing assistance programs. An Aboriginal fishing assistance program includes provisions for

   (a) the making of grants or loans to Aboriginal persons, Aboriginal entities or persons acting on behalf of Aboriginal entities, for the purpose of Aboriginal cultural fishing or commercial fishing activities,

(b) the acquisition of fishing assets by the Minister, for the purpose of benefiting Aboriginal communities,

(c) access to, or the use of, those fishing assets by Aboriginal persons or Aboriginal entities.

7. Subsection 237B(9) states that the Minister may sell any fishing asset held by the Fisheries Administration Ministerial Corporation under an Aboriginal fishing assistance program and exercise any other functions of the owner of a fishing asset.

8. Fishing assets may mean either shares in a share management fishery, any operational items or operating equipment necessary to the function of the fishing operations (for example, fishing vessels, fishing gear or hatchery infrastructure), or any other thing prescribed by the regulations as being included in this definition.

9. It is noted that subsection 237B(3) of the Bill requires the Minister to obtain and have regard to the advice or recommendations of any relevant advisory council on Aboriginal fishing before approving an Aboriginal fishing assistance program. However, as an Aboriginal fishing program specifically includes the *acquisition* of fishing assets, as opposed to the *sale* of fishing assets, it is not clear whether the same requirement is placed on the Minister to obtain and have regard to advice of the Aboriginal advisory council before selling any fishing assets that may under these Aboriginal fishing assistance programs.

The Bill includes a provision that allows the Minister to sell any fishing asset held by the Fisheries Administration Ministerial Corporation under an Aboriginal fishing assistance program and exercise any other functions of the owner of a fishing asset. Fishing assets may include shares, operating equipment or any other thing prescribed by the regulations. Although the Bill outlines that the Minister must consult with the relevant Aboriginal advisory committee for the *acquisition* of fishing assets, the Bill does not require the Minister to consult with the Aboriginal advisory council when it comes to the *sale* of these assets.

The Committee is concerned that this may give insufficiently defined powers to the Minister to make decisions in relation to assets belonging to Aboriginal fishing assistance programs. This may not accord with the intention of the Bill to empower the Aboriginal community to make decisions about programs to foster Aboriginal cultural fishing. The Committee draws this issue to the attention of the Parliament.

7. Health Practitioner Regulation Amendment Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Council
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The *Health Practitioner Regulation (Adoption of National Law) Act 2009* adopts, with modifications, the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland.

2. The object of this Bill is to make amendments consequent on the passage of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* of Queensland, which makes a number of amendments to the Health Practitioner Regulation National Law, including the following:

   (a) recognising paramedicine as a registered health profession;

   (b) allowing National Boards for each health profession to be consolidated so that a single National Board may cover more than one health profession;

   (c) separating the single health profession of nursing and midwifery into two health professions;

   (d) enabling a National Board to obtain additional information from a health practitioner about the health practitioner's practice;

   (e) making it an offence to breach a prohibition order mad in any jurisdiction;

   (f) permitting a NSW health professional Council to review conditions imposed on a practitioner's registration in another jurisdiction if the practitioner moves to NSW.

3. The Bill also makes a number of minor statute law revision type amendments.

BACKGROUND

4. This Bill is to give effect to recent changes relating to the registration of health practitioners. These changes were recommended following a review of the National Registration and Accreditation Scheme.

5. Changes to the national scheme are made by adopting the Queensland schedule as law of New South Wales, subject to certain modifications. However, as New South Wales is a co-regulatory scheme, it has retained a number of its own specific provisions unique to the State.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy of health practitioners

6. Schedule 2, Clause 7 of the Bill updates the *Health Care Complaints Act 1993* to provide that the Health Care Complaints Commission must publish information about decisions and deregistered practitioners.

7. In particular, proposed section 94B(1) provides that the Commission *must* make publicly available decisions of the Commission where a complaint has been proved or admitted in whole or in part. In addition, section 94B(3) provides that the Commission *must* publish information about a person whose registration as a registered health practitioner is cancelled or suspended as result of disciplinary proceedings.

Schedule 2, Clause 7 of the Bill provides that the Health Care Complaints Commission must make public details of a complaint against a registered health practitioner where a complaint against them has been proved or admitted in whole or in part, or where their registration has been cancelled or suspended due to disciplinary action. The Committee notes that this could interfere with the privacy and professional reputation of the health practitioner concerned.

The Committee also notes that the integrity of the health complaints scheme rests of making the public aware of unsatisfactory conduct or professional misconduct by particular health care practitioners. In addition, these provisions are substantially in effect already, and the amendments are simply an update to these existing provisions. The Committee makes no further comment.

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

Reference to legislation in another jurisdiction

8. Schedule 1 of the Bill amends the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which itself makes a number of references to the Queensland equivalent of that Act. The law has been structured in this way to achieve national consistency in health practitioner regulation. Uniform legislation is achieved by establishing one jurisdiction as hosting the model legislation, with other jurisdictions adopting the law through references to it. This means that with respect to health practitioner regulation, NSW legislation refers to the legislation of Queensland which validly applies to NSW, and where changes to the Queensland Act automatically apply in NSW.

9. The Bill provides for a number of additional provisions that relate to New South Wales only.

Schedule 1 of the Bill amends the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which itself makes a number of references to the Queensland equivalent of that Act. With respect to the health practitioner regulation, NSW legislation refers to Queensland legislation which validly applies to NSW, and where changes to Queensland legislation automatically apply in NSW.

The Committee recognises that the effect of this is that NSW law is being amended by another jurisdiction without the benefit of the Parliament of NSW being able to scrutinise the amending legislation.

The Committee also notes that in order to achieve national harmonisation in some regulatory fields, it is generally required that one jurisdiction hosts model legislation which other jurisdictions will adopt through references to it. In addition, these changes are the subject of a lengthy review process and the nature of cooperative federalism sometimes requires an approach like this for streamlining legislative efficiency. The Committee makes no further comment.

8. Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman MP
Portfolio	Attorney-General

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to amend the *Criminal Procedure Act 1986*, the *Children (Criminal Proceedings) Act 1987*, *the Crimes (Sentencing Procedure) Act 1999* and other Acts as follows:

   (a) to replace the current procedure for committal proceedings for offences committed by adults or serious children's indictable offences, where a Magistrate conducts an inquiry into the evidence against an offender, with a new procedure overseen by a Magistrate that requires the prosecutor to disclose a brief of evidence to the accused person and to certify the charges to be proceeded with. The new committal proceedings will also provide for a formal conferencing procedure to enable opportunities for appropriate early guilty pleas to be considered during committal proceedings,

   (b) to provide for specified sentencing discounts for the utilitarian value of guilty pleas to indictable offences,

   (c) to make provision for committal proceedings in the Children's Court for indictable offences (other than serious children's indictable offences) so as to generally retain existing committal procedures,

   (d) to make other minor and consequential amendments and to provide for savings and transitional matters consequent on the enactment of the Bill.

BACKGROUND

2. The Bill intends to improve the efficiency of the criminal justice system and reduce trial delays by reforming the framework for appropriate early guilty pleas and ensuring that these cases are more effectively managed.

3. In his second reading speech, the Attorney-General stated that the Law Reform Commissions found that 73 per cent of indictable criminal cases end with the defendant pleading guilty, but that 23 per cent of guilty pleas are not entered until the day of the trial. The Attorney-General particularly noted that by this stage, the prosecution and defence lawyers have already spent time and resources to prepare for trials that will never occur, which can also cause stress for victims awaiting trial.

4. This Bill attempts to alleviate the backlog of criminal cases from the District Court by creating a framework that facilitates obtaining appropriate early guilty pleas before the matter is committed to trial, and in a way that affords procedural fairness to the accused.

ISSUES CONSIDERED BY COMMITTEE

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

Procedural fairness to accused

5. Section 95 outlines provisions for committal timing generally. Subsection 95(1) states that the Magistrate in committal proceedings is to commit the accused person for trial or sentence after the case conference certificate has been filed, or after the charge certificate has been filed if a case conference is not required under Division 4.

6. Subsection 95(2) creates an exemption for a Magistrate to commit an accused person for sentence before a charge certificate is filed if the prosecutor consents to the accused being committed for sentence for that offence, or if a charge certificate has been filed but no case conference has yet been held. Subsection 95(4) requires that the Magistrate must ascertain whether or not the accused person pleads guilty to the offences that are being proceeded with.

7. Section 98 provides that a Magistrate must not commit an unrepresented accused person for trial or sentence unless the Magistrate is satisfied that the accused person has had a reasonable opportunity to obtain legal representation for, or legal advice about, the committal proceedings.

The Committee recognises that the Bill outlines a number of provisions that are intended to increase the efficiency of the criminal justice system and afford procedural fairness to the accused. This includes the new requirement to serve the accused with a brief of evidence, a charge certificate simplifying the relevant charges, and the establishment of case conferences to facilitate early guilty pleas. In regard to these new frameworks, the Committee has identified some provisions that may impact procedural fairness afforded to the accused.

Under subsection 95(2), a Magistrate may commit an accused person for sentence before a charge certificate is filed, or where a charge certificate has been filed but not case conference has been held. This is concerning as a charge certificate is intended for the benefit of informing the accused of the relevant offences that are to be proceeded with by the prosecution. Additionally, a case conference is intended to facilitate the provision of additional material or other information that may be reasonably necessary to enable the accused person to determine whether or not to plead guilty to one or more offences. A case conference may also facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts. Absence of a charge certificate or case conference before committing an accused person to sentence may affect the procedural fairness afforded to the accused.

This may be particularly problematic in cases of unrepresented persons who have not had the opportunity to view a charge certificate. However, the

Committee recognises that section 98 provides a safeguard against this and states that a Magistrate must not commit the accused for trial or sentence if they are unrepresented unless they have had reasonable opportunity to obtain legal representation.

Onus of proof

8. The Bill inserts a new Division 1A, which contains subsection 25F(5) that states that the burden of establishing that grounds exist for the sentencing discount lies on the offender and must be proved on the balance of probabilities.

9. Division 1A also includes several provisions that outline how sentencing discounts can be applied in cases where the accused makes a guilty plea offer for a different offence that is refused or later accepted by the prosecution. Both subsection 25E(1) and 25E(2) outlines that in these cases it is the offender that must make an offer recorded in a negotiations document to plead guilty to a different offence that was not the subject of the proceedings when the offer was made. If the accused is later found guilty of the different offence, then the sentencing discount can still be applied by the court based on the guilty plea offer by the accused for the different offence.

10. From these sections, it appears that in addition to bearing the onus of establishing eligibility for a guilty plea and reduced sentence, the offender also bears the onus to make an offer in a negotiations document to plead guilty for a different offence that was not the subject of proceedings.

The Bill states that the burden of establishing that grounds exist for the sentencing discount lies on the offender and must be proved on the balance of probabilities. Although it is required that the accused be provided with a brief of evidence and a charge certificate, the elements of the charges may not have necessarily been proved by the prosecution at this pre-trial stage. To place the burden on the accused to prove that they are eligible for a sentencing discount for the charges put by the prosecution at the pre-trial stage, including the burden of establishing that grounds exist for a sentencing discount for any different offences that are not the subject of proceedings, may affect the presumption of innocence.

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

Commencement by proclamation

11. Section 2 of the Bill provides that the amendments are to commence on a day or days to be appointed by proclamation.

The Committee generally prefers that legislation commence on a fixed date or by assent to provide certainty to those affected by the Bill's provisions. In this case, the Bill enacts several provisions across different Acts in relation to procedures for indictable criminal offences – reserved for offences of a serious nature. As the amendments provide an opportunity for early guilty pleas and sentence reduction, it is important that the commencement date be clear for

procedural fairness to be afforded to the accused, for the benefit of the victims, and for the administrative convenience of the prosecution in preparing and serving the necessary evidence upon the accused. The Committee draws this to the attention of the Parliament for its further consideration.

9. Parole Legislation Amendment Bill 2017

Date introduced	11 October 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. David Elliot MP
Portfolio	Corrections

PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend the *Crimes (Administration of Sentences) Act 1999* and the *Children (Detention Centres) Act 1987* as follows:

   - to require the State Parole Authority (the Parole Authority) and the Children's Court to consider the risk to the community before making changes to parole conditions or before revoking a parole order and impose supervision on all parole orders except in certain circumstances;
   - to require the Parole Authority and the Children's Court not to make a parole order unless satisfied that it is in the interest of the community;
   - to confer on the Parole Authority and the Children's Court powers to revoke a parole order if satisfied that the offender poses a serious and immediate risk to the community, which cannot be sufficiently mitigated or has breached the re-integration home detention order;
   - to provide for the making of re-integration home detention orders for suitable adult offenders under home detention conditions for a period of not more than 6 months before the parole orders take effect;
   - to provide notice to registered victims of an adult offender applying for parole or re-integration home detention order, so the victims have an opportunity to make submissions in response to the offender's application;
   - to provide a separate legislative framework for juvenile parole with the Children's Court to determine parole matters and;
   - to make other consequential amendments and provide for savings and transitional matters consequent on the enactment of the proposed Act.

BACKGROUND

2. The *Parole Legislation Amendment Bill 2017* makes amendments to a number of Acts with the intention to 'improve community safety and reduce reoffending'.

3. In his second reading speech, the Minister noted the bill was a product of detailed consultation with key stakeholders on parole reform. The Bill introduces the community safety test to emphasise the importance of community safety when making parole determinations.

4. The State Parole Authority is responsible for determining the suitability of parole for offenders who have total sentences with a non-parole period of three years or more. The Bill also introduces a separate legislative framework for juvenile parole with the Children's Court to make determinations on parole matters.

5. The Minister noted in the public interest test, community safety is one of a range of factors taken into consideration by the Parole Authority when determining if release on parole is in the public interest. However in the proposed community safety test, 'the Parole Authority must only release an offender on parole if it is satisfied that releasing the offender is in the interest of public safety'.

ISSUES CONSIDERED BY COMMITTEE

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

Ill-defined circumstances for refusal of re-integration detention order

6. Subsection 124E provides that the State Parole Authority (Parole Authority) may, for any reason it thinks fit, refuse to make a re-integration home detention order despite a favourable assessment report.

7. In his second reading speech, the Minister noted that the re-integration home detention scheme is a means 'to prepare offenders for life in the community to help reduce their likelihood of reoffending by providing a transitional step down between custody and parole'.

8. While the Committee notes that section 135 provides for a general duty for the Parole Authority relating to the release of offenders, the Committee is concerned with the undefined circumstances in which the Parole Authority can deny an application for a re-integration home detention order for 'any reason it thinks fit', thereby creating uncertainty if the applicant wishes to appeal the decision.

9. Despite these concerns, the Committee also notes the safeguards provided within the *Crimes (Administration of Sentences) Act 1999*. This is with respect to the requirement to provide reasons to unsuccessful applicants in certain circumstances, under sections 139, 146 and an avenue of appeal for others (Subdivision 4).

> **Subsection 124E provides the State Parole Authority may refuse to make a re-integration home detention order, for a reason it thinks fit, despite a favourable assessment report. The Committee is concerned the subsection does not define the circumstances in which an application may be refused, thereby creating uncertainty which may infringe on an applicant's potential appeal. However, given that section 135 specifies a general duty for the Parole Authority in relation to the release of offenders with a focus on the public safety, the policy implications of the Bill and the safeguards provided within the *Crimes (Administration of Sentences) Act 1999*, the Committee makes no further comment.**

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

Commencement by proclamation

10. Clause 2 of the Bill provides this Act is to commence on a day or days to be appointed by proclamation.

> **The Committee generally prefers legislation to commence on assent or a fixed date. However, given the amount of administrative changes to be implemented across various Acts, the Committee makes no further comment.**

10. Plastic Shopping Bags (Prohibition on Supply by Retailers) Bill 2017 (No 2)*

Date introduced	12 October 2017
House introduced	Legislative Assembly
Member responsible	Mr Luke Foley MP
	*Private members Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit retailers from supplying plastic shopping bags to their customers.

2. This Bill contains clauses that;

   a. prohibit retailers from supplying certain plastic shopping bags to their customers to carry goods bought, or to be bought, from the retailer. This does not prevent a retailer from charging a customer a fee for the provision of an alternative shopping bag.

   b. provide for the Governor to make regulations under the proposed Act.

   c. amends the *Protection of the Environment Operations Act 1997* (the 1997 Act) to extend the operation of the enforcement provisions of that Act to the proposed Act so that offences by retailers under the proposed Act can be investigated and prosecuted (including by penalty notice) under the 1997 Act.

BACKGROUND

3. In his second reading speech, the Leader of the Opposition, Mr Luke Foley, outlined that the purpose of the Bill was to reduce the number of plastic bags that are littered or sent to landfill. Mr Foley noted that plastic bags do not degrade for decades and can have a detrimental effect on wildlife, ecosystems, and marine life.

4. The Bill is similar in nature to legislative bans that currently exist in South Australia and the Australian Capital Territory (ACT). Mr Foley noted that in the ACT, the first two years of the plastic bag ban resulted in a 36 per cent decrease in the number of plastic bags sent to landfill. In South Australia, it is estimated that 400 million fewer plastic bags are being used in the State each year. This Bill aims to set up a similar scheme in NSW for the benefit of the environment and future generations.

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

Part Two – Regulations

1. Crimes (Administration of Sentences) Amendment Regulation 2017

Date published	18 August 2017
Disallowance date	19 October 2017
Minister responsible	Mr David Elliott MP
Portfolio	Corrections

PURPOSE AND DESCRIPTION

1. The object of the *Crimes (Administration of Sentences) Amendment Regulation 2017* (the Regulation) is to amend the *Crimes (Administration of Sentences) Regulation 2014*, which is made under the *Crimes (Administration of Sentences) Act 1999*.

2. Under the amended regulation, the governor of a correctional centre will be able to prevent a 'restricted associate' from visiting, communicating or corresponding with an inmate in certain circumstances. Those circumstances include if they are a person with whom the inmate has been directed not to associate or make contact with under an extended supervision order that would otherwise have been in force if the inmate had not been incarcerated, or that will come into force when that incarceration ends.

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of association and communication

3. Clauses 108A and 112A of the Regulation empower a governor of a correctional centre to bar restricted associates from visiting correctional centres and to direct an inmate not to send or receive a letter or parcel to or from a restricted associate. The governor also has power to open, inspect and confiscate any letters or parcels sent to or by restricted associates.

4. 'Restricted associate' means a person with whom the inmate has been directed not to associate or make contact with under an extended supervision order under the *Crimes (High Risk Offenders) Act 2006*. Such orders may include conditions restricting association with particular persons. Under the Regulation, a person is only considered a 'restricted associate' if the relevant order is suspended, has expired because a continuing detention order is in place, or has been made but has not commenced.

Under the Regulation, the governor of a correctional centre can bar restricted associates from visiting certain correctional centres. The governor can also direct inmates not to send or receive correspondence to or from a restricted associate, and has complementary powers to open, inspect and confiscate any such correspondence. Restricted associates are those people with whom an inmate has been directed not to associate or make contact with under an extended supervision order under the *Crimes (High Risk Offenders) Act 2006*, but only if that order has been suspended, expired, or is yet to commence.

The Committee notes that this aspect of the Regulation may be seen to trespass on the freedom of association and freedom of communication of persons, including both inmates and restricted associates. However, the Committee is of the view that the Regulation does not unduly trespass on these rights, including because it is likely that the inmate would be subject to similar or identical restrictions under an extended supervision order if they were not incarcerated.

2. Firearms Regulation 2017

Date published	25 August 2017
Disallowance date	19 October 2017
Minister responsible	Mr Troy Grant MP
Portfolio	Police

PURPOSE AND DESCRIPTION

1. The regulation of firearms and prohibited weapons in NSW is currently governed by the *Firearms Act 1996* (the Act).

2. The *Firearms Regulation 2017* supports the operation of the Act by providing regulatory detailed provisions for licences, permits, registration of firearms, approval of clubs and shooting ranges, fees, exemptions and other miscellaneous matters.

3. The *Firearms Regulation 2017* is a remake, with some amendments of the *Firearms Regulation 2006*, which was repealed on 1 September 2017 by section 10(2) of the *Subordinate Legislation Act 1989*.

ISSUES CONSIDERED BY COMMITTEE

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

Broad police powers to inspect a deceased firearm dealer's property and inventory

4. Clause 52 provides that following the death of a licenced firearms dealer (the dealer), the responsible person must notify a police officer of the death of the dealer and permit police officers to:

- Access the dealer's premises and
- Permit police officers to access and make copies of any records kept by the dealer, and
- Make any firearms, firearm parts or ammunition on the dealer's premises available for police inspection for the purposes of ensuring the safekeeping and proper storage of the dealer's stock and records.

5. The person responsible is defined as the executor, administrator or person who takes control or possesses of the dealer's business/premises following the death of the dealer. A failure to comply with the section could result in a maximum penalty of 50 penalty units. [Clause 52(1)]

6. The Committee noted in the Department of Justice's Regulatory Impact Statement that the purpose of the amendment was to "provide a public safety benefit by properly auditing and securing firearms and weapons kept in dealership."

The Committee is concerned the broad inspection powers to search and inspect private premises, inventory and records may infringe on the deceased's right to privacy. However, the Committee notes the policy implications of ensuring the safe storage of firearms and weapons in respect to public safety, the infringement is reasonable and makes no further comment.

3. Pesticides Regulation 2017

Date published	25 August 2017
Disallowance date	19 October 2017
Minister responsible	The Hon. Gabrielle Upton MP
Portfolio	Environment

PURPOSE AND DESCRIPTION

1. The *Pesticides Regulation 2017* (the Regulation) remakes, with some amendments, the provisions of the *Pesticides Regulation 2009*.

2. The amendments include adding to the list of fumigants, adding a new category of prescribed pesticide work, requiring trainees to obtain a permit, updating record keeping requirements and providing exemptions from licensing requirements.

3. A regulatory impact statement has been published in relation to the Regulation.

ISSUES CONSIDERED BY COMMITTEE

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Substantial increase to licence application fees

4. Clause 17 of the Regulation prescribes licence application fees for the purposes of section 47(2)(b) of the principal Act, for those carrying out prescribed pesticide work.

5. The clause has the effect of significantly increasing the licence application fees over the course of six years. For example, the licence fee until 1 July 2018 is $196, while the fee after 1 July 2022 will be $425.

The Regulation significantly increases the licence application fees payable in respect of those carrying out prescribed pesticide work. The fees increase over a 6 year period, so that a licence fee of $196 which is payable until 1 July 2018, becomes a fee of $425 from 1 July 2022 onwards. A number of the submissions made in response to the regulatory impact statement note this substantial fee increase. While the increase is staggered over time, the Committee nevertheless notes that the increase may have an adverse impact on those professionals who carry out pesticide work.

4. Sydney Water Regulation 2017

Date published	25 August 2017
Disallowance date	19 October 2017
Minister responsible	The Hon. Donald Harwin, MLC
Portfolio	Energy and Utilities

PURPOSE AND DESCRIPTION

1. The *Sydney Water Regulation 2017* (the Regulation) remakes, with various changes, the provisions of the *Sydney Water Regulation 2011*.

2. The Regulation now regulates access to controlled areas (rather than just the Prospect Reservoir controlled area). It also extends existing offences that apply to the Prospect Reservoir controlled area to other controlled areas.

3. The Regulation also increases the penalty notice amount for certain offences under the Regulation, among other changes.

4. A regulatory impact statement has been published in relation to the Regulation.

ISSUES CONSIDERED BY COMMITTEE

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

Restrictions on freedom of movement and enjoyment

5. Clause 7 of the Regulation prohibits entry to a controlled area. Under the *Sydney Water Regulation 2011*, such a prohibition only applied to the Prospect Reservoir controlled area. A note indicates that a 'controlled area' is an area of land declared by an order in force under section 88 of the *Sydney Water Act 1994* to be a controlled area, and a map is available on Sydney Water's website.

6. The Regulation also creates certain other offences in relation to controlled areas. For instance, a person must not bring a vehicle or animal into a controlled area (clause 8), must not use land or carry out any activity for the purpose of agriculture in a controlled area (clause 9), must not damage property in a controlled area (clause 10), and must not leave waste in a controlled area (clause 11). However, the Sydney Water Corporation has a wide ability to grant consent to a person to enter or otherwise interact with a controlled area.

The Regulation now prohibits entry to controlled areas. A note in the Regulation indicates that a 'controlled area' is an area of land declared to be a controlled area under the *Sydney Water Act 1994*. Such a prohibition only applied in respect of the Prospect Reservoir controlled area under the previous regulation. While the provision has potential to trespass on an individual's freedom of movement and enjoyment, the Committee is of the view that the

provision is justified on public policy grounds. As it is important that the physical and environmental security of Sydney's water resources is preserved and controlled, the Committee makes no further comment.

The form or intention of the regulation calls for elucidation: s 9(1)(b)(vii) of the LRA

No definition of 'controlled area'

7. The Regulation creates new offences in respect of controlled areas, but does not define 'controlled area.' A note in the Regulation defines 'controlled area', but this does not form part of the Regulation itself by virtue of clause 3(2).

'Controlled area' is not defined in the Regulation. While a note in the Regulation clarifies its meaning, the definition does not form part of the Regulation itself by virtue of clause 3(2). As the Regulation creates a number of new offences relating to controlled areas, the Committee would prefer if this term was defined separately in the Regulation.

5. Weapons Prohibition Regulation 2017

Date published	25 August 2017
Disallowance date	19 October 2017
Minister responsible	Mr Troy Grant MP
Portfolio	Police

PURPOSE AND DESCRIPTION

1. The regulation of prohibited weapons in NSW is governed by the *Weapons Prohibition Act 1998* (the Act).

2. The *Weapons Prohibition Regulation 2017* (the Regulation) supports the operation of the Act by regulating permits for prohibited weapons, exemptions, permit conditions, storage and safety requirements, and related matters.

3. The Regulation is a remake of the *Weapons Prohibition Regulation 2009*, with some amendments. A regulatory impact statement, which also considered the *Firearms Regulation 2017*, has been published in relation to the Regulation.

ISSUES CONSIDERED BY COMMITTEE

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

Ability to receive a weapons permit

4. Clause 6 of the Regulation provides that the Commissioner may refuse to issue a weapons permit to a person ‘if the Commissioner considers that issue of the permit would be contrary to the public interest.’ The Regulation does not list factors that must be considered by the Commissioner when determining what is in the public interest.

> **Under the Regulation, the Commissioner has a broad power to refuse to issue a weapons permit if it is contrary to the public interest. The Committee notes that this wide-ranging power was not present in the previous regulation. The Committee generally prefers that similar provisions list factors which should be taken into account when deciding what is in the public interest. However, the Committee understands that, in the context of weapon control, there may be sound policy reasons as to why the Commissioner should have a residual and wide-ranging power to refuse to issue a weapons permit. Accordingly, the Committee makes no further comment.**

Right to possess property

5. Clause 25 of the Regulation introduces a new provision whereby a person cannot hold more than one prohibited weapons – heirloom permit at any one time. The Commissioner has power to issue a prohibited weapons-heirloom permit to a person

who has acquired a prohibited weapon as an heirloom. Such a permit is only granted if the relevant weapon has been inherited and is of genuine sentimental value.

6. In relation to the equivalent provision in the Firearms Regulation 2017, the regulatory impact statement noted that the current practice was to only issue a single heirloom permit.

The Commissioner can issue a permit to a person who has inherited a prohibited weapon if the heirloom is also of genuine sentimental value. The Regulation includes a new provision which prevents a person from holding more than one prohibited weapon – heirloom permit at any one time. The Committee notes that this may trespass on a person's right to possess property. However, the Committee notes that the right to property must also be balanced against other considerations, such as the risk that a prohibited weapon will be stolen or misused by a third party. The Committee understands that there may also be other good policy reasons why only a single permit should be issued for a prohibited weapon – heirloom, and therefore makes no further comment.

Broad police powers to inspect a deceased weapon dealer's property and inventory

7. Clause 33 provides that following the death of an authorised weapons dealer (the dealer), the person responsible for the dealer's business must notify a police officer of the death of the dealer and permit police officers to access the dealer's premises and make copies of records, among other things.

8. The person responsible is defined as the executor, administrator or person who takes control or possesses of the dealer's business/premises following the death of the dealer. A failure to comply with the section could result in a maximum penalty of 50 penalty units.

9. The Committee notes that the Regulatory Impact Statement states that the purpose of the amendment is to "provide a public safety benefit by properly auditing and securing firearms and weapons kept in dealership."

The Committee is concerned the broad inspection powers to search and inspect private premises, inventory and records may infringe on a deceased weapon dealer's right to privacy. However, the Committee acknowledges the policy reasons for ensuring the safe storage of firearms and weapons, the infringement is reasonable and 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.