



## 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 s 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. ANIMAL PROTECTION AND CRIMES LEGISLATION AMENDMENT (REPORTING ANIMAL CRUELTY AND PROTECTION OF ANIMAL ENTERPRISES) BILL 2018\*

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

#### *Inappropriate duty placed on individuals*

The Committee notes that the proposed section places a duty on members of the public to report to relevant officers acts of cruelty towards animals that they have recorded. Any failure to discharge this duty results in a penalty. The Committee notes that the Bill does not provide for any exemptions or circumstances where there may be a delay in providing a recording to authorities, such as, where the recording may be part of attempts to expose ongoing animal cruelty. The Committee refers this issue to Parliament for its consideration.

#### *Excessive penalties*

The Committee notes that the Bill creates two new offences aimed at strengthening the protections for people engaged in animal enterprises. Depending on the circumstances surrounding the offences, the maximum penalties range from 1 year imprisonment to life imprisonment. The Committee considers that the penalties exceed the offending behaviour and refers this issue to Parliament for its consideration.

2. LIQUOR AND GAMING LEGISLATION AMENDMENT BILL 2018; CASINO CONTROL AMENDMENT BILL 2018; GAMING MACHINE AMENDMENT (LEASING AND ASSESSMENT) BILL 2018; REGISTERED CLUBS AMENDMENT (ACCOUNTABILITY AND AMALGAMATIONS) BILL 2018

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

#### **Casino Control Amendment Bill 2018**

#### *Privacy – identity of applicants*

The Bill permits the Authority to refer to the Commissioner of Police details of special employee applicants, including copies of photographs, fingerprints, palm prints and any supporting evidence that the Authority considers appropriate. The Bill also permits this information to be used by the Commissioner of Police to inquire into and report to the Authority on such matters that the Authority requests. The Committee notes that the information may be used for a wide variety of purposes and may unduly infringe on the privacy of those applicants. The Committee draws this to the attention of the Parliament.

#### *Privacy – identity of patrons*

The Bill requires the casino operator to provide the Authority or inspector with a list of persons excluded from the casino premises. Although this requirement involves potentially sharing personal details of excluded persons, the Committee recognises that this information is required to fulfil the purpose and functions of the Act. The Committee makes no further comment.

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

**Gaming machines Amendment (Leasing and Assessment) Bill 2018**

*Ill and wide-defined powers*

The Committee notes that the Bill provides the Authority with powers to make a determination that a certain area is a restricted increase area for the purposes of setting caps on gaming entitlements. The Bill does not specify what factors the Authority may consider in making this determination. A determination made under this section may impact upon obligations of the owners of venues and gaming entitlements in certain areas. The Committee draws Parliament's attention to the insufficiently defined powers of the Authority under the proposed section.

**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 to provide certainty to those subject to its provisions. However, the Committee acknowledged that the Bills introduce a wide range of administrative changes across many casino bodies. Consequently, the Committee recognises the administrative convenience of such a provision.

**Casino Control Amendment Bill 2018**

*Delegation to the regulations – postponement of mandatory reviews*

The Committee refers to Parliament whether it is appropriate for the regulations to have the power to postpone or extend the intervals between the required reviews of a casino license.

3. MODERN SLAVERY BILL 2018\*

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

*Right to privacy/right to confidentiality*

Several provisions in the Bill override privacy protections that may otherwise apply to information provided by and to the Anti-Slavery Commissioner. However, the relevant privacy Acts may only be breached to the extent the information in question is relevant to the exercise of the Commissioner's functions. The Bill also excludes liability for providing any information to the Commissioner which breaches a duty of confidentiality, as long as that information is given in good faith and in accordance with the Act.

While these provisions may trespass on rights to privacy and confidentiality, the Committee is of the view that the trespass is justified in the circumstances. This is for two reasons. Firstly, the aim of the provisions is to inform appropriate agencies or the Commissioner of instances of suspected or actual slavery. Second, the relevant provisions contain safeguards that limit the scope of information to be provided. The Committee makes no further comment.

*Reverse onus of proof*

The Bill enables a court to impose a modern slavery risk order in relation to certain offences. Such an order prohibits a person from engaging in specified conduct. It is an offence to contravene the order, without reasonable excuse. The Bill makes clear that the person charged with the offence bears the onus of proving that they had a reasonable excuse. While the

Committee generally discourages the imposition of a reverse onus of proof, the Committee is of the view that this is justified in the circumstances. This is because, given the likely practical application of the offence, the evidentiary burden on the prosecution may otherwise be too high. The Committee makes no further comment.

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

*Meaning of ‘digital platform’*

The Bill creates several new offences in relation to the use of a digital platform to deal with child abuse material. The relevant offences all attract a maximum penalty of 14 years in prison. While ‘administer’ a digital platform is defined, the meaning of ‘digital platform’ is absent from the Bill. The Committee is concerned that ‘digital platform’ may not have a natural and ordinary meaning which is readily understood by the community. Given that the new offences attract a sentence of up to 14 years’ prison, the Committee draws this lack of clarity to the attention of Parliament.

4. ROAD TRANSPORT LEGISLATION AMENDMENT (ROAD SAFETY) BILL 2018

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

*Increased penalties*

The Bill amends the principal Act to increase the penalties for offences for the use or attempted use of a vehicle under the influence of alcohol or any other drug – this doubles the current imprisonment terms. The Committee considers that such a sharp increase in the maximum penalties, without detailed evidence to support them, may unduly trespass on personal rights and liberties. The Committee refers this issue to the Parliament for its consideration.

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

*Ill-defined powers*

It is noted that the definition of a ‘sobriety assessment’ is not included in the Bill, the principal Act, or the regulations. In absence of a clear and formal test outlining the requirements of a ‘sobriety assessment’, it may be possible for police to prevent a person from driving for being under the influence of drugs without an objective assessment or evidence indicating this fact. This may also lead to inconsistency in its application. However, the Committee recognises the public safety objectives of this provision and makes no further comment.

5. WORK HEALTH AND SAFETY AMENDMENT BILL 2018

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

*Right to a safe workplace*

The Bill amends the *Work Health and Safety Act 2011* so that Police who are involved in responding to particular active armed offender incidents are excluded from criminal liability for failing to comply with a health and safety duty. The Act creates a number of offences in relation to the breach of such a duty, including if the breach exposes an individual to a risk of death or serious injury or illness, and the person who exposes an individual to that risk does so recklessly and without reasonable excuse.



Such a provision may be seen to trespass on the right of the Police to a safe workplace. However, the Committee acknowledges that Police have a unique and important role in protecting the community, which may expose members of the Police to the risk of death or serious injury. Given that the exclusion from liability is limited to certain active armed offender incidents, and the amendment appears to have been requested by the Police, the Committee makes no further comment.

*Rights under the Surveillance Devices Act 2007*

The Bill proposes that, when conducting an interview under the Act, an inspector may make a sound or audio visual recording of that interview. However, the inspector must inform the interviewee and provide a copy of the recording to them as soon as practicable.

This provision may trespass on a person's right to privacy, specifically the right under the *Surveillance Devices Act 2007* not to be recorded, unless the person being recorded provides their consent. That said, the amendment follows a recommendation of the statutory review of the Act, which detailed the policy reasons for such a change. That review also observed that a similar power to record interviews without a person's consent already exists in seven other Acts, including the *Environmental Planning and Assessment Act 1979*.

Given that the statutory review also noted that the Department of Justice would be consulted in relation to the impact of the amendment on the *Surveillance Devices Act 2007*, the Committee makes no further comment.

6. WYONG SPECIAL AREA (PROTECTION) BILL 2018\*

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

*Retrospectivity*

The Committee notes the cancellation of planning approvals before the commencement of the Bill is contrary to the rule of law. In some circumstances, the Committee may consider subsection 6(2) to trespass on an individual's rights and liberties. However, the Committee also notes that the object of the Bill is to protect certain lands at Wyong from mining and mining-related activities and individuals are unlikely to be the affected parties under this legislation. As such, the Committee makes no further comment.

## Part One - Bills

# 1. Animal Protection and Crimes Legislation Amendment (Reporting Animal Cruelty and Protection of Animal Enterprises) Bill 2018\*

Date introduced	8 March 2018
House introduced	Legislative Council
Member responsible	The Hon Robert Borsak MLC
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- a) to amend the *Prevention of Cruelty to Animals Act 1979* to require persons who record serious acts of cruelty to animals to report the act, and provide the recording, to a police officer or other relevant officer under that Act (which includes an RSPCA inspector),
- b) to amend the *Crimes Act 1900* to create the following offences:
  - i. destroying or damaging property used in connection with a lawful animal enterprise with the intention of interfering with the carrying on of the enterprise,
  - ii. engaging in conduct involving threats, vandalism, damage to property, trespass, harassment or intimidation against or in relation to persons who are carrying on (or are connected with) a lawful animal enterprise.

### BACKGROUND

2. In the Second Reading Speech, the Hon Robert Borsak MLC commented that the Bill aims to minimise unnecessary delays in reporting cruelty to animals by requiring a person to report serious animal cruelty after recording it. Mr Borsak commented that any failure to do so makes the person complicit in the act of animal cruelty.
3. Mr Borsak also commented that the Bill aims to afford lawful animal enterprises the security that they may conduct their businesses free of unwarranted trespasses and attacks.

## ISSUES CONSIDERED BY THE COMMITTEE

**Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA***Inappropriate duty placed on individuals*

4. Schedule 1 of the Bill amends the *Prevention of Cruelty to Animals Act 1979* to insert a provision requiring any person who records an act of cruelty to a domestic animal to report the Act to an officer and provide the recording to an officer. The person must report the act to an officer within 1 business day and provide the recording within 5 business days. A failure to fulfil the requirements attracts a maximum penalty of 50 penalty units.

**The Committee notes that the proposed section places a duty on members of the public to report to relevant officers acts of cruelty towards animals that they have recorded. Any failure to discharge this duty results in a penalty. The Committee notes that the Bill does not provide for any exemptions or circumstances where there may be a delay in providing a recording to authorities, such as, where the recording may be part of attempts to expose ongoing animal cruelty. The Committee refers this issue to Parliament for its consideration.**

*Excessive penalties*

5. Schedule 2 of the Bill amends the *Crimes Act 1900* by inserting a new Division that concerns the protection of animal enterprises. Animal enterprises are defined to include:
  - a) a commercial or academic enterprise that uses, sells, houses or stores animals or animal products for profit, food, fibre production, agriculture, education, research or testing,
  - b) a zoo, aquarium, animal shelter, pet shop, animal breeding establishment or circus,
  - c) a rodeo or other lawful competitive animal event,
  - d) any show or similar event intended to advance agricultural arts and sciences.
6. The proposed Division creates two offences concerning: destroying and damaging property used in connection with animal enterprises; and engaging in unlawful conduct against or in relation to persons who are carrying on an animal enterprise. The Division also provides for circumstances where the offences are committed in aggravation.
7. Depending on the circumstances surrounding the offences, the maximum penalties range from 1 year imprisonment to life imprisonment. For example, an offence of engaging in conduct that damages property used in an animal enterprise attracts a maximum penalty of 1 year imprisonment. If the same conduct results in economic damage exceeding \$100,000, the maximum penalty is 10 years imprisonment. Similarly, an offence of engaging in conduct involving vandalism that causes a person who carries on an animal enterprise to reasonably fear for their safety attracts a maximum penalty of 1 year imprisonment. If the same conduct results in the death of the person, the maximum penalty is life imprisonment.

8. The Division also provides that for the purposes of the offences, it does not matter whether the offending conduct actually interferes with the carrying on of the animal enterprise.

**The Committee notes that the Bill creates two new offences aimed at strengthening the protections for people engaged in animal enterprises. Depending on the circumstances surrounding the offences, the maximum penalties range from 1 year imprisonment to life imprisonment. The Committee considers that the penalties exceed the offending behaviour and refers this issue to Parliament for its consideration.**

## 2. Liquor and Gaming Legislation Amendment Bill 2018; Casino Control Amendment Bill 2018; Gaming Machine Amendment (Leasing and Assessment) Bill 2018; Registered Clubs Amendment (Accountability and Amalgamations) Bill 2018

Date introduced	6 March 2018
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Racing

### PURPOSE AND DESCRIPTION

1. For the purpose and description of these four cognate Bills, please refer to Appendix Two.

### BACKGROUND

2. This Bill report considers four cognate Bills – the *Liquor and Gaming Legislation Amendment Bill 2018*, the *Casino Control Amendment Bill 2018*, the *Gaming Machine Amendment (Leasing and Assessment) Bill 2018*, and the *Registered Clubs Amendment (Accountability and Amalgamations) Bill 2018*.
3. These Bills introduce a legislative framework to reform the regulation of the liquor, gaming and club industries in New South Wales. In his second reading speech, the Minister noted that the Bills make a number of amendments to 16 pieces of legislation and build on the Government’s existing measures that are designed to protect those most impacted by gambling-related harms.

### ISSUES CONSIDERED BY THE COMMITTEE

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

##### **Casino Control Amendment Bill 2018**

###### *Privacy – identity of applicants*

4. Clause 6 inserts section 46(3A), which provides that the Authority may refer to the Commissioner of Police details of a special employee applicant, copies of any photographs, fingerprints and palm prints taken and any supporting information that the Authority considers appropriate for referral to the Commissioner.

5. A special employee is defined in the principal Act as a person who is employed or working in the casino in a wide range of positions relating to management, security and gaming.
6. The principal Act also permits that the Authority may require the applicant (of a special employee licence) to consent to having their photograph, fingerprints and palm prints taken and may refuse to consider the application if the applicant refuses to provide this information. The Bill proposes to extend this power to gather personal information to also include the sharing of this personal information with the Commissioner of Police.
7. Clause 6 also inserts section 46(3B), which permits the Commissioner of Police to inquire into and report to the Authority on such matters concerning the application as the Authority may request. This allows the Commissioner of Police to use personal identification information of special employee applicants to inquire into and report to the Authority on matters concerning the application as requested by the Authority – leaving a wide range of purposes open for investigations and use of this information that is not specified in the Act or regulations.

**The Bill permits the Authority to refer to the Commissioner of Police details of special employee applicants, including copies of photographs, fingerprints, palm prints and any supporting evidence that the Authority considers appropriate. The Bill also permits this information to be used by the Commissioner of Police to inquire into and report to the Authority on such matters that the Authority requests. The Committee notes that the information may be used for a wide variety of purposes and may unduly infringe on the privacy of those applicants. The Committee draws this to the attention of the Parliament.**

*Privacy – identity of patrons*

8. Clause 42 inserts section 83(2), which required the casino operator to provide the Authority or inspector with a list of excluded persons.

**The Bill requires the casino operator to provide the Authority or inspector with a list of persons excluded from the casino premises. Although this requirement involves potentially sharing personal details of excluded persons, the Committee recognises that this information is required to fulfil the purpose and functions of the Act. The Committee makes no further comment.**

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

**Gaming machines Amendment (Leasing and Assessment) Bill 2018**

*Ill and wide-defined powers*

9. Clause 8 of the Bill inserts section 32A into the *Gaming Machines Act 2001*. Section 32A provides that the Liquor and Gaming Authority (the Authority) may determine from time to time the maximum number of gaming machine entitlements to be permitted in the Fairfield Local Government Area or a *restricted increase area*.

10. A *restricted increase area* is defined as any local statistical area of the State that is classified as a Band 3 LSA and that the Authority determines from time to time to be a restricted increase area for the purposes of this section.
11. The Bill does not provide details as to what criteria the Authority may use to determine when an area will be classified as a restricted increase area.

**The Committee notes that the Bill provides the Authority with powers to make a determination that a certain area is a restricted increase area for the purposes of setting caps on gaming entitlements. The Bill does not specify what factors the Authority may consider in making this determination. A determination made under this section may impact upon obligations of the owners of venues and gaming entitlements in certain areas. The Committee draws Parliament's attention to the insufficiently defined powers of the Authority under the proposed section.**

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

#### *Commencement by proclamation*

12. All four cognate Bill provide that the Acts commence a day or days to be appointed by proclamation.

**The Committee generally prefers legislation to commence on a fixed date or on assent to provide certainty to those subject to its provisions. However, the Committee acknowledged that the Bills introduce a wide range of administrative changes across many casino bodies. Consequently, the Committee recognises the administrative convenience of such a provision.**

### **Casino Control Amendment Bill 2018**

#### *Delegation to the regulations – postponement of mandatory reviews*

13. Clause 2 of the Bill inserts section 31(3), which permits the regulations to postpone or extend the intervals between reviews required under section 31. Section 31 reviews involve a review, at intervals not exceeding five years, of whether the casino operator is a suitable person to continue to give effect to a casino license and whether it is in the public interest that the casino license should continue.

**The Committee refers to Parliament whether it is appropriate for the regulations to have the power to postpone or extend the intervals between the required reviews of a casino license.**

### 3. Modern Slavery Bill 2018\*

Date introduced	8 March 2018
House introduced	Legislative Council
Minister responsible	The Hon Paul Green MLC
Portfolio	*Private Members Bill

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to combat modern slavery,
  - (b) to provide assistance and support for victims of modern slavery,
  - (c) to provide for an Anti-Slavery Commissioner (the Commissioner),
  - (d) to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur,
  - (e) to raise community awareness of, and provide for education and training about, modern slavery,
  - (f) to encourage collaborative action to combat modern slavery,
  - (g) to provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws,
  - (h) to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of certain corporate bodies,
  - (i) to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales,
  - (j) to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material.

#### BACKGROUND

2. The Bill has been drafted by a cross-parliamentary working group and addresses the findings and recommendations of the October 2017 report of the Legislative Council's Select Committee on Human Trafficking in NSW.
3. The second reading speech suggests that the Anti-Slavery Commissioner is based in part on the UK commissioner, who encourages good practice in the prevention, detection, investigation and prosecution of modern slavery offences.



## ISSUES CONSIDERED BY COMMITTEE

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

#### *Right to privacy/right to confidentiality*

4. Several provisions in the Bill, including proposed sections 13(4) and 14(5), override privacy protections that may otherwise apply to the provision of information by and to the Commissioner. Section 16 also excludes liability for a breach of duty of confidentiality.
5. For example, section 13 allows the Commissioner to refer any information received in relation to actual or suspected slavery to certain government or investigative agencies.
6. Section 14 imposes a duty to cooperate on certain agencies, meaning that such agencies must disclose information likely to be of assistance to the Commissioner or an agency in the exercise of its functions. The duty to cooperate under the section is subject to any duty of confidentiality imposed by the law.
7. That said, both sections 13 and 14 note that such information may be referred or disclosed despite the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002. However, such information can only be communicated in breach of these Acts to the extent relevant to the exercise of a function of the Commissioner.
8. The Committee also notes that section 16 prevents a person from incurring criminal or civil liability (including for a breach of the duty of confidentiality) for providing any information to the Commissioner if it is provided in accordance with the Act, and in good faith.

**Several provisions in the Bill override privacy protections that may otherwise apply to information provided by and to the Anti-Slavery Commissioner. However, the relevant privacy Acts may only be breached to the extent the information in question is relevant to the exercise of the Commissioner's functions. The Bill also excludes liability for providing any information to the Commissioner which breaches a duty of confidentiality, as long as that information is given in good faith and in accordance with the Act.**

**While these provisions may trespass on rights to privacy and confidentiality, the Committee is of the view that the trespass is justified in the circumstances. This is for two reasons. Firstly, the aim of the provisions is to inform appropriate agencies or the Commissioner of instances of suspected or actual slavery. Second, the relevant provisions contain safeguards that limit the scope of information to be provided. The Committee makes no further comment.**

#### *Reverse onus of proof*

9. Proposed section 26 enables a court to impose a modern slavery risk order in respect of certain criminal offences, which prohibits the person from engaging in conduct described in the order. The Bill provides that a person subject to such an order must not, without reasonable excuse, contravene the order. Subsection (9) makes clear that the person charged with the offence bears the onus of proving whether they had a reasonable excuse.

**The Bill enables a court to impose a modern slavery risk order in relation to certain offences. Such an order prohibits a person from engaging in specified conduct. It is an offence to contravene the order, without reasonable excuse. The Bill makes clear that the person charged with the offence bears the onus of proving that they had a reasonable excuse. While the Committee generally discourages the imposition of a reverse onus of proof, the Committee is of the view that this is justified in the circumstances. This is because, given the likely practical application of the offence, the evidentiary burden on the prosecution may otherwise be too high. The Committee makes no further comment.**

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

*Meaning of 'digital platform'*

10. Clause 3 of Schedule 4 to the Bill amends the Crimes Act 1900 to create a new offence of administering a digital platform used to deal with child abuse material. Section 91HAA provides that the person who administers the digital platform is guilty of an offence if several elements are satisfied, including for example that the digital platform is used by another person to deal with child abuse material. Section 91HAB creates an offence of encouraging use of a digital platform to deal with child abuse material, and section 91HAC creates an offence of assisting in the commissioning of an offence under sections 91HAA and 91HAB. The maximum penalty for all these offences is imprisonment for 14 years.
11. While section 91HAA elaborates on what it means to 'administer' a digital platform, the Bill and the Crimes Act 1900 do not define the meaning of 'digital platform'.

**The Bill creates several new offences in relation to the use of a digital platform to deal with child abuse material. The relevant offences all attract a maximum penalty of 14 years in prison. While 'administer' a digital platform is defined, the meaning of 'digital platform' is absent from the Bill. The Committee is concerned that 'digital platform' may not have a natural and ordinary meaning which is readily understood by the community. Given that the new offences attract a sentence of up to 14 years' prison, the Committee draws this lack of clarity to the attention of Parliament.**

## 4. Road Transport Legislation Amendment (Road Safety) Bill 2018

Date introduced	6 March 2018
House introduced	Legislative Assembly
Minister responsible	The Hon. Melinda Pavey MP
Portfolio	Roads, Maritime and Freight

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Road Transport Act 2013* (the principal Act):
  - (a) to include cocaine as a prescribed illicit drug, and
  - (b) to bring the consequences for driving a motor vehicle while under the influence of drugs into line with those for doing so with a high range prescribed concentration of alcohol, and
  - (c) to authorise a police officer to prevent a person suspected of being under the influence of alcohol or another drug from using a vehicle, and
  - (d) to authorise the use of devices for the enforcement of offences relating to the use of a mobile phone by drivers of motor vehicles, and
  - (e) to make other amendments of a minor, miscellaneous or consequential nature.

### BACKGROUND

2. In her second reading speech, the Minister noted that the Bill was in line with the NSW Government Road Safety Plan 2021 to decrease the road toll. The Minister also noted that the plan reflects the internationally recognised Safe System approach to improving road safety, and has been developed based on expert advice and input from road safety stakeholders and the community.

### ISSUES CONSIDERED BY THE COMMITTEE

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

##### *Increased penalties*

3. Clause 4 amends the maximum penalty available in the case of a first offence to 30 penalty units or imprisonment for 18 months or both. This doubles the current maximum terms of imprisonment of 9 months for a first offence. Clause 4 also increases the maximum penalty in the case of a second or subsequent offence to 50 penalty units or imprisonment for 2 years or both. This doubles the maximum term of imprisonment of 12 months for a second or subsequent offence.

**The Bill amends the principal Act to increase the penalties for offences for the use or attempted use of a vehicle under the influence of alcohol or any other drug – this doubles the current imprisonment terms. The Committee considers that such a sharp increase in the maximum penalties, without detailed evidence to support them, may unduly trespass on personal rights and liberties. The Committee refers this issue to the Parliament for its consideration.**

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

*Ill-defined powers*

4. Clause 13 of the Bill permits additional powers to police officers who arrest a person for failing to submit to or pass a sobriety assessment to also prohibit the person from driving a motor vehicle for a period of up to 48 hours. A sobriety assessment is not defined in the amending legislation, the principal Act or the regulations.

**It is noted that the definition of a ‘sobriety assessment’ is not included in the Bill, the principal Act, or the regulations. In absence of a clear and formal test outlining the requirements of a ‘sobriety assessment’, it may be possible for police to prevent a person from driving for being under the influence of drugs without an objective assessment or evidence indicating this fact. This may also lead to inconsistency in its application. However, the Committee recognises the public safety objectives of this provision and makes no further comment.**

## 5. Work Health and Safety Amendment Bill 2018

Date introduced	6 March 2018
House introduced	Legislative Council
Minister responsible	The Hon. Matt Kean MP
Portfolio	Innovation and Better Regulation

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
  - (a) to provide that certain members of the NSW Police Force (the Police) who are involved in responding to active armed offender incidents do not commit offences under Division 5 of Part 2 of the Work Health and Safety Act 2011 (the Act) for failures to comply with health and safety duties, and
  - (b) to make miscellaneous amendments to the Act as a result of a statutory review tabled in Parliament on 22 June 2017.

### BACKGROUND

2. Most amendments in the Bill implement recommendations from the statutory review of the Act. That review focused only on matters relating to NSW, given that a national review of the model Work Health and Safety Law will be undertaken in 2018.
3. According to the second reading speech, the amendment that relates to the liability of members of the Police under the Act follows concerns raised by the Police.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Right to a safe workplace*

4. The Bill inserts section 34A which provides that a member of the Police does not commit an offence under the Division for failing to comply with a health and safety duty in relation to 'particular active armed offender incidents.' An incident is generally classified as such if an offender attacks or attempts to attack another person, and the member or their supervisor reasonably believes that the offender will attack or continue to attack a person. Members of the Police that are excluded from liability in relation to such incidents include:
  - (a) the Police responding to the incident,
  - (b) members in command of Police who are responding to the incident,

- (c) members receiving or providing information to other members of the Police to assist in the response,
  - (d) members planning or preparing a response to the incident with other members of the Police.
5. Division 5 sets out a number of offences relating to the breach of a health and safety duty. For example, section 31 creates a Category 1 offence for those that, recklessly and without reasonable excuse, expose an individual to whom a health and safety duty is owed to a risk of death or serious injury or illness. Such an offence carries a maximum term of imprisonment of 5 years. Section 32 also creates a Category 2 offence if a person breaches a health and safety duty and the failure exposes an individual to a risk of death or serious injury or illness.
6. Subsection (3) clarifies that the provision does not affect the duties of the State or Crown in relation to active armed offender incidents. The second reading speech clarifies that this means that the State can still be prosecuted under the Act for a breach of duty.

**The Bill amends the *Work Health and Safety Act 2011* so that Police who are involved in responding to particular active armed offender incidents are excluded from criminal liability for failing to comply with a health and safety duty. The Act creates a number of offences in relation to the breach of such a duty, including if the breach exposes an individual to a risk of death or serious injury or illness, and the person who exposes an individual to that risk does so recklessly and without reasonable excuse.**

**Such a provision may be seen to trespass on the right of the Police to a safe workplace. However, the Committee acknowledges that Police have a unique and important role in protecting the community, which may expose members of the Police to the risk of death or serious injury. Given that the exclusion from liability is limited to certain active armed offender incidents, and the amendment appears to have been requested by the Police, the Committee makes no further comment.**

#### *Rights under the Surveillance Devices Act 2007*

7. Section 185A in the Bill provides that an inspector may make an audio visual or sound recording of an interview with a person being questioned without their consent. The inspector must inform the interviewee that the recording is being made and provide a copy as soon as practicable after it is made.
8. This amendment relates to recommendation 4 in the statutory review.<sup>1</sup> According to the statutory review, if an interviewee withholds consent to the recording of an interview, the current practice is that the inspector instead makes a written record of the interview. This practice is time-consuming and may result in inaccuracies.
9. In support of the recommendation, the statutory review observes that several other NSW Acts enable an authorised officer to record an interview, provided that the interviewee is informed. These include the Environmental Planning and Assessment Act

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<sup>1</sup> See [Work Health and Safety Act 2011 Statutory Review – June 2017](#).

1979, Water Management Act 2000, Biosecurity Act 2015, among others. The Resources Regulator has similar powers under other legislation it administers, but is not able to record interviews when exercising its functions under the Act relating to mines.

10. For completeness, the statutory review notes that the Act would continue to provide that an answer to a question in such an interview is not admissible, other than in proceedings for a false or misleading answer.

**The Bill proposes that, when conducting an interview under the Act, an inspector may make a sound or audio visual recording of that interview. However, the inspector must inform the interviewee and provide a copy of the recording to them as soon as practicable.**

**This provision may trespass on a person's right to privacy, specifically the right under the *Surveillance Devices Act 2007*<sup>2</sup> not to be recorded, unless the person being recorded provides their consent. That said, the amendment follows a recommendation of the statutory review of the Act, which detailed the policy reasons for such a change. That review also observed that a similar power to record interviews without a person's consent already exists in seven other Acts, including the *Environmental Planning and Assessment Act 1979*.**

**Given that the statutory review also noted that the Department of Justice would be consulted in relation to the impact of the amendment on the *Surveillance Devices Act 2007*, the Committee makes no further comment.**

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<sup>2</sup> See section 7(2) of that Act.

## 6. Wyong Special Area (Protection) Bill 2018\*

Date introduced	8 March 2018
House introduced	Legislative Council
Member responsible	The Hon. Adam Searle MLC
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to protect certain land at Wyong from mining and mining-related activities. This is achieved by prohibiting the granting, renewal or modification of licences, leases, claims and authorities, and the granting of planning approvals, that allow persons to prospect for, and mine, minerals and petroleum on that land. The land concerned is the site of the Wallarah 2 coal mine project.

### BACKGROUND

2. The Bill seeks to protect the Wyong water catchment area from mining and mining-related activities. In the Second Reading Speech to the Bill, the Hon Adam Searle MLC commented that the Bill aims to preserve an 'important water supply, which serves more than 300,000 people.'

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Retrospectivity*

3. Clause 6 of the Bill provides restrictions on certain planning approvals related to the Wyong special area. Subsection 6(2) cancels any planning approvals granted for the purposes of prospecting or mining in the Wyong special area prior to the commencement of the Bill. The Bill doesn't provide any compensation for such a cancellation.

**The Committee notes the cancellation of planning approvals before the commencement of the Bill is contrary to the rule of law. In some circumstances, the Committee may consider subsection 6(2) to trespass on an individual's rights and liberties. However, the Committee also notes that the object of the Bill is to protect certain lands at Wyong from mining and mining-related activities and individuals are unlikely to be the affected parties under this legislation. As such, the Committee makes no further comment.**



# Appendix One – Purpose and description of Liquor and Gaming Bills

## Liquor and Gaming Legislation Amendment Bill 2018

1. The objects of this Bill are as follows:

(a) to include the General Counsel of the Independent Liquor and Gaming Authority (the Authority) within the definition of key official for the purposes of the *Gaming and Liquor Administration Act 2007* and to update and provide greater flexibility in relation to employment restrictions applying to former key officials,

(b) to enhance the enforcement powers under the *Betting and Racing Act 1998*, *Public Lotteries Act 1996* and *Totalizator Act 1997* and provide greater consistency with the way liquor and gaming legislation is enforced under Part 4 of the *Gaming and Liquor Administration Act 2007*,

(c) to standardise and increase penalties for certain offences committed by corporations and other persons under the *Betting and Racing Act 1998*, *Casino Control Act 1992*, *Gaming Machines Act 2001*, *Liquor Act 2007*, *Public Lotteries Act 1996* and *Totalizator Act 1997* and make other minor changes to penalty levels,

(d) to make provision with respect to the personal executive liability of directors and other corporate officers as a consequence of corporate offences under the *Betting and Racing Act 1998*,

(e) to strengthen provisions prohibiting the offering of inducements to gamble and certain forms of gambling advertisements and totalizator advertisements under the *Betting and Racing Act 1998* and *Totalizator Act 1997*,

(f) to provide for first instance review by the casino operator of voluntary exclusion orders and exclusion orders made by the operator in relation to problem gamblers instead of by the Authority under the *Casino Control Act 1992* and to omit an unnecessary requirement for the casino operator to notify the Authority in writing of the making of an exclusion order,

(g) to remove unnecessary regulatory provisions from the *Gambling (Two-up) Act 1998*, *Gaming Machines Act 2001* and *Liquor Act 2007*,

(h) to enable approved gaming machines to be destroyed with the authorisation of the Authority under the *Gaming Machines Act 2001*,

(i) to decrease the maximum penalty that may be imposed for an offence against the regulations under the *Gaming Machines Act 2001* and *Liquor Act 2007* from 100 penalty units to 50 penalty units and to transfer from the *Gaming Machines Regulation 2010* and *Liquor Regulation 2008* to their respective parent Acts certain regulations with increased penalties and to make other provision with respect to the imposition of penalties and sanctions,

(j) to enable higher education providers (such as the National Art School) to be prescribed by the regulations under the *Liquor Act 2007* as tertiary institutions for the purposes of that Act so that on-premises licences may be granted in respect of their premises,

(k) to enable identifying information about persons in respect of whom licensees in premises in prescribed precincts have imposed licensee bans to be included and held on the prescribed precinct ID scanner system under the *Liquor Act 2007*,

(l) to enable the Authority to declare that a person is ineligible to stand for election or to hold a position as secretary or a member of the governing body of a club under the *Registered Clubs Act 1976* for a longer period than 3 years.

### **Casino Control Amendment Bill 2018**

1. The object of this Bill is to amend the Casino Control Act 1992 for the following purposes:
  - (a) to defer the required 5-yearly review of a casino licence until the first review of the restricted gaming licence relating to the Barangaroo restricted gaming facility (which will be required within 3 years after gaming commences under the restricted gaming licence),
  - (b) to allow the regulations to prescribe a contract or class of contracts as exempt from the “controlled contract” provisions that apply to contracts relating to the supply or servicing of gaming equipment,
  - (c) to require identification worn by casino special employees to be in accordance with casino internal controls approved by the Independent Liquor and Gaming Authority (instead of the existing requirement for the identification to be approved by the Authority),
  - (d) to require the fee for a casino special employee licence to be prescribed by the regulations instead of being approved by the Authority,
  - (e) to authorise the issue and renewal of a casino special employee licence to the holder of a security industry licence without a suitability assessment of the applicant,
  - (f) to require the Authority to notify the Commissioner of Police of any disciplinary action taken against the holder of a casino special employee licence who also holds a security industry licence,
  - (g) to remove cessation of casino employment as a ground for automatic cancellation of a casino special employee licence,
  - (h) to extend the term of a casino special employee licence from 5 to 7 years,
  - (i) to provide that the Authority is not required to give reasons for a decision to take disciplinary action against the holder of a casino special employee licence,

- (j) to standardise between the casino and the Barangaroo restricted gaming facility the requirements for the approval of facilities and equipment for monitoring and surveillance operations,
- (k) to repeal a provision that currently allows the Authority to give directions as to the particular games that are or are not to be available to be played in a casino,
- (l) to authorise the provision of complimentary chip purchase vouchers to premium players,
- (m) to repeal the provision that allows the Authority to direct when a casino is to be open or closed to the public for gaming,
- (n) to remove the requirement that a summary of game rules to be provided to a casino patron be approved by the Authority,
- (o) to change the requirement for the notice to be given of a change to a higher minimum wager at a gaming table or location,
- (p) to allow a participant in a premium player arrangement or junket to purchase chips using a debit card,
- (q) to allow a casino operator to release or discharge a debt,
- (r) to allow the provision of credit to a person not ordinarily resident in Australia to enable the person to participate in a premium player arrangement or a junket approved by the Authority (with such credit currently only permitted in the Barangaroo restricted gaming facility),
- (s) to allow the use at a casino of funds deposited with a casino in another jurisdiction that is a related corporation of the first casino,
- (t) to remove the prohibition on a casino operator accepting a cheque from a person when a previous cheque has not been met,
- (u) to simplify the application procedure for a voluntary exclusion order,
- (v) to remove the requirement that premises can only be declared to be in a casino precinct for exclusion order purposes if they are under the control or management of the casino operator,
- (w) to prevent the revocation of a voluntary exclusion order for a person except on the application of the person and to prevent the revocation of such an order less than 6 months after it is given,
- (x) to simplify the information required to be provided to the Authority about exclusion orders made by a casino operator,
- (y) to prohibit wagering in a casino by a minor or a person who is the subject of an exclusion order and to provide for the forfeiture of any winnings from prohibited wagers to the Responsible Gambling Fund,

- (z) to extend the existing exemption from smoking restrictions at the Barangaroo restricted gaming facility to approved private gaming areas in the casino,
- (aa) to require unclaimed winnings to be paid into the Responsible Gambling Fund,
- (ab) to require a casino operator to notify the Authority within 24 hours after a minor is removed from the casino (instead of the existing requirement for notification of an inspector at the time of removal),
- (ac) to make miscellaneous minor amendments,
- (ad) to enact consequential savings and transitional provisions.

### **Gaming Machine Amendment (Leasing and Assessment) Bill 2018**

1. The object of this Bill is to amend the *Gaming Machines Act 2001*, the *Gaming Machines Regulation 2010* and the *Casino Control Act 1992* as follows:
  - a) by changing the geographical area used for classifying local communities in the context of the local impact assessment scheme for gaming machines so that smaller local statistical areas will be used instead of local government areas,
  - b) by broadening various exemptions affecting the transfer of gaming machine entitlements within a local government area as a consequence of the proposed use of smaller local statistical areas to classify local communities,
  - c) by extending an existing exemption to allow a country hotel to transfer up to 6 gaming machine entitlements at the one time without forfeiture if the transfer will result in the venue's gaming machine threshold falling to zero (at present only one entitlement may be transferred in a 12-month period without forfeiture and may only be transferred to another country hotel),
  - d) by authorising the transfer of 2 blocks of gaming machine entitlements held by a country hotel in any period of 12 months to a hotel that is situated in a metropolitan area (at present only one block can be transferred),
  - e) by allowing the Independent Liquor and Gaming Authority (the Authority) to impose a cap on the number of gaming machine entitlements in certain areas of the State with that cap to prevent an increase in the overall gaming machine threshold for venues in the Fairfield local government area and to prevent an increase in the overall gaming machine threshold for venues in other designated areas unless a local impact assessment for the increase is not required,
  - f) by requiring venues that are exempt from the local impact assessment process to provide community organisations with a local impact statement if their application for an increase in gaming machine threshold is successful,
  - g) by authorising the Authority to publish guidelines about the local impact assessment process,
  - h) by allowing the Authority to have regard to additional positive contributions by a venue in connection with a proposed increase in gaming machine entitlements

to reduce what is required to satisfy a community benefit requirement for the proposed increase,

- i) by providing that where a venue is not required to undertake a local impact assessment in connection with a gaming machine threshold increase the approved increase expires if it is not taken up after 12 months,
- j) by giving the Authority the discretion to extend the time that a venue has to acquire additional gaming machine entitlements following the approval of an increase in gaming machine threshold,
- k) by extending to Band 2 areas an existing exemption that reduces the community consultation and forfeiture requirements on a club that is establishing in a new development area,
- l) by adding certain community organisations to the list of organisations and agencies required to be notified and consulted about a threshold increase application and to require verification by statutory declaration of the organisations that have been notified,
- m) by introducing a 90-day consultation period in respect of a proposed threshold increase application that required to be accompanied by a class 2 local impact assessment,
- n) by increasing from 30 to 60 days the community consultation period for a threshold increase application required to be accompanied by a local impact assessment,
- o) by authorising the leasing of gaming machine entitlements with a lease of gaming machine entitlements to operate as a transfer of the entitlement for the term of the lease with a commensurate reduction in the gaming machine threshold for the lessor venue,
- p) by requiring the lessee of a gaming machine entitlement to pay a levy into the Responsible Gambling Fund (established under the *Casino Control Act 1992*),
- q) by requiring money paid into the Responsible Gambling Fund as a community benefit payment in connection with local impact assessment or the levy payable by a lessee of a gaming machine entitlement to be applied for such purposes as the Minister determines for the benefit of local communities in which gaming machine thresholds for venues have increased,
- r) by making miscellaneous minor amendments.

### **Registered Clubs Amendment (Accountability and Amalgamations) Bill 2018**

1. The object of this Bill is to amend the Registered Clubs Act 1976 (the principal Act) and the Registered Clubs Regulation 2015 (the principal Regulation) as follows:
  - (a) to require clubs to comply with the Registered Clubs Accountability Code (the Code) that is to be set out in the principal Regulation,

(b) to transfer to the Code existing provisions of the principal Act and Regulation relating to the accountability of clubs (including requirements relating to the disclosure of financial and other interests, restrictions on contracts, loans and the use of club property, the provision of information to club members and reporting requirements),

(c) to authorise the Independent Liquor and Gaming Authority (ILGA) to take disciplinary action against the secretary of a club or a member of the governing body of a club rather than only against the club itself,

(d) to provide that the disciplinary action that ILGA may take against a secretary or member of a governing body of a club includes imposing a monetary penalty not exceeding 100 penalty units (currently \$11,000) or removing the person from that office,

(e) to permit clubs to call for expressions of interest from, and amalgamate with, clubs outside their local area,

(f) to make it clear that the limitation on the number of other clubs that a club is permitted to amalgamate with does not include any de-amalgamated club or club that has ceased to trade,

(g) to make other miscellaneous amendments of a minor or consequential nature.

## Appendix Two – 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.