



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Guide to the Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Conclusions

PART ONE – BILLS

1. CIVIL LIABILITY AMENDMENT (INSTITUTIONAL CHILD ABUSE) BILL 2017*

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

2. COMBAT SPORTS AMENDMENT (REFEREE'S DUTY TO STOP CONTEST) BILL 2017*

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

3. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (WASTE INCINERATOR FACILITIES – RESIDENTIAL EXCLUSION ZONES) BILL 2017*

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

4. HEALTH LEGISLATION AMENDMENT BILL 2017

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

Mental health review in absence of affected person

The Committee acknowledges that the Bill permits the Mental Health Tribunal to conduct a review in absence of the patient in certain circumstances. Although this may potentially remove the patient's right to be heard at a review for their case or application, the Bill contains considerable safeguards to ensure the patient has every opportunity for themselves, a carer, or representative to attend on their behalf. In these circumstances, the Committee makes no further comment.

Entry to premises without warrant

The Committee notes that the Bill permits authorised officers to enter a premises without a warrant for the purpose of apprehending a person not permitted to be absent from a mental health facility. This means that an authorised officer is not required to establish that they have reasonable grounds to enter a premises without the consent of the owner. However, the provision is intended to allow authorised officers to quickly remedy a situation where a person is not permitted to be absent from a mental health facility, which may be for the safety of the person or the community. In these circumstances, the Committee makes no further comment.

Mental health review requirements

The Bill amends the *Mental Health (Forensic Provisions) Act 1990* to require a review of correctional patients 'no later than 3 months after the community treatment order is made and at least once every 6 months during the term of the order', rather than 'every 3 months'. The Committee is concerned this may impact or delay the appropriate level of care received by the correctional patient until such a review takes place. The Committee notes that cases may be reviewed at any time before this, and acknowledges the administrative convenience of such a provision to process more cases. However, the Committee is wary of this occurring at a cost to the level of care appropriate for each correctional patient. The Committee draws this to the attention of Parliament.

Employment terminated by person other than employer

The Committee notes that the Bill amends *the Government Sector Employment Act 2013* to permit the Secretary of the Ministry of Health to terminate the employment of a NSW Health Service senior executive. This subverts the autonomy of the contractual relationship between the employer and employed senior executive. However, the Committee notes that this provision is consistent with section 121 of the *Health Services Act 1997*, which permits the Secretary to terminate an executive's employment at any time for any or no reason. Termination of an executive must also be procedurally fair. In these circumstances, the Committee makes no further comment.

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

Regulations to specify when a serious adverse event review may be discontinued

The Bill outlines circumstances permitting the discontinuation of a review team investigation, including in further circumstances prescribed by the regulations. The Committee acknowledges that there may be circumstances that warrant the discontinuation of a review and the administrative convenience of being able to list further circumstances in the regulations. However, as the review team deals with serious incidents of systematic failure in health services, it may be preferable that the grounds upon which a review may be discontinued are included in the Act. The Committee draws this to the attention of the Parliament.

5. PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT (PROPERTY INDUSTRY REFORM) BILL 2017

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

Right to work

The Bill would allow real estate agents or other professionals to be suspended for more than the current 60 days, including because of the failure to lodge an audit report.

A suspension of more than 60 days due to a failure to lodge an audit report with no adverse findings may trespass unduly on personal rights and liberties, including the ability to work. However, the reform package is designed to improve public confidence in the property industry by imposing more robust integrity measures, such as the requirement to lodge all audit reports. As such, the Committee makes no further comment.

Retrospectivity

The Bill allows suspensions of more than 60 days to be imposed, even where the grounds for the suspension arose before the Act was amended.

A key tenet of the rule of law is that individuals should only be bound by the law as it stands at a given time. There may be good policy reasons for the provision in question. However, because it impacts on a person's ability to work, and there is no right for a person to be heard before a suspension is imposed, the Committee draws this matter to Parliament's attention.

Excessive penalties

Under the Act, anyone who operates a relevant business without a class 1 licence must employ someone with a class 1 licence to be in charge. That person operating the business must notify the Secretary of the name and address of a class 1 licensee within 5 days.

There is a maximum penalty of \$11,000 for an individual for any failure to adhere to these requirements. While the Committee notes that the reform package is designed to improve public confidence in the property industry by imposing more robust integrity measures, the Committee is concerned that the penalty may be disproportionate to the offence. As such the Committee draws this matter to the attention of Parliament.

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

Wide discretion of Secretary

Under, proposed subsection 31(5) of the Act, the Secretary can exempt a licensed business from employing someone who holds a class 1 licence to be in charge of that business.

This may be an inappropriate delegation of legislative power as there are no parameters in the Act governing the discretion to grant an exemption. Although such parameters can be specified in the regulations, regulations are generally subject to a lower degree of Parliamentary scrutiny. Given also that the reform package is intended to ensure that professionals in the industry are appropriately trained and qualified, the Committee draws this matter to the attention of Parliament.

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

Matters deferred to regulations

Some matters in the Bill are deferred to the regulations, including some of the functions that licensees and assistant agents can perform. The Committee generally prefers that substantive matters are dealt with in the principal legislation, but notes that the matters deferred are not extensive and so makes no further comment.

Commencement by proclamation

The Act commences by proclamation. The Committee prefers that the Executive does not have unfettered control over the commencement date. However, given that the Act makes widespread changes to a licensing scheme and therefore involves some administrative complexity, the Committee makes no further comment.

6. SAINT JOHN'S COLLEGE BILL 2017

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

Commencement by proclamation

The Committee generally prefers legislation to commence on assent or a fixed date. Given the Bill implements new governance arrangements, including the establishment of a Council and appointment of officers, flexibility with respect to its commencement is reasonable.

7. SMOKE-FREE ENVIRONMENT AMENDMENT (E-CIGARETTES) BILL 2017*

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

8. STATE DEBT RECOVERY BILL 2017

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

Potential for discrimination

The Bill permits the Chief Commissioner to direct the Sheriff to give priority to a property seizure order over another property seizure order, regardless of the order in which they are received by the Sheriff. The Bill does not provide in what circumstances this is permissible, or what factors the Chief Commissioner must consider before directing that a particular seizure order be given priority over another, or that the Chief Commissioner provide a reason for doing so. This could leave this discretion open to potential discrimination if there is no clear basis for why a particular property seizure order has been prioritised over another. The Committee draws this to the attention of the Parliament.

Disallowance for claim without determination

The Bill allows the Chief Commissioner to make time to pay orders to allow debtors more time to pay a State debt. The Bill also provides that if an application is made for a time to pay order and the Chief Commissioner has not made a determination within 30 days of it having been made, then the Chief Commissioner is taken to have refused the application. The Committee is concerned that a failure to determine a claim after a period of time has lapsed is to be considered a disallowance of the claim. It is preferable that a determination is made in every case so that the debtor may be notified of the outcome and provided with reasons for the disallowance – particularly in the case when the applicant owes a debt that is time-sensitive. The Committee draws this to the attention of the Parliament.

Review procedures

The Bill permits the Hardship Review Board to conduct a hardship review in the absence of the parties. The Committee notes that this may be preferable in cases where the debtor is unable to attend due to travelling distance or disability, however, the Bill does not list circumstances in which this is permitted. The Committee understands that it may be administratively convenient to continue with a hardship review if the applicant is routinely absent or unable to attend. However, the provision may benefit from making it clear in what circumstances this may occur to ensure procedural fairness and allow the applicant a fair review process should they wish to attend. The Committee draws this to the attention of the Parliament.

Privacy of information

The Committee notes that the Bill permits information to be shared between the Hardship Review Board and the Chief Commissioner, and authorises the Chief Commissioner to request access to and disclosure of personal information held by police, NSW Government agencies, State owned corporations, employers and credit reporting bodies. The list of persons and organisations that can be requested to produce documents is extensive. However, the Committee notes that the Bill only permits the access to, and disclosure of, personal information for a specific purpose, namely, to enable the Chief Commissioner to take debt recovery action under the Act or to ascertain the financial circumstances of a debtor to whom a debt recovery order has been made. The Committee makes no further comment.

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

The Committee notes that the Bill permits the Chief Commissioner to exercise debt recovery actions, including the ability to suspend a relevant licence held by the debtor. The Bill also prevents an appeal or review of a licence suspension, even if this right of appeal/review is

provided for by another Act. The Committee is concerned that this operates to limit the review of administrative decisions, especially in cases where this disadvantages the debtor – for instance, hindering their ability to perform tasks related to their employment or operate a business. The Committee notes that the Bill does provide for the option of referring the matter to a court for judgement, upon which a suspension may be terminated if the debt recovery action is suspended or cancelled. Despite this, the Committee draws this to the attention of the Parliament.

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

Commencement by proclamation

The Committee generally prefers legislation to commence on assent or a fixed date. The Committee acknowledges that the Bill implements a large amount of regulatory and administrative changes to different government departments and offices. However, the Bill affects the personal and monetary obligations of individuals subject to its provisions. In these circumstances, the Committee prefers that the legislation commence on a specified date so as to provide certainty to those affected by the Bill.

9. TEACHING AND EDUCATION LEGISLATION AMENDMENT (EMPLOYMENT) BILL 2017

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

Suspension of employment without pay

The Bill permits the Secretary to suspend a person’s employment without pay if that person’s accreditation has been suspended. This may disadvantage a person who is disputing their suspension and impact on that person’s right to employment. The Committee draws this issue to the attention of Parliament.

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

Ill-defined terms

The Bill provides for the termination of employment on the grounds a person has abandoned their employment. The Committee notes that the Bill does not expand on this ground for termination which may lead to inconsistencies in its application. The Committee draws this issue to the attention of Parliament.

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

Commencement by proclamation

10. VEXATIOUS PROCEEDINGS AMENDMENT (STATUTORY REVIEW) BILL 2017

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

Definition of ‘materially different’

The Committee notes the term ‘materially different’ is not defined in the Bill. Nor is there guidance provided on what matters may be taken into consideration to determine when applications are materially different. This may create uncertainty for an individual applying to set aside a vexatious proceeding order. However, given the level of consultation this Bill has

received to date, and that the provisions will be applied by superior courts, the Committee does not consider the provisions unreasonable.

PART TWO - REGULATIONS

1. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (INFORMATION SHARING) REGULATION 2017

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

Right to privacy – issue one

The Regulation enables the Commissioner of Corrective Services to disclose a wide range of information, including an offender’s personal information, obtained in the exercise of his or her functions under the Act.

The Committee notes that the Regulation is likely to trespass on an offender’s right to privacy. However, the Committee acknowledges that when in custody, offenders are effectively under the care and control of the State. This may mean that there are good policy reasons for allowing the Commissioner to disclose information to other agencies relating to the offender or to help administer sentences and court orders. Accordingly, the Committee makes no further comment.

Right to privacy – issue two

Under the Regulation, the Commissioner of Corrective Services enters into an information sharing arrangement with the Commissioner of Fines Administration. The information to be shared relates primarily to the personal details of offenders (such as name, address and date of birth), details of fines, and the duration of an offender’s sentence.

While this may breach an offender’s right to privacy, the clause clearly specifies a fairly narrow range of information that may be disclosed. The Committee considers that the clause is therefore proportionate to the legitimate aim of recovering unpaid fines. As such, the Committee makes no further comment.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (XI FIP WORLD POLO CHAMPIONSHIP) REGULATION 2017

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

Right to amenity

The Regulation excluded any work associated with the World Polo Championship (27 – 29 October 2017) from the definition of ‘development’ or an ‘activity’ under the EP&A Act. This means that the environmental impacts of the World Polo Championship and associated development were not assessed in the way development and activities, including events, are usually assessed under the EP&A Act.

The Committee observes that not assessing the environmental impacts of a development risks unduly trespassing on the right to amenity of individuals and communities, among other rights. However, the Parliament passed the *Major Events Act 2009* in order to facilitate major events in this way, including by enabling the responsible Minister to effectively exempt an event from formal environmental assessment. Given that the Minister must be satisfied an event is in the

public interest, and the authority for the responsible event may impose conditions on the carrying out of an activity, the Committee makes no further comment.

3. GOVERNMENT SECTOR EMPLOYMENT AMENDMENT (TRANSFERS TO NON-GOVERNMENT SECTOR) REGULATION 2017

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

Restricts entitlement to severance or redundancy payments

The Regulation allows government sector employees whose employment ceased as a result of a transfer to a non-government sector role to be entitled to receive severance or redundancy payments, provided that the non-government sector body was selected before 1 January 2015. Although this clause lifts the restriction on payments to certain past-employees, it still upholds the restriction of entitlements to employees whose employment ceased after this date. This may infringe on one's civil liberties and their right to receive employment entitlements, particularly if a transfer to a non-government body was due to a mandatory transfer by the government sector-employer.

4. LIQUOR AMENDMENT (MISCELLANEOUS) REGULATION 2017

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

Freedom of association

The regulation excludes persons from entering subject premises if they are wearing any clothing or accessory displaying a connection with any of the listed motorcycle organisations. This restricts the freedom of association for these persons from being members of these organisations, or persons who are wearing colours of these organisations. The regulation may also, in practice, result in members of other motorcycle clubs being excluded access to subject premises as the list of prohibited clothing/items is quite extensive and may be confused with other unrelated groups.

The Committee acknowledges that these organisations have been identified as criminal organisations and that the regulation aims to increase public safety and reduce alcohol-related violence in venues where this may be more prevalent. However, the Committee must comment on any infringement of civil liberties present in the statutory instruments, including freedom of association of any group of persons.

Privacy of personal information

The Regulation requires patron ID scanning in high-risk venues during certain times. The information obtained through ID scanning is retained by the licensed premises and includes the person's name, date of birth, residential address and photograph. The Regulation does not state how long this information will be held or who within the business may have access to it. The Committee acknowledges the safety reasons for obtaining this information and understands that persons operating an ID scanner need to complete an online privacy training course and that licensees implement a privacy policy that complies with the *Privacy Act 1988*. However, it is not clear what safeguards are in place to detect or protect against breaches of this policy.

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

Restriction of trading hours and conditions

The Committee notes that the Regulation places strict requirements on the trading hours and procedures of certain businesses based on their geographic location. This may negatively impact these businesses. However, the Committee also notes that these requirements are part of a broader policy decision of the 'lock out' laws for certain areas of Sydney that have been assessed as having a higher risk of violence. Even so, the Committee is required to comment on regulations that may have an adverse impact on the business community, however it acknowledges that the policy focus is on minimising alcohol-related violence in public venues.

5. LIQUOR AMENDMENT (SPECIAL EVENTS EXTENDED TRADING) REGULATION 2017

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

The Committee notes that the regulation allows certain hotels and clubs in the Bathurst region to trade until midnight on 8 October 2017. While this is due to a special event taking place, the extended trading hours require staff to work late into the evening and potentially impact their ability to refuse work. However, as the date for which this regulation applied to has already passed, the Committee makes no further comment.

Freedom from noise pollution

The Regulation allows for extended trading hours of certain hotels and clubs, which may encroach on the freedom from noise pollution of nearby residents. Although the regulation is allowing extended hours for a one-off special event only, the additional trading hours may increase the potential for increased noise levels from the venue and its patrons at a late hour on a Sunday evening. However, as the date for which this regulation applied to has already passed, the Committee makes no further comment.

6. MAJOR EVENTS REGULATION 2017

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

The Regulation declares the World Polo Championship (27 – 29 October 2017) a major event. It also modifies the effect of existing environmental planning instruments and development consents so, even if the major event is contrary to those planning controls, the development is still lawful. The Committee notes that this may impact on the right of neighbouring residents and the community to amenity, among other rights.

However, the Regulation simply applies provisions of the *Major Events Act 2009*. Moreover, there may be good policy reasons why a major event may need to be held in a way which is contrary to existing planning controls, for instance because of the size or scale of the event. The Committee also notes that the World Polo Championship was temporary in nature and as such the Committee makes no further comment.

Part One – Bills

1. Civil Liability Amendment (Institutional Child Abuse) Bill 2017*

Date introduced	21 November 2017
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch, MP
	*Private member's bill

PURPOSE AND DESCRIPTION

1. The Bill amends the *Civil Liability Act 2002* (the Act) by inserting a new Part 13. The Part imposes a duty of care on certain institutions to make them liable for institutional child abuses, unless the institution proves that it took reasonable steps to prevent the abuse.
2. The Bill seeks to implement recommendation 91 of the 2015 Redress and Civil Litigation Report of the Royal Commission into Institution Responses to Child Sexual Abuse (the Report):

“...state and territory governments should introduce legislation to make institutions liable for child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The ‘reverse onus’ should be imposed on all institutions in respect of which we do not recommend a non-delegable duty be imposed.”

3. The Report states that the steps that are reasonable for the institution to take to prevent abuse will depend on the nature of the institution (for example, whether it is commercial or voluntary) and the role of the perpetrator within that institution (Report, p 494).

BACKGROUND

4. In early 2017, the Victorian Parliament passed the *Wrongs Amendment (Organisational Child Abuse) Act 2017*. The explanatory notes state that this Bill is broadly consistent with the Victorian Act.

ISSUES CONSIDERED BY COMMITTEE

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

2. Combat Sports Amendment (Referee's Duty to Stop Contest) Bill 2017*

Date introduced	23 November 2017
House introduced	Legislative Council
Member responsible	The Hon. Lynda Voltz MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Combat Sports Act 2013* to require a referee to stop a combat sport contest if directed to do so by the trainer of a combatant because the combatant is exhausted or injured to such an extent as to be unable to defend himself or herself or to continue the contest. The maximum penalty for not stopping the contest is 500 penalty units or 12 months imprisonment, or both.

BACKGROUND

2. This Bill draws on recommendations made by the Deputy State Coroner following the death of boxer, Mr Davey Browne, during a professional boxing contest in 2015.
3. The inquest made a number of recommendations, including that the legislative scheme be amended to provide a comprehensive set of rules to govern the conduct of all boxing contests in NSW.
4. In the Second Reading Speech, the Hon. Lynda Voltz MLC commented:

Reading the Deputy Coroner's reports shows there is significant confusion about who can and should stop a fight.
5. The current provisions in the *Combat Sports Act 2013* authorise a medical practitioner, a combat sport inspector, and the referee to stop a contest if a combatant is exhausted or injured to such extent that they are unable to defend themselves. Currently, the Act does not provide for a combatants trainer to call for a contest to stop.
6. The Hon. Lynda Voltz MLC commented that a trainer is the person who knows the individual fighter's combat sports skills and physical capacity better than any of the officials and is uniquely placed to notice anything unusual in the fighter's demeanour during a contest.
7. At present the only power a combatant's trainer has to stop a contest is contained in the Combat Sports Rules. The Combat Sports Rules provide that a trainer may "throw in the towel" to indicate that the bout should cease if a trainer is of the opinion that their combatant is exhausted or injured and unable to continue.
8. This Bill seeks to clarify a trainer's authority to cease a contest by providing for it in legislation, as opposed to just the Combat Sports Rules.

ISSUES CONSIDERED BY COMMITTEE

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

3. Environmental Planning and Assessment Amendment (Waste Incinerator Facilities – Residential Exclusion Zones) Bill 2017*

Date introduced	23 November 2017
House introduced	Legislative Council
Member responsible	Mr Jeremy Buckingham MLC
	Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit new development for the purposes of recovering energy from the thermal treatment of waste from being carried out on land within a residential zone or within 15 kilometres of a residential zone.

BACKGROUND

2. This Bill seeks to prevent waste incinerator facilities from being built within 15 kilometres of residential zones. In the Second Reading Speech, Mr Jeremy Buckingham MLC stated that this Bill is aimed at preventing waste incinerator facilities in the Western Sydney region, namely Eastern Creek.

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*.

4. Health Legislation Amendment Bill 2017

Date introduced	23 November 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to amend the *Health Administration Act 1982* to establish new procedures for dealing with reportable incidents and other incidents and to make a consequential amendment to the *Government Information (Public Access) Act 2009* to protect information arising from reviews of those incidents,
 - (b) to amend the *Health Services Act 1997* to change the name of the Ambulance Services Advisory Council to the Ambulance Service Advisory Board, to require the Secretary of the Ministry of Health (the Health Secretary) (instead of the Minister for Health) to appoint persons to the Board, to provide that local health district boards must not exercise functions inconsistently with the exercise of functions by the Health Secretary and to provide that the employment of a NSW Health Service senior executive may not be terminated without the concurrence of the Health Secretary,
 - (c) to amend the *Human Tissue Act 1983* to enable persons (other than medical practitioners) appointed by the Health Secretary to remove tissue from the body of deceased persons,
 - (d) to amend the *Mental Health Act 2007* to enable the Mental Health Review Tribunal to hear reviews and electro convulsive therapy inquiries in the absence of a patient or person in certain circumstances if the patient or person refuses to attend or is too unwell to attend,
 - (e) to amend the *Mental Health (Forensic Provisions) Act 1990* to require regular reviews by the Mental Health Review Tribunal of persons (other than forensic patients) who are subject to community treatment orders and who are detained in correctional centres and to provide for the apprehension of forensic patients and correctional patients who breach conditions of leave from mental health facilities,
 - (f) to amend the *Government Sector Employment Act 2013* to clarify that the Health Secretary may terminate the employment of a health executive for unsatisfactory performance

BACKGROUND

2. This Bill is part of a regular review of health-related legislation and makes amendments to several Acts that deal with health services in NSW, including the *Health*

Administration Act 1982, Health Services Act 1997, Human Tissue Act 1983, Mental Health Act 2007, Mental Health (Forensic Provisions) Act 1990, Government Sector Employment Act 2013 and Government Information (Public Access) Act 2009.

ISSUES CONSIDERED BY COMMITTEE

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

Mental health review in absence of affected person

3. The Bill amends the *Mental Health Act 2007* to permit the Mental Health Review Tribunal to review a case of an involuntary patient in the absence of the patient in certain circumstances. This may potentially remove the opportunity for the patient to be heard.
4. However, the Committee notes that the Bill also contains considerable safeguards to ensure that a case may only be held in absence of the patient in certain circumstances where they are physically unable to attend. The Bill requires that an authorised medical officer must be of the opinion that the patient is too unwell to attend the review and that the patient has declined to attend. The Bill also requires the Tribunal to notify the family or carers of the patient of each review, and that the Tribunal consider the views of the patient.

The Committee acknowledges that the Bill permits the Mental Health Tribunal to conduct a review in absence of the patient in certain circumstances. Although this may potentially remove the patient's right to be heard at a review for their case or application, the Bill contains considerable safeguards to ensure the patient has every opportunity for themselves, a carer, or representative to attend on their behalf. In these circumstances, the Committee makes no further comment.

Entry to premises without warrant

5. Schedule 5 amends the *Mental Health (Forensic Provisions) Act 1990*, which contains provisions for correctional and forensic patients. The proposed section 68A outlines provisions permitting authorised persons, including police officers, to apprehend persons not permitted to be absent from a mental health facility. The Bill states that 'a police officer may enter premises to apprehend any such person under this section, and may apprehend any such person, without a warrant and may exercise any of the powers conferred on a person who is authorised under section 81 of the *Mental Health Act 2007* to take a person to a mental health facility'.
6. The Bill provides that a medical officer may only request a police officer apprehend or assist in apprehending a person under this section if the medical officer is of the opinion that there are serious concerns relating to the safety of the person or other persons if the assistance of the police is not requested. The bill also requires the medical officer to notify the Tribunal, as soon as practicable, of any apprehensions directed and also made under this section.

The Committee notes that the Bill permits authorised officers to enter a premises without a warrant for the purpose of apprehending a person not permitted to be absent from a mental health facility. This means that an authorised officer is not required to establish that they have reasonable

grounds to enter a premises without the consent of the owner. However, the provision is intended to allow authorised officers to quickly remedy a situation where a person is not permitted to be absent from a mental health facility, which may be for the safety of the person or the community. In these circumstances, the Committee makes no further comment.

Mental health review requirements

7. The Bill amends the *Mental Health (Forensic Provisions) Act 1990* to change the requirement for reviews by the Tribunal for correctional patients from 'every 3 months' to 'no later than 3 months after the community treatment order is made and at least once every 6 months during the term of the order'. The Committee notes the role of these reviews by the Tribunal is to determine the patient's continued detention, care of treatment in, or transfer to, a mental health facility, correctional centre or other place. If these reviews take place less frequently, this may impact or delay the appropriate level of care received by the correctional patient until such a review takes place.
8. The Committee notes that the Act states that the Tribunal may review the case of any correctional patient at any time, which may act as a safeguard from urgent cases being delayed. The Committee also notes the administrative convenience of such a provision to allow the Tribunal to process more reviews and applications.

The Bill amends the *Mental Health (Forensic Provisions) Act 1990* to require a review of correctional patients 'no later than 3 months after the community treatment order is made and at least once every 6 months during the term of the order', rather than 'every 3 months'. The Committee is concerned this may impact or delay the appropriate level of care received by the correctional patient until such a review takes place. The Committee notes that cases may be reviewed at any time before this, and acknowledges the administrative convenience of such a provision to process more cases. However, the Committee is wary of this occurring at a cost to the level of care appropriate for each correctional patient. The Committee draws this to the attention of Parliament.

Employment terminated by person other than employer

9. The Bill amends the *Government Sector Employment Act 2013* to permit the Secretary of the Ministry of Health to terminate the employment of a NSW Health Service senior executive if the Secretary is not their employer. This subverts the autonomy of the contractual relationship between the employer and employed person.
10. However, the Committee notes that this provision is in addition to the existing section 121H of the *Health Services Act 1997*, that states that the Health Secretary may terminate the employment of the executive 'at any time, for any or no stated reason without notice'. To this effect, the Bill clarifies that that Secretary has the power to terminate an executive's employment where there has been unsatisfactory performance. The amendment to the *Government Sector Employment Act 2013* is also subject to subsection 68(1), which requires that termination of government sector employees for unsatisfactory employment is consistent with procedural fairness.

The Committee notes that the Bill amends *the Government Sector Employment Act 2013* to permit the Secretary of the Ministry of Health to terminate the

employment of a NSW Health Service senior executive. This subverts the autonomy of the contractual relationship between the employer and employed senior executive. However, the Committee notes that this provision is consistent with section 121 of the *Health Services Act 1997*, which permits the Secretary to terminate an executive's employment at any time for any or no reason. Termination of an executive must also be procedurally fair. In these circumstances, the Committee makes no further comment.

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

Regulations to specify when a serious adverse event review may be discontinued

11. The Bill permits the relevant health services organisation to authorise that a serious event review team discontinue taking any further steps in relation to a serious adverse event review of an incident. The Bill also permits the relevant health service organisation to give a direction to discontinue a review in circumstances prescribed by the regulations. This means that the regulations may prescribe further circumstances that permit the discontinuation of a serious adverse event review team.

The Bill outlines circumstances permitting the discontinuation of a review team investigation, including in further circumstances prescribed by the regulations. The Committee acknowledges that there may be circumstances that warrant the discontinuation of a review and the administrative convenience of being able to list further circumstances in the regulations. However, as the review team deals with serious incidents of systematic failure in health services, it may be preferable that the grounds upon which a review may be discontinued are included in the Act. The Committee draws this to the attention of the Parliament.

5. Property, Stock and Business Agents Amendment (Property Industry Reform) Bill 2017

Date introduced	21 November 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Matt Kean MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The *Property, Stock and Business Agents Act 2002* (the Act) regulates the real estate and property services industry. It establishes a mandatory licensing system for real estate agents, buyer's agents, strata agents, and business agents, among other professionals.
2. The Bill amends the Act in a number of ways, including to:
 - (a) provide for 2 classes of licence (one of which is required to be held by a licensee in charge of a business) and to permit regulations under the Act to specify which functions may be exercised under each class of licence;
 - (b) permit a licence or certificate of registration to be granted for 1 or 5 years;
 - (c) provide that the offence of an agent failing to disclose a material fact is limited to material facts of a kind prescribed by the regulations under the Act; and
 - (d) prohibit the holder of a licence or certificate of registration from receiving certain gifts.
3. The Bill also requires the lodgement of auditor's reports and provides for the suspension of licences and certificates of registration.

BACKGROUND

4. According to the second reading speech, the Bill is part of a broader reform package which will consist of an amended *Property, Stock and Business Agents Regulation 2014*, rules of conduct, and various guidelines for continuing professional development and the supervision of licensees in charge. The package was detailed in the Real Estate and Property Services Industry Reform Paper published in November 2016.
5. The reform paper was informed by a review, released in June 2016, commissioned in response to concerns regarding the lack of training of real estate agents and other property services professionals.

ISSUES CONSIDERED BY COMMITTEE

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

6. The Bill proposes to amend section 196(3) by allowing the suspension of a person's licence or certificate of registration be imposed for more than 60 days, including if an audit report has not been lodged with the Secretary. Currently the Act contains a maximum suspension of 60 days and only requires a report to be lodged with the Secretary if it contains an adverse finding.
7. The Committee notes that there is currently no right for an individual to be heard before they are suspended: section 196(4).
8. In the circumstances, the Committee is concerned that the provision may infringe on an individual's ability to generate an income.

The Bill would allow real estate agents or other professionals to be suspended for more than the current 60 days, including because of the failure to lodge an audit report.

A suspension of more than 60 days due to a failure to lodge an audit report with no adverse findings may trespass unduly on personal rights and liberties, including the ability to work. However, the reform package is designed to improve public confidence in the property industry by imposing more robust integrity measures, such as the requirement to lodge all audit reports. As such, the Committee makes no further comment.

Retrospectivity

9. Proposed section 35 of the Act allows a licence or certificate of registration to be suspended for more than 60 days, even if the grounds for the suspension occurred before the section was amended.
10. In practice this could mean that a real estate agent or salesperson who has failed to lodge certain audit reports on time could be suspended for more than 60 days, even though the ability to impose a suspension longer than 60 days post-dated the breach. Again, there is no right under the Act for an individual to be heard before they are suspended: section 196(4).
11. The Committee usually discourages the use of provisions that impact rights and liberties retrospectively.

The Bill allows suspensions of more than 60 days to be imposed, even where the grounds for the suspension arose before the Act was amended.

A key tenet of the rule of law is that individuals should only be bound by the law as it stands at a given time. There may be good policy reasons for the provision in question. However, because it impacts on a person's ability to work, and there is no right for a person to be heard before a suspension is imposed, the Committee draws this matter to Parliament's attention.

Excessive penalties

12. Proposed section 31 of the Act provides for a number of requirements related to the management of a business by a class 1 licence holder. For example, anyone who operates a relevant business without a class 1 licence must employ someone with a class 1 licence to be in charge. In addition, a person must notify the Secretary of certain matters regarding a licensee within 5 days, and a class 1 licensee is prevented from running more than 2 relevant businesses.
13. The proposed section contains significant monetary penalties (\$22,000 for a corporation and \$11,000 for an individual) for a breach of the requirements under the section. For example, a failure to notify the Secretary within 5 days of the name and address of a licensee could correspond to a maximum penalty of up to \$11,000 for an individual.

Under the Act, anyone who operates a relevant business without a class 1 licence must employ someone with a class 1 licence to be in charge. That person operating the business must notify the Secretary of the name and address of a class 1 licensee within 5 days.

There is a maximum penalty of \$11,000 for an individual for any failure to adhere to these requirements. While the Committee notes that the reform package is designed to improve public confidence in the property industry by imposing more robust integrity measures, the Committee is concerned that the penalty may be disproportionate to the offence. As such the Committee draws this matter to the attention of Parliament.

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

14. Proposed section 31 provides that an individual or corporation who carries on a business under a licence other than a class 1 licence must employ someone who holds a class 1 licence to be in charge of the business. The second reading speech indicates that a class 1 licence will be the highest level of licence and will require the licensee to have completed 2 years of work experience and a property services diploma, or other similar qualifications.
15. The section also contains other provisions, which require a person to notify the Secretary of certain matters regarding a licensee, and which generally prevent a class 1 licensee from running more than 2 relevant businesses.
16. However, proposed subsection (5) permits the Secretary to grant a person an exemption from any of these provisions, with conditions if appropriate. There are no parameters on the exercise of this wide discretion in the Act. That said, subsection (6) also provides that the regulations may specify matters to be taken into account by the Secretary in considering whether to grant an exemption under the section.

Under, proposed subsection 31(5) of the Act, the Secretary can exempt a licensed business from employing someone who holds a class 1 licence to be in charge of that business.

This may be an inappropriate delegation of legislative power as there are no parameters in the Act governing the discretion to grant an exemption. Although

such parameters can be specified in the regulations, regulations are generally subject to a lower degree of Parliamentary scrutiny. Given also that the reform package is intended to ensure that professionals in the industry are appropriately trained and qualified, the Committee draws this matter to the attention of Parliament.

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

Matters deferred to regulations

17. The Bill proposes to defer the following matters to the regulations:

- (a) The Bill introduces a new licensing system, but some functions that can be exercised by licensees and assistant agents may be set out in the regulations: proposed sections 3A, 3B and 10A.
- (b) Matters to be taken into account by the Secretary when deciding to grant an exemption under section 31, including a licence exemption: proposed section 31(6).

Some matters in the Bill are deferred to the regulations, including some of the functions that licensees and assistant agents can perform. The Committee generally prefers that substantive matters are dealt with in the principal legislation, but notes that the matters deferred are not extensive and so makes no further comment.

Commencement by proclamation

18. The Act commences on a day or days to be appointed by proclamation. The Committee usually prefers that Acts commence on assent or a specified date so that the Executive does not have unfettered control over the commencement date and certainty is provided for the community and industry.

The Act commences by proclamation. The Committee prefers that the Executive does not have unfettered control over the commencement date. However, given that the Act makes widespread changes to a licensing scheme and therefore involves some administrative complexity, the Committee makes no further comment.

6. Saint John's College Bill 2017

Date introduced	21 November 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Rob Stokes MP
Portfolio	Education

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to constitute a corporation with the name "The Rector and Fellows of Saint John's College" (referred to as the College) and to provide that the College is a continuation of the corporation constituted by the *Saint John's College Act 1857*,
 - (b) to establish a Council to govern and manage the College and to provide for the membership and procedures of the Council,
 - (c) to provide for the appointment of a Rector of the College to conduct the day-to-day management of the affairs of the College,
 - (d) to repeal the *Saint John's College Act 1857* and the by-laws made under that Act.

BACKGROUND

2. This Bill seeks to modernise the governance arrangements for St John's College at the University of Sydney. The Bill repeals and replaces the *Saint John's College Act 1857* which is a private Act.
3. As referred to in the Second Reading Speech, the reforms to the governance arrangements at the College have followed an extended consultation and discussion process within the St John's College community.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

4. The Bill provides that the Act is to commence on a day or days appointed by proclamation.

The Committee generally prefers legislation to commence on assent or a fixed date. Given the Bill implements new governance arrangements, including the establishment of a Council and appointment of officers, flexibility with respect to its commencement is reasonable.

This bill recognises that sometimes a school will not be able to fill a teaching position permanently. For example, if a teacher goes on maternity leave, she may indicate that she seeks two or three years away from the paid workforce. In that situation, the school could offer temporary employment for two to three years. The school and the community will be better off knowing that a longer period of temporary employment can be offered to a suitable qualified temporary teacher.

5. The Bill also introduces provisions to deal with teachers who have lost their accreditation to work as a teacher or abandoned their employment. The Minister for Education commented that one barrier to offering permanent work to new teachers was the lack of an efficient provision to manage teachers who have abandoned their employment.

ISSUES CONSIDERED BY COMMITTEE

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

Suspension of employment without pay

6. The Bill provides for the termination or suspension of employment under the *Teaching Service Act 1980* if a person's accreditation is revoked under the *Teacher Accreditation Act 2004*. The *Teacher Accreditation Act 2004* provides for a review process if there is any dispute over the termination or suspension of a person's accreditation.
7. In the event a person's accreditation is suspended, the Bill permits the Secretary to suspend that person's employment, without pay, during any period in which the person's accreditation is suspended. This is regardless of whether the suspension of the accreditation is being disputed.

The Bill permits the Secretary to suspend a person's employment without pay if that person's accreditation has been suspended. This may disadvantage a person who is disputing their suspension and impact on that person's right to employment. The Committee draws this issue to the attention of Parliament.

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

Ill-defined terms

8. Schedule 1, clause 9 of the Bill inserts a provision into the *Teaching Service Act 1980* permitting the Secretary to terminate a person's employment if the person has abandoned their employment. Similarly, schedule 2, clause 6 of the Bill inserts an identical provision into the *Education (School Administrative and Support Staff) Act 1987*.
9. The Bill does not include any provision to provide guidance or rules on how to determine when a person has abandoned their employment.

The Bill provides for the termination of employment on the grounds a person has abandoned their employment. The Committee notes that the Bill does not expand on this ground for termination which may lead to inconsistencies in its application. The Committee draws this issue to the attention of Parliament.

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

Commencement by proclamation

10. The Bill provides that the Act is to commence on a day or days appointed by proclamation.

The Committee generally prefers legislation to commence on assent or a fixed date. Given the Bill amends and introduces measures affecting the employment of members of the Teaching Service and support staff, the Committee notes that flexibility may be required to ensure the amendments have been effectively communicated.

10. Vexatious Proceedings Amendment (Statutory Review) Bill 2017

Date introduced	21 November 2017
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman MP
Portfolio	Attorney-General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Vexatious Proceedings Act 2008* to give effect to recommendations arising from the statutory review of that Act. This is achieved as follows:
 - (a) by making it clear that references to proceedings include civil proceedings, criminal proceedings and proceedings before a tribunal and also include any interlocutory proceedings or applications, or procedural applications, taken in connection with or incidental to such proceedings,
 - (b) by making it clear that a court determining whether or not to make a vexatious proceedings order is to have regard to the effect that the conduct of the person who will be subject to the order had on earlier proceedings, and not just to the intention of the litigant, and may have regard to evidence of decisions or findings of fact of another Australian court or tribunal (which would ordinarily be inadmissible),
 - (c) by providing that, unless a vexatious proceedings order expressly states otherwise, the order prohibits the making of interlocutory and procedural applications within civil proceedings (as well as prohibiting the initiation of proceedings) but does not prevent a person from making applications, or conducting proceedings, within criminal proceedings that have been brought against that person or from making bail applications,
 - (d) by allowing a court to decline to consider a vexatious litigant's application to vary or set aside an existing vexatious proceedings order, or application for leave to institute proceedings otherwise prohibited by the order, if the applications are not materially different from an earlier, unsuccessful application,
 - (e) by making it clear that a court considering an application by a person who is subject to a vexatious proceedings order for leave to institute proceedings that are otherwise prohibited by that order is not required to hold an oral hearing before dismissing the application,
 - (f) by providing that, unless a grant of leave to institute proceedings that are otherwise prohibited by a vexatious proceedings order expressly states otherwise,

the grant of leave extends to allow the person the subject of the order to make interlocutory or procedural applications within those proceedings.

BACKGROUND

2. The Attorney-General noted that the *Vexatious Proceedings Act 2008* underwent a statutory review in 2017 and the introduction of the *Vexatious Proceedings Amendment (Statutory Review) Bill 2017* would implement all the recommendations from the review.
3. In his second reading speech, the Attorney-General noted the review and development of the Bill involved 'extensive consultation with key legal stakeholders, including the Chief Justice of New South Wales, the Chief Judge of the Land and Environment and the President of the NSW Civil and Administration Tribunal.'
4. The Bill provides mechanisms for authorised officers of the Court to manage litigants who abuse the court proceedings by repeatedly pursuing vexatious legal proceedings. Vexatious litigants are persons or parties who persistently take legal action against others without reasonable grounds or for improper purposes.
5. The Attorney-General noted the Bill would strike 'a balance between preserving personal rights to approach the courts on civil and criminal matters on one hand and on the other hand, ensuring the courts have suitable powers to control litigants who may abuse the judicial system.'

ISSUES CONSIDERED BY COMMITTEE

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

Definition of 'materially different'

6. There are a number of provisions in the Bill that make reference to applications being materially different from earlier applications. For example:
 1. proposed section 9(4) provides that an authorised court may decline to consider an application to vary or set aside vexatious proceedings, if they are not satisfied that the application is materially different from the earlier application; and
 2. proposed section 14(4A) provides that an authorised court may decline to consider an application if the court is not satisfied that the application is not materially different from an earlier application which was dismissed under 15(1) (b) or (c).

The Committee notes the term 'materially different' is not defined in the Bill. Nor is there guidance provided on what matters may be taken into consideration to determine when applications are materially different. This may create uncertainty for an individual applying to set aside a vexatious proceeding order. However, given the level of consultation this Bill has received to date, and that the provisions will be applied by superior courts, the Committee does not consider the provisions unreasonable.

Part Two - Regulations

1. Crimes (Administration of Sentences) Amendment (Information Sharing) Regulation 2017

Date published	29 September 2017
Disallowance date	8 February 2018
Minister responsible	The Hon. David Elliott MP
Portfolio	Corrections

PURPOSE AND DESCRIPTION

1. The Regulation amends the *Crimes (Administration of Sentences) Regulation 2014*. The objects of the Regulation are:
 - (a) to prescribe the purposes for which the Commissioner of Corrective Services may disclose information obtained in connection with the administration or execution of the *Crimes (Administration of Sentences) Act 1999* (the Act) or any other Act.
 - (b) to prescribe the Commissioner of Fines as a relevant agency with whom the Commissioner may enter an information sharing agreement (despite various privacy Acts) and to detail the information that may be shared.
2. The Regulation is made under the Act, including sections 257A and 271 (the general regulation-making power.)

ISSUES CONSIDERED BY COMMITTEE

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

Right to privacy – issue one

3. The Regulation prescribes 14 purposes for which the Commissioner of Corrective Services may disclose information obtained in the exercise of his or her functions. The Commissioner has a wide range of functions under the Act, including managing and maintaining correctional facilities, managing offenders held in custody, and making submissions to the Parole Authority.
4. Many of the prescribed purposes relate to the administration of court proceedings concerning an offender, protecting security and order, and assisting other agencies with their interactions with offenders.
5. While the prescribed purposes cover a wide range of matters, information may only be disclosed if the Commissioner considers that it is reasonably necessary for the purpose.

6. The Committee notes that the Regulation is likely to breach the right to privacy of offenders by allowing disclosure of personal information. The Committee acknowledges that there may be good policy reasons for enabling the Commissioner to disclose such information, including that offenders in custody are effectively under the care and control of the State. This may justify a number of the purposes for which information may be disclosed, including to provide services to inmates, to maintain security and order, and to assist other agencies who liaise with offenders (for example, to help determine eligibility for a social or health related payment or service).

The Regulation enables the Commissioner of Corrective Services to disclose a wide range of information, including an offender's personal information, obtained in the exercise of his or her functions under the Act.

The Committee notes that the Regulation is likely to trespass on an offender's right to privacy. However, the Committee acknowledges that when in custody, offenders are effectively under the care and control of the State. This may mean that there are good policy reasons for allowing the Commissioner to disclose information to other agencies relating to the offender or to help administer sentences and court orders. Accordingly, the Committee makes no further comment.

Right to privacy – issue two

7. Section 257A of the Act enables the Commissioner to enter into information sharing arrangements with agencies. Clause 327 of the Regulation establishes an information sharing arrangement with the Commissioner of Fines Administration. This entitles both parties to disclose, and request and receive, information that assists in the exercise of either Commissioner's functions.
8. However, clause 327(3) largely confines this information to the personal details of an offender (such as name, address and date of birth), details of fines, the duration of the offender's sentence, and other related information.
9. Although the clause appears to breach an offender's right to privacy, the Committee is of the view that this may be reasonable in the circumstances. This is because the clause clearly specifies what information can be disclosed, and the permitted disclosures are proportionate to the legitimate aim of recovering unpaid fines from offenders.

Under the Regulation, the Commissioner of Corrective Services enters into an information sharing arrangement with the Commissioner of Fines Administration. The information to be shared relates primarily to the personal details of offenders (such as name, address and date of birth), details of fines, and the duration of an offender's sentence.

While this may breach an offender's right to privacy, the clause clearly specifies a fairly narrow range of information that may be disclosed. The Committee considers that the clause is therefore proportionate to the legitimate aim of recovering unpaid fines. As such, the Committee makes no further comment.

2. Environmental Planning and Assessment Amendment (XI FIP World Polo Championship) Regulation 2017

Date published	22 September 2017
Disallowance date	8 February 2018
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Planning

PURPOSE AND DESCRIPTION

1. The object of the Regulation is to facilitate the XI Federation of International Polo World Polo Championship Sydney 2017 (World Polo Championship). Development for the purposes of that event is excluded from being 'development' or an 'activity' within the meaning of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).
2. The *Major Events Regulation 2017* declared the World Polo Championship a major event. The declaration was in force from 9 October 2017 to 5 November 2017.

ISSUES CONSIDERED BY COMMITTEE

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

Right to amenity

3. The Regulation inserts a new clause 288A in the *Environmental Planning and Assessment Regulation 2000* so that any development for the purposes of the World Polo Championship is not 'development' or an 'activity' for the purposes of the EP&A Act. This means that the World Polo Championship would be excluded from an assessment of environmental impacts, which would ordinarily occur if work is classified as 'development' or an 'activity'.
4. The exemption also extended to any car parking for the purposes of the event. The land to which the car parking exemption applies is shown on a map that is not available online but which is held by the Department of Planning and Environment. This may make it difficult for residents to understand whether they would be affected by the car parking development.

The Regulation excluded any work associated with the World Polo Championship (27 – 29 October 2017) from the definition of 'development' or an 'activity' under the EP&A Act. This means that the environmental impacts of the World Polo Championship and associated development were not assessed in the way development and activities, including events, are usually assessed under the EP&A Act.

The Committee observes that not assessing the environmental impacts of a development risks unduly trespassing on the right to amenity of individuals and communities, among other rights. However, the Parliament passed the *Major Events Act 2009* in order to facilitate major events in this way, including by enabling the responsible Minister to effectively exempt an event from formal environmental assessment. Given that the Minister must be satisfied an event is in the public interest, and the authority for the responsible event may impose conditions on the carrying out of an activity, the Committee makes no further comment.

3. Government Sector Employment Amendment (Transfers to Non-Government Sector) Regulation 2017

Date published	6 October 2017
Disallowance date	8 February 2017
Minister responsible	The Hon. Gladys Berijikian MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to provide that certain persons whose employment in a government sector agency is to cease as a result of the transfer of services provided by the agency to a non-government sector body are not affected by the operation of clause 25A(1) of the *Government Sector Regulation 2014* which limits the entitlement to any severance or redundancy payment for that cessation of employment.
2. This Regulation is made under the *Government Sector Employment Act 2013*, including section 88 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

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

Restricts entitlement to severance or redundancy payments

3. The Regulation amends the clause 25A of the *Government Sector Employment Regulation 2014*, which states that an employee of a government sector agency is not entitled to severance or redundancy payments if their employment ceases as a result of a transfer to a non-government sector body. The Regulation inserts clause 25A(4A) that states that clause 25A(1) does not apply if the non-government sector body was chosen before 1 January 2015. This means that government sector employees whose employment ceased before this date will be eligible for severance or redundancy payments. However, this still excludes severance and redundancy payments to employees whose employment ceased as a result of a transfer after this date.

The Regulation allows government sector employees whose employment ceased as a result of a transfer to a non-government sector role to be entitled to receive severance or redundancy payments, provided that the non-government sector body was selected before 1 January 2015. Although this clause lifts the restriction on payments to certain past-employees, it still upholds the restriction of entitlements to employees whose employment ceased after this date. This may infringe on one's civil liberties and their right to receive employment entitlements, particularly if a transfer to a non-

**government body was due to a mandatory transfer by the government sector-
employer.**

4. Liquor Amendment (Miscellaneous) Regulation 2017

Date published	29 September 2017
Disallowance date	8 February 2018
Minister responsible	The Hon. Paul Toole MP
Portfolio	Racing

PURPOSE AND DESCRIPTION

1. The objects of this Regulation are as follows:
 - (a) to consolidate (with some modifications) the special licence conditions that apply, as a consequence of the amendments made to the Liquor Act 2007 by the Liquor Amendment (Reviews) Act 2017, to certain licensed premises in the Sydney CBD Entertainment and Kings Cross precincts,
 - (b) to modify the basis on which the compliance history risk loading element of the periodic licence for a liquor licence is payable,
 - (c) to enable the Independent Liquor and Gaming Authority to disregard minor departures from (or non-compliance with) the advertising requirements in relation to liquor licence applications in certain circumstances,
 - (d) to enable the Secretary of the Department of Industry to revoke an interim restaurant authorisation (which authorises the sale of liquor in a restaurant pending the determination of a licence application) if the requirements and other eligibility criteria for the issuing of the authorisation were not complied with when it was issued,
 - (e) to prescribe digital driver licences as an “evidence of age document” for the purposes of the Liquor Act 2007,
 - (f) to make other amendments of a minor or administrative nature.
2. This Regulation is made under the *Liquor Act 2007*, including the definition of evidence of age document in section 4, and sections 58A, 116I and 159 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

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

3. The Regulation excludes certain persons from entering certain premises if the person is wearing or carrying any clothing, jewellery, colours, club patches, insignia, logo, or accessory displaying the name of listed motorcycle-related and similar organisations. This extends to persons displaying the '1%' or '1%er' symbol, or any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with any of the listed organisations. This has the effect of restricting the freedom of association of persons associated with these organisations.

The regulation excludes persons from entering subject premises if they are wearing any clothing or accessory displaying a connection with any of the listed motorcycle organisations. This restricts the freedom of association for these persons from being members of these organisations, or persons who are wearing colours of these organisations. The regulation may also, in practice, result in members of other motorcycle clubs being excluded access to subject premises as the list of prohibited clothing/items is quite extensive and may be confused with other unrelated groups.

The Committee acknowledges that these organisations have been identified as criminal organisations and that the regulation aims to increase public safety and reduce alcohol-related violence in venues where this may be more prevalent. However, the Committee must comment on any infringement of civil liberties present in the statutory instruments, including freedom of association of any group of persons.

Privacy of personal information

4. Division 3 of Part 5A outlines provisions for patron ID scanning. The Regulation requires the scanning of photo ID that contains the person's name, date of birth, residential address and photograph. The Committee notes that patron ID scanning is only for high-risk venues (as defined by the *Liquor Act 2008*). The Regulation also exempts minors from requiring photo ID.

The Regulation requires patron ID scanning in high-risk venues during certain times. The information obtained through ID scanning is retained by the licensed premises and includes the person's name, date of birth, residential address and photograph. The Regulation does not state how long this information will be held or who within the business may have access to it. The Committee acknowledges the safety reasons for obtaining this information and understands that persons operating an ID scanner need to complete an online privacy training course and that licensees implement a privacy policy that complies with the *Privacy Act 1988*. However, it is not clear what safeguards are in place to detect or protect against breaches of this policy.

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA*Restriction of trading hours and conditions*

5. The Regulation restricts the trading hours of certain businesses and imposes strict conditions with which businesses must comply. This may have an adverse impact on the business community to which this applies. The Committee notes that the regulation is one part of a broader policy plan for liquor-related laws in specific areas of the Sydney CBD.

The Committee notes that the Regulation places strict requirements on the trading hours and procedures of certain businesses based on their geographic location. This may negatively impact these businesses. However, the Committee also notes that these requirements are part of a broader policy decision of the 'lock out' laws for certain areas of Sydney that have been assessed as having a higher risk of violence. Even so, the Committee is required to comment on regulations that may have an adverse impact on the business community, however it acknowledges that the policy focus is on minimising alcohol-related violence in public venues.

5. Liquor Amendment (Special Events Extended Trading) Regulation 2017

Date published	29 September 2017
Disallowance date	8 February 2018
Minister responsible	The Hon. Paul O'Toole MP
Portfolio	Liquor and Gaming

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to allow certain hotels and clubs within the Bathurst Regional local government area to trade for an extended period on 8 October 2017, being the day on which the Supercheap Auto Bathurst 1000 event will be held.
2. This Regulation is made under the Liquor Act 2007, including sections 13 and 159 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

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

Right to refuse work

3. Regulation allows certain hotels and clubs within the Bathurst Regional local government areas to trade until midnight on 8 October 2017. While this is due to a special event occurring in the Bathurst region, the extended trading hours require staff to work late into the evening outside of normal trading hours and may affect the employee's ability to refuse work.

The Committee notes that the regulation allows certain hotels and clubs in the Bathurst region to trade until midnight on 8 October 2017. While this is due to a special event taking place, the extended trading hours require staff to work late into the evening and potentially impact their ability to refuse work. However, as the date for which this regulation applied to has already passed, the Committee makes no further comment.

Freedom from noise pollution

4. The Regulation's provisions allowing certain hotels and clubs to trade until midnight may encroach on the freedom from noise pollution of nearby residents due to the level of noise from the venue or its patrons.

The Regulation allows for extended trading hours of certain hotels and clubs, which may encroach on the freedom from noise pollution of nearby residents. Although the regulation is allowing extended hours for a one-off special event only, the additional trading hours may increase the potential for increased noise levels from the venue and its patrons at a late hour on a Sunday evening.

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,

