



Legislation Review Committee

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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 section 8A(1)(b) of the *Legislation Review Act 1987*.

COMMENT ON REGULATIONS

This section contains the Legislation Review Committee's reports on Regulations in accordance with section 9 of the *Legislation Review Act 1987*.

Conclusions

PART ONE - BILLS

1. FAMILY IMPACT COMMISSION BILL 2018*

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

Exclusive definition of ‘family’ and ‘marriage’

This definition of family places an emphasis on a two-parent family – comprising a man and a woman - joined by marriage, to the exclusion of other family structures that do not meet this definition. Although the Bill recognises that families may include adoption or a wider extension to grandparents, aunts, uncles, and cousins, this definition excludes de facto couples, single parents, same-sex parents, or foster parents. Consequently, the Bill does not allow for the social diversity of different family structures within NSW.

The Committee also notes that the Bill’s definition of ‘marriage’ as a union of a man and a woman to the exclusion of all others voluntarily entered into for life’ is inconsistent with the definition of marriage contained in the Commonwealth Act.

Given the Bill requires all legislation to compile a family impact statement, the narrow and exclusive definition of family and marriage would leave a number of adults, children and young people unrepresented and unable to benefit from any protection offered by the Bill. This could impact upon the right to recognition as a married couple under the law and the rights of children in non-traditional family structures.

Freedom of religion – Ethic of Commission

The Committee refers to the Parliament whether the emphasis placed on a proposal or other matter contradicts or adversely affects the ‘Judeo-Christian ethic’ is appropriate for the development of public policy for the wider and multi-faith community.

Religious bias – Advisory Committee membership

The Bill proposes that 12 out of 15 members on the Advisory Committee be a representative of one of the 12 possible Judeo-Christian religious institutions listed in the Bill. The Committee is concerned that this disproportionately represents organisations of Judeo-Christian religious groups and may neglect to represent the views and interests of stakeholders and community members who do not subscribe to this religion. The Committee refers to Parliament whether it is appropriate for a Committee with the function of providing advice and reporting on matters of public policy (for a multi-cultural and multi-faith community) to be required to be made up of organisations of the Judeo-Christian ethic.

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

Freedom of religion - Appointment of Commissioner and Assistant Commissioner

The Bill requires that a Commissioner may not be appointed unless the Advisory Committee is satisfied that the person is supportive of the principles set out under the Act. The test used by the Advisory Committee for whether a potential Commissioner is supportive of these principles is not defined. The Bill’s principles contain the exclusive definition of ‘family’,

focuses on matters affecting the Judeo-Christian ethic and requires a selective membership base of the Advisory Committee to represent only organisations of Judeo-Christian origin. Given this, the Committee refers to Parliament whether it is appropriate for a potential Commissioner be required to meet a religious or political test for the appointment to a role regarding public and social policy. The Committee refers this to Parliament for its further consideration.

Wide powers of investigation and information gathering

The Committee is concerned that the Bill permits the Commission wide powers of information gathering for the purposes of an investigation, which are broadly defined as being of the Commission's 'own initiative' or 'for the purposes of the preparation of a Study or Assessment'. The Committee refers to Parliament whether it is appropriate for the proposed Commission to have wide-ranging powers of information gathering for investigations with insufficiently defined parameters.

No definition of 'lawful excuse'

The Bill prescribes offences for any person that hinders, fails to comply with or makes false statements to the Commission without 'lawful excuse'. The Committee notes that the Bill does not define what constitutes a lawful excuse, which may create a broad interpretation of this provision. Given the wide powers of information gathering that the Bill affords the Commission, it is concerning that the Bill also creates offences for a person that is seen to obstruct the Commission carry out these broad powers and functions particularly as there are no procedures for review of a decision of the Commission. The Committee draws this to the attention of the Parliament.

Commencement

The Committee generally prefers legislation to commence on assent or a fixed date. Given the Bill implements a new Commission and requires all introduced legislation to be accompanied by the 'Family Impact Statement', it is important that those that are required to comply with the Act be aware of the commencement of these obligations.

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

No review procedures

The Committee notes that the Bill does not contain any review procedures for decisions made by the Commission. The Committee is concerned that this may make rights, liberties or obligation dependent upon non-reviewable decisions, particularly as the Bill allows the Commission, to require the production of information and documents, enter premises and conduct investigations on its own initiative.

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

Delegation of Commissioners powers to any person

The Committee notes that the Bill allows the Commissioner to delegate any of their legislated functions to any person without requiring that they be an authorised officer of the Commission or any other requirements. This may inappropriately delegate legislative powers to any person as chosen by the Commissioner.

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

Matters dealt with by regulations

This grants the Governor the power to make regulations for a wide scope of matters, provided that it is 'necessary' or 'convenient' to do so. While what determines whether a regulation as necessary is not defined, it is concerning that regulations can be made for convenience – and without Parliamentary scrutiny - in relation to a wide scope of matters. The Committee refers this issue to the Parliament for its consideration.

2. MEDICINAL CANNABIS (COMPASSIONATE ACCESS) BILL 2018*

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

Privacy

The Bill requires the Health Secretary to keep a register of registered medicinal user and carers and to issue certificates of registration that incorporate a recent photograph of the person. The Bill does not specify who has access to these records or for what purpose they may also be used. The Committee recognises that some individuals may consider providing a photograph in official health records to infringe on their right to privacy. However, given the public policy concerns that the use of medicinal cannabis be restricted to approved individuals, the Committee makes no further comment.

Freedom of movement

The Committee notes that the Bill restricts access to medicinal cannabis treatment in a public place. Given the aims of the legislation, particularly the alleviation of pain and symptoms relating to a wide range of terminal or serious medical conditions, the Committee draws this to the attention of the Parliament.

Compensation

The Committee notes that a person who has had their registration cancelled or suspended may be subject to forfeiture, destruction or disposal requirements of the legally purchased medicinal cannabis. The Committee refers to Parliament whether a person who has legally purchased medicinal cannabis should be compensated for its forfeiture, destruction or disposal.

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

Power to cancel registration

The Committee notes that the Bill allows further grounds for cancellation of a person's registration as a medicinal cannabis user or carer may be set out in the regulations. It is noted that the Bill allows a person 14 days in which to make submissions to the Health Secretary in relation to the proposed cancellation. However, this procedural safeguard may not be adequate against additional grounds for cancellation to be created in the regulations. The Committee generally prefers that provisions prescribing rights, liberties or obligations are sufficiently clear for the benefit of people relying on those rights, liberties or obligations. The Committee refers this regulation-making power to the Parliament for its consideration.

Scheme to be established by regulations

The Committee notes the administrative convenience of enabling the regulations to establish a scheme that involves the granting and revocation of licences. However, the Committee refers to Parliament whether such a scheme may be more appropriately included in the principal legislation.

Power to create offences in the regulations

The Committee notes that the Bill empowers the regulations to create offences. The Committee refers this to the Parliament for its consideration on whether offences are more appropriately set out in the principal legislation that is passed by the Parliament.

Clarity - Rights of the child

Part 2 of the Bill outlines provisions for the registration of medicinal users and carers, including subsection 5(6) that allows an application to be made on behalf of a child by the parents or guardians of the child. The Committee notes that subsection 5(6) does not specify whether the application is for the child to be a registered medicinal user or a registered carer of a registered medicinal user. While it can be assumed that the provision intends for children to be able to access medicinal cannabis for terminal or serious medical conditions, the legislation does not clearly distinguish this. Legislation that enables carer responsibilities to be conferred onto children may infringe on the rights of the child. 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 a fixed date or on assent. However, the Committee acknowledged that the Bill introduces various administrative changes relating to the supply and use of cannabis for health conditions. Due to the complex nature of these changes, the Committee understands that some flexibility may be desirable in regards to a commencement date.

PART TWO - REGULATIONS

1. HEALTH PRACTITIONER REGULATION (NEW SOUTH WALES) AMENDMENT (RECORDS OF PARTNERS) REGULATION 2017

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

Right to privacy

The regulation continues the requirement that medical practitioners keep a record of partners of patients being treated for chlamydia. As this includes keeping a record of the name, email address or mobile number of a patient's spouse, de facto partner or a person with whom the patient is or was in a sexual relationship with, this may impact the right to privacy of a patient's relationships and the identify of their partners. However, the Committee recognises the importance of keeping such records to ensure the health of the patient's partner and the treatment of chlamydia. The Committee makes no further comment.

2. LIQUOR FURTHER 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 amends the list of certain persons excluded from entering certain licensed premises if they are wearing any clothing or accessory displaying a connection with the listed motorcycle organisations. This may interfere with a person's right to join and participate in an organisation of their choosing without prejudice. The regulation may also, in practice, result in members of other clubs being excluded access to certain premises as the list of prohibited clothing/items is quite extensive.

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, for the reasons outlined above, the Committee refers to Parliament whether the regulation unduly trespasses on personal rights and liberties.

3. POISONS AND THERAPEUTIC GOODS AMENDMENT (RECORDS OF PARTNERS) REGULATION 2017

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

Right to privacy

The regulation continues the requirement that authorised practitioners keep a record of partners of patients being treated for chlamydia. As this includes keeping a record of the name, email address or mobile number of a patient's spouse, de facto partner or a person with whom the patient is or was in a sexual relationship with, this may impact on the right to privacy of a patient's relationships and the identify of their partners. However, the Committee recognises the importance of keeping such records to ensure the health of the patient's partner and the treatment of chlamydia. The Committee makes no further comment.

4. WORK HEALTH AND SAFETY AMENDMENT (LICENCE REGISTER) REGULATION 2017

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

Privacy

The Committee notes that the discretion of the regulator to include information on the register that it 'thinks appropriate' may allow information to be included that extends beyond a person's capacity as a licence holder. This opens the potential for the recording of information not directly relevant to their licence. Given that the regulator also has a wide discretion as to what information from the register can be published, the Committee refers to Parliament whether the regulation should limit this discretion to particulars that are directly relevant to the person in their capacity as a licence holder.

Part One - Bills

1. Family Impact Commission Bill 2018*

| | |
|--------------------|-----------------------------|
| Date introduced | 15 February 2018 |
| House introduced | Legislative Council |
| Member responsible | Revd. the Hon Fred Nile MLC |
| | *Private Member's Bill |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for the establishment of the Family Impact Commission.
2. The Commission is to study and report on the moral, social and economic impact on New South Wales families of existing laws and proposed laws and Government expenditure, for the purpose of ensuring that the following principles are recognised and upheld:
 - a) The family, consisting of those individuals related by blood, adoption or marriage, is the foundational social unit of the nation.
 - b) The family is to be given the widest possible protection and assistance as the natural and fundamental unit of society, particularly where it is responsible for the care and education of dependent children.
 - c) The family has primary responsibility for the welfare, education and property of its members.
 - d) The sanctity and unique sphere of authority of the family is to be recognised and preserved.
 - e) Optimum conditions for maintaining the integrity of the family unit are to be preserved and promoted.
3. The Bill provides for the following:
 - a) the preparation of Family Impact Studies and Assessments for all Bills introduced into Parliament and for all expenditure or programs of expenditure of public money,
 - b) the preparation of those Studies and Assessments for other matters considered appropriate by the Commission,
 - c) the principles to be taken into account when preparing such Studies and Assessments,
 - d) the constitution of an Advisory Committee,

- e) the conferring of investigation powers on the Commission,
- f) the publicising and review of Studies and Assessments.

BACKGROUND

4. This Bill proposes the introduction of a Family Impact Commission. Two variations of this Bill have previously been introduced in the Legislative Council by the Hon. Reverend Nile MLC. On its first introduction to Parliament in 1995, the Bill lapsed due to the prorogation of the Parliament in January 1996. Upon the reopening of Parliament, the Legislative Council resolved that the Bill be restored and the second reading debate commenced. In October 1997, the Bill was referred to the Legislative Council Standing Committee on Law and Justice for inquiry and report on any public comments on the Bill and any proposed amendments to the Bill. The Committee tabled its report in November 1997.
5. The Bill was again introduced to the Legislative Council in 2002. The debate was adjourned and later lapsed.
6. This report will review the Bill in its updated form and comment on issues outlined in section 8A of the *Legislation Review Act 1987*.

ISSUES CONSIDERED BY COMMITTEE

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

Exclusive definition of 'family' and 'marriage'

7. Section 3 defines family as 'an organic unit composed essentially of a man and a woman related by marriage and the children of either or both of them by blood or adoption, whether or not in a wider relationship of grandparents, aunts, uncles and cousins.' The Bill defines marriage as 'the union of a man and a woman to the exclusion of all others voluntarily entered into for life'.

This definition of family places an emphasis on a two-parent family – comprising a man and a woman - joined by marriage, to the exclusion of other family structures that do not meet this definition. Although the Bill recognises that families may include adoption or a wider extension to grandparents, aunts, uncles, and cousins, this definition excludes de facto couples, single parents, same-sex parents, or foster parents. Consequently, the Bill does not allow for the social diversity of different family structures within NSW.

The Committee also notes that the Bill's definition of 'marriage' as a union of a man and a woman to the exclusion of all others voluntarily entered into for life' is inconsistent with the definition of marriage contained in the Commonwealth Act.

Given the Bill requires all legislation to compile a family impact statement, the narrow and exclusive definition of family and marriage would leave a number of adults, children and young people unrepresented and unable to benefit from any protection offered by the Bill. This could impact upon the right to recognition as a married couple under the law and the rights of children in non-traditional family structures.

Freedom of religion – Ethic of Commission

8. Section 10 outlines that the Commission may prepare a Family Impact Statement of a proposal or other matter and in doing so 'is to consider the moral, social and economic effect of the proposal on the family unit and whether that effect contradicts or adversely affects the Judeo-Christian ethics or any of the principles set out in section 2'. Section 2 outlines the recognition of the 'family' and protection and sanctity of this unit.

The Committee refers to the Parliament whether the emphasis placed on a proposal or other matter contradicts or adversely affects the 'Judeo-Christian ethic' is appropriate for the development of public policy for the wider and multi-faith community.

Religious bias – Advisory Committee membership

9. The Bill provides for the constitution of an Advisory Committee, which is to make recommendations to, provide advice to, and consult with the Family Impact Commission. The Committee may also investigate and report on matters referred to it by the Commission. The Bill requires that 12 members appointed to the Advisory Committee be a representative of 12 possible Judeo-Christian religious institutions, including;

- (i) Institute of Family Studies
- (ii) Salvation Army
- (iii) Anglican Church
- (iv) Catholic Church
- (v) Uniting Church
- (vi) Jewish Faith
- (vii) Greek Orthodox Church
- (viii) Presbyterian Church
- (ix) Assembly of God Church
- (x) Australian Federation of Festival of Light Community Standards Organisation – NSW Branch
- (xi) Australian Family Association – NSW Branch
- (xii) NSW Council of Churches

The Bill proposes that 12 out of 15 members on the Advisory Committee be a representative of one of the 12 possible Judeo-Christian religious institutions listed in the Bill. The Committee is concerned that this disproportionately represents organisations of Judeo-Christian religious groups and may neglect to represent the views and interests of stakeholders and community members who do not subscribe to this religion. The Committee refers to Parliament whether it is appropriate for a Committee with the function of providing advice

and reporting on matters of public policy (for a multi-cultural and multi-faith community) to be required to be made up of organisations of the Judeo-Christian ethic.

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

Freedom of religion - Appointment of Commissioner and Assistant Commissioner

10. Section 33(2) provides that a person is not eligible to be appointed as Commissioner unless the Advisory Committee is satisfied that the person is supportive of the principles set out in section 2 of the Bill and is experienced in and knowledgeable about issues which concern the family.
11. Section 34(2) also outlines that a person is not eligible to be appointed as an Assistant Commissioner unless the Advisory Committee is satisfied that the person is supportive of the principles set out in section 2 and is experienced in and knowledgeable about issues which concern the family.

The Bill requires that a Commissioner may not be appointed unless the Advisory Committee is satisfied that the person is supportive of the principles set out under the Act. The test used by the Advisory Committee for whether a potential Commissioner is supportive of these principles is not defined. The Bill's principles contain the exclusive definition of 'family', focuses on matters affecting the Judeo-Christian ethic and requires a selective membership base of the Advisory Committee to represent only organisations of Judeo-Christian origin. Given this, the Committee refers to Parliament whether it is appropriate for a potential Commissioner be required to meet a religious or political test for the appointment to a role regarding public and social policy. The Committee refers this to Parliament for its further consideration.

Wide powers of investigation and information gathering

12. Part 6 outlines provisions for information gathering by the Commission. This includes the power to 'conduct investigations on its own initiatives or for the purposes of the preparation of a Study or Assessment (Section 24). The Committee notes that a Study or Assessment refers to a Family Impact Study or Family Impact Assessment which may evaluate any proposed legislation or expenditure and all enacted, or proposed to be enacted, by the State or a Parliament of the Commonwealth or another State or Territory.
13. Section 25 permits the Commissions to serve notice to require an authority or official to produce a statement or information. Section 26 permits the Commission to serve notice to require an authority or public official to produce documents specified in the notice. Section 27 permits the Commissioner or an authorised officer of the Commission to enter any premises occupied or used by a public authority or public official in that capacity, inspect any document or thing on those premises, and take copies of any document on the premises.

The Committee is concerned that the Bill permits the Commission wide powers of information gathering for the purposes of an investigation, which are broadly defined as being of the Commission's 'own initiative' or 'for the purposes of the preparation of a Study or Assessment'. The Committee refers to Parliament

whether it is appropriate for the proposed Commission to have wide-ranging powers of information gathering for investigations with insufficiently defined parameters.

No definition of 'lawful excuse'

14. Section 41 prescribes offences for any person that hinders, fails to comply with, or makes false statements to the Commission without 'lawful excuse.' The Bill does not contain a definition or guide as to what constitutes a lawful excuse.

The Bill prescribes offences for any person that hinders, fails to comply with or makes false statements to the Commission without 'lawful excuse'. The Committee notes that the Bill does not define what constitutes a lawful excuse, which may create a broad interpretation of this provision. Given the wide powers of information gathering that the Bill affords the Commission, it is concerning that the Bill also creates offences for a person that is seen to obstruct the Commission carry out these broad powers and functions particularly as there are no procedures for review of a decision of the Commission. The Committee draws this to the attention of the Parliament.

Commencement

15. The Committee notes that the Bill does not state its commencement, whether that be by proclamation, on assent or on a fixed date.

The Committee generally prefers legislation to commence on assent or a fixed date. Given the Bill implements a new Commission and requires all introduced legislation to be accompanied by the 'Family Impact Statement', it is important that those that are required to comply with the Act be aware of the commencement of these obligations.

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

No review procedures

16. The Bill does not contain a review process for decisions made by the Commissioner.

The Committee notes that the Bill does not contain any review procedures for decisions made by the Commission. The Committee is concerned that this may make rights, liberties or obligation dependent upon non-reviewable decisions, particularly as the Bill allows the Commission, to require the production of information and documents, enter premises and conduct investigations on its own initiative.

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

Delegation of Commissioners powers to any person

17. Subsection 33(4) allows the Commissioner the discretion to 'by instrument in writing, delegate to any person any of the Commissioner's functions, other than this power of delegation.' It does not outline any requirements that this person be an authorised officer of the Commission or the Advisory Committee, or any other requirements to be selected for delegation of the Commission's functions.

The Committee notes that the Bill allows the Commissioner to delegate any of their legislated functions to any person without requiring that they be an authorised officer of the Commission or any other requirements. This may inappropriately delegate legislative powers to any person as chosen by the Commissioner.

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

Matters dealt with by regulations

18. Section 47 of the Bill proposes that ‘the Governor may make regulations, not inconsistent with this Act, for or with respect to any matter by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.’

This grants the Governor the power to make regulations for a wide scope of matters, provided that it is ‘necessary’ or ‘convenient’ to do so. While what determines whether a regulation as necessary is not defined, it is concerning that regulations can be made for convenience – and without Parliamentary scrutiny - in relation to a wide scope of matters. The Committee refers this issue to the Parliament for its consideration.

2. Medicinal Cannabis (Compassionate Access) Bill 2018*

| | |
|--------------------|--------------------------|
| Date introduced | 15 February 2018 |
| House introduced | Legislative Council |
| Member responsible | The Hon. Adam Searle MLC |
| | *Private Member's Bill |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to establish a registration scheme for medicinal users of cannabis and their carers, and
 - (b) to enable regulations to be made establishing a scheme of authorities for cultivating cannabis plants, manufacturing cannabis and supplying cannabis for the use of registered medicinal users, and
 - (c) to protect registered medicinal users and carers and those acting under authorities under the regulations from criminal liability.

BACKGROUND

2. In his second reading speech, the Hon. Adam Searle MLC noted that a 2013 Legislative Council committee reported on the *Use of cannabis for medical purposes*. That report recommended the provision of medicinal cannabis to those suffering from chronic pain for whom existing pain management is not effective. This Bill implements the recommendations of that report and removes criminal sanctions in relation to people who are using, or wish to use, medicinal cannabis products for pain relief.
3. A version of this Bill was introduced in the Legislative Assembly in 2017 as the *Public Health (Medicinal Cannabis) Bill 2017*. The Legislation Review Committee previously reviewed this Bill in Digest 33/56 and identified several issues. These issues will be outlined in the current report.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

4. Subsection 5(10) requires that the Health Secretary must keep a register of persons registered as medicinal users of cannabis and of persons registered as carers of registered medicinal users.
5. Subsection 5(13) requires each registered medicinal user or carer to be issued with a certificate of registration that incorporates a recent photograph of the person.

The Bill requires the Health Secretary to keep a register of registered medicinal user and carers and to issue certificates of registration that incorporate a recent photograph of the person. The Bill does not specify who has access to these records or for what purpose they may also be used. The Committee recognises that some individuals may consider providing a photograph in official health records to infringe on their right to privacy. However, given the public policy concerns that the use of medicinal cannabis be restricted to approved individuals, the Committee makes no further comment.

Freedom of movement

6. Section 10 provides that a registered medicinal user or carer must not administer cannabis in a public place.

The Committee notes that the Bill restricts access to medicinal cannabis treatment in a public place. Given the aims of the legislation, particularly the alleviation of pain and symptoms relating to a wide range of terminal or serious medical conditions, the Committee draws this to the attention of the Parliament.

Compensation

7. Section 13 provides that if the Health Secretary cancels the registration of a registered medicinal user or registered carer, or a licence, permit or other authority is suspended or cancelled under the regulations, the Health Secretary may, by written order given to the person whose registration or authority is suspended or cancelled, require the person to forfeit destroy or dispose of any cannabis in the possession of the person as specified in the order.

The Committee notes that a person who has had their registration cancelled or suspended may be subject to forfeiture, destruction or disposal requirements of the legally purchased medicinal cannabis. The Committee refers to Parliament whether a person who has legally purchased medicinal cannabis should be compensated for its forfeiture, destruction or disposal.

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

Power to cancel registration

8. Section 6(3) provides that the regulations may set out other grounds for cancellation of a person's registration as a medicinal cannabis user or carer, in addition to those listed in the Bill.

The Committee notes that the Bill allows further grounds for cancellation of a person's registration as a medicinal cannabis user or carer may be set out in the regulations. It is noted that the Bill allows a person 14 days in which to make submissions to the Health Secretary in relation to the proposed cancellation. However, this procedural safeguard may not be adequate against additional grounds for cancellation to be created in the regulations. The Committee generally prefers that provisions prescribing rights, liberties or obligations are sufficiently clear for the benefit of people relying on those rights, liberties or

obligations. The Committee refers this regulation-making power to the Parliament for its consideration.

Scheme to be established by regulations

9. Part 3 of the Bill provides that the regulations may establish a scheme for authorising activities designed to enable cannabis to be obtained for use by registered medicinal users, including the cultivating, harvesting, manufacturing or producing, storing or supplying cannabis. The regulations may also provide a scheme for the granting, revocation or suspension of licenses permits or other authorities for the activities, including requirements for criminal record checks or other eligibility requirements.

The Committee notes the administrative convenience of enabling the regulations to establish a scheme that involves the granting and revocation of licences. However, the Committee refers to Parliament whether such a scheme may be more appropriately included in the principal legislation.

Power to create offences in the regulations

10. Subsection 14(2) permits the regulation to create offences punishable by a penalty not exceeding 20 penalty points.

The Committee notes that the Bill empowers the regulations to create offences. The Committee refers this to the Parliament for its consideration on whether offences are more appropriately set out in the principal legislation that is passed by the Parliament.

Clarity - Rights of the child

11. Part 2 outlines provisions for the registration of medicinal users and carers. Section 5(6) provides that 'an application may be made on behalf of a child by the parents and guardians of the child'.

Part 2 of the Bill outlines provisions for the registration of medicinal users and carers, including subsection 5(6) that allows an application to be made on behalf of a child by the parents or guardians of the child. The Committee notes that subsection 5(6) does not specify whether the application is for the child to be a registered medicinal user or a registered carer of a registered medicinal user. While it can be assumed that the provision intends for children to be able to access medicinal cannabis for terminal or serious medical conditions, the legislation does not clearly distinguish this. Legislation that enables carer responsibilities to be conferred onto children may infringe on the rights of the child. 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

12. Section 2 states that the Bill commences on a date to be appointed by proclamation.

The Committee generally prefers legislation to commence on a fixed date or on assent. However, the Committee acknowledged that the Bill introduces various administrative changes relating to the supply and use of cannabis for health conditions. Due to the complex nature of these changes, the Committee

understands that some flexibility may be desirable in regards to a commencement date.

Part Two - Regulations

1. Health Practitioner Regulation (New South Wales) Amendment (Records of Partners) Regulation 2017

| | |
|----------------------|--------------------------|
| Date published | 8 December 2017 |
| Disallowance date | 1 May 2018 |
| Minister responsible | The Hon. Brad Hazzard MP |
| Portfolio | Health |

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to continue in force a provision requiring certain records to be kept by medical practitioners and medical corporations in relation to partners of patients being treated for chlamydia, which would otherwise cease to have effect on 1 January 2018.
2. This regulation is related to the *Poisons and Therapeutic Goods Amendment (Records of Partners) Regulation 2017*.

ISSUES CONSIDERED BY COMMITTEE

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

Right to privacy

3. The regulation continues the requirement that medical practitioners and medical corporations keep a record of partners of patients being treated for chlamydia. A 'partner' includes the patient's spouse, de facto partner, or a person with whom the patient is or was in a sexual relationship. The regulation states that the partner's name and email address or mobile number is sufficient for the purposes of identifying the partner.

The regulation continues the requirement that medical practitioners keep a record of partners of patients being treated for chlamydia. As this includes keeping a record of the name, email address or mobile number of a patient's spouse, de facto partner or a person with whom the patient is or was in a sexual relationship with, this may impact the right to privacy of a patient's relationships and the identity of their partners. However, the Committee recognises the importance of keeping such records to ensure the health of the patient's partner and the treatment of chlamydia. The Committee makes no further comment.

2. Liquor Further Amendment (Miscellaneous) Regulation 2017

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|----------------------|------------------------|
| Date published | 8 December 2017 |
| Disallowance date | 1 May 2018 |
| Minister responsible | The Hon. Paul Toole MP |
| Portfolio | Racing |

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Liquor Regulation 2008*:
 - (a) to allow certain licensed premises (or part of licensed premises) to which section 12 (1B) of the *Liquor Act 2007* applies to sell or supply liquor for consumption away from the premises until 11pm in the case of any Sunday that falls on 24 December, and
 - (b) to vary the special licence conditions that apply to certain licensed premises in the Sydney CBD Entertainment and Kings Cross precincts. The licensee of such premises must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying the name of a motorcycle-related or similar organisation prescribed by the *Liquor Regulation 2008*. The list of such prescribed names is amended by:
 - (i) omitting the name “Muslim Brotherhood Movement”, and
 - (ii) adding the names “Iron Horsemen”, “Mobshitters”, “No Surrender and Outlaws”, “Brothers for Life” and “Mongrel Mob”

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of association

2. The Regulation amends the list of certain persons excluded 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.

The Regulation amends the list of certain persons excluded from entering certain licensed premises if they are wearing any clothing or accessory displaying a connection with the listed motorcycle organisations. This may

interfere with a person's right to join and participate in an organisation of their choosing without prejudice. The regulation may also, in practice, result in members of other clubs being excluded access to certain premises as the list of prohibited clothing/items is quite extensive.

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, for the reasons outlined above, the Committee refers to Parliament whether the regulation unduly trespasses on personal rights and liberties.

3. Poisons and Therapeutic Goods Amendment (Records of Partners) Regulation 2017

| | |
|----------------------|--------------------------|
| Date published | 8 December 2017 |
| Disallowance date | 1 May 2018 |
| Minister responsible | The Hon. Brad Hazzard MP |
| Portfolio | Health |

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to continue in force provisions requiring certain records to be kept by authorised practitioners and details to be included on certain prescriptions, in relation to partners of patients being treated for chlamydia that would otherwise cease to have effect on 1 January 2018.
2. This regulation is related to the *Health Practitioner Regulation (New South Wales) Amendment (Records of Partners) Regulation 2017*.

ISSUES CONSIDERED BY COMMITTEE

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

Right to privacy

3. The regulation continues the requirement that authorised practitioners keep a record of partners of patients being treated for chlamydia. A ‘partner’ includes the patient’s spouse, de facto partner, or a person with whom the patient is or was in a sexual relationship. The regulation states that the partner’s name and email address or mobile number is sufficient for the purposes of identifying the partner.

The regulation continues the requirement that authorised practitioners keep a record of partners of patients being treated for chlamydia. As this includes keeping a record of the name, email address or mobile number of a patient’s spouse, de facto partner or a person with whom the patient is or was in a sexual relationship with, this may impact on the right to privacy of a patient’s relationships and the identity of their partners. However, the Committee recognises the importance of keeping such records to ensure the health of the patient’s partner and the treatment of chlamydia. The Committee makes no further comment.

4. Work Health and Safety Amendment (Licence Register) Regulation 2017

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|----------------------|----------------------------------|
| Date published | 8 December 2017 |
| Disallowance date | 1 May 2018 |
| Minister responsible | The Hon. Matthew Keane MP |
| Portfolio | Innovation and Better Regulation |

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to require SafeWork NSW, being the regulator under the *Work Health and Safety Act 2011*, to keep a register of the holders of certain licences and general construction induction training cards under that Act.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

2. The regulation requires that the regulator must keep a register of each person who is a holder of certain licenses and general construction induction training cards. The register must include the details of the licence and licence holder, including the name, class of licence and date of issue and expiry of the licence holder.
3. The register may also include other particulars listed in the regulation. These include particulars 'as the regulator thinks appropriate for inclusion on the register.'
4. The regulation also authorises the regulator to make certain information on the register publicly available, including 'other information that the regulator thinks fit.'

The Committee notes that the discretion of the regulator to include information on the register that it 'thinks appropriate' may allow information to be included that extends beyond a person's capacity as a licence holder. This opens the potential for the recording of information not directly relevant to their licence. Given that the regulator also has a wide discretion as to what information from the register can be published, the Committee refers to Parliament whether the regulation should limit this discretion to particulars that are directly relevant to the person in their capacity as a licence holder.

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.