



## Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 53/56 – 1 MAY 2018



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

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2018, 20p 30cm

Chair: Mr James Griffin MP

1 May 2018

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 53 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 53 of 56

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

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# Membership

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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. COAL INDUSTRY AMENDMENT BILL 2018

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

##### *Commencement by proclamation*

The Committee generally prefers legislation to commence on assent or a fixed date. As the Bill implements a new compensation scheme for coal workers, commencement by assent or a fixed date may afford certainty to those affected by the provisions to know when it will come into force. However, given that the Bill creates a new scheme and obligations for multiple employers and coal workers in various industries, the Committee notes that flexibility may be required to ensure the amendments have been effectively communicated.

### 2. ENVIRONMENTAL PLANNING AND ASSESSMENT (MORATORIUM AND RESTRICTIONS ON RECOVERING ENERGY FROM WASTE) BILL 2018\*

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

### 3. FARM DEBT MEDIATION AMENDMENT BILL 2018

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

##### *Commencement by proclamation*

The Committee generally prefers legislation to commence on assent or a fixed date. As the Bill introduces new measures relating to mediation processes, the Committee accepts there may need to be flexibility to ensure all interested parties are aware of the changes. The Committee makes no further comment.

### 4. TRANSPORT ADMINISTRATION AMENDMENT (SYDNEY METRO) BILL 2018

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

##### *Right to privacy*

The Bill amends the *Passenger Transport Act 2014* to allow RMS, TfNSW and the Sydney Metro to enter into information sharing arrangements with each other or relevant agencies, such as the Commissioner for Police. The information that can be shared relates to possible breaches of the Act, certain proceedings commenced against licence or accreditation holders, and the safe provision of public passenger services.

The Committee notes that the exchange of some types of information under the section may breach an individual's right to privacy, particularly as the regulations may also prescribe other information which can be shared. However, given that the information that is able to be shared is likely to be fairly narrow in scope and relates primarily to the safe and efficient delivery of public passenger services, the Committee makes no further comment.

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

*Uncertain scope of potential powers to develop land*

Under the Bill, Sydney Metro can acquire and develop land for residential, retail and commercial purposes on land in the locality of an actual or proposed metro station, depot or stabling yard. The land on which Sydney Metro can do this will be shown on a map adopted by an order of the Minister for Planning, made with the concurrence of the Minister for Transport, and which will be published in the Gazette.

In light of Sydney Metro's powers under the Bill to acquire and develop land for a wide variety of purposes, and because 'locality' is not defined in the Bill, the Committee is concerned that the map is not subject to an appropriate level of parliamentary scrutiny. The Committee draws this to the attention of Parliament.

*Matters subject to the regulations*

Several matters in the Bill are expressed to be 'subject to the regulations'. For example, the Bill notes that 'subject to the regulations', Sydney Metro's corporate plan is not required to be published in the first financial year of operation. The phrase 'subject to the regulations' may in theory allow the regulations to provide that the corporate plan is not required to be published for further financial years.

Accordingly, the Committee notes that the inclusion of 'subject to the regulations' may not afford the affected provisions in the Bill an appropriate level of Parliamentary scrutiny. The Committee draws this matter to the attention of Parliament.

*Commencement by proclamation*

The Committee generally prefers legislation to commence on assent or a fixed date. Given that the transition from the Sydney Metro delivery office to a standalone transport agency may involve some administrative complexity, the Committee makes no further comment.

PART TWO - REGULATIONS

1. TERRORISM (HIGH RISK OFFENDERS) REGULATION 2018

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

*Privacy*

The Committee notes that clause 7 of the regulation provides a range of documents which the Attorney General may require a person to provide. Such information includes letters of correspondence to an associate or family member; and reports, records or other documents relating to the eligible offender's employment history, educational history and financial situation.

The Committee notes the wide range of documents required to be produced may infringe on an individual's right to privacy, especially in the instance where the information may have no direct connection to an eligible offender's current behaviour, such as their educational history. The Committee refers this matter to Parliament for special consideration.

## Part One – Bills

### 1. Coal Industry Amendment Bill 2018

Date introduced	11 April 2018
House introduced	Legislative Council
Minister responsible	The Hon. Don Harwin MLC
Portfolio	Resources

#### PURPOSE AND DESCRIPTION

1. Employers in the coal industry are required to obtain workers compensation insurance from an approved workers compensation company. Currently, that requirement only applies to employers directly engaged in the coal industry and not to employers who, with reference to their character and business, are engaged in another industry and merely provide services to the coal industry (*Kuypers v Ashton Coal Operations Pty Ltd* [2014] NSWSC 1276).
2. The object of this Bill is to amend the *Coal Industry Act 2001* to require all employers whose employees work in or about a coal mine to obtain workers compensation insurance from an approved workers compensation company.

#### BACKGROUND

3. This Bill extends the definition of an ‘employer in the coal industry’ to widen the scope of employers that are required to take out workers compensation insurance for employed coal workers, regardless of what industry the employer predominantly operates in.
4. In his second reading speech, the Minister noted that the Bill is in response to the 2014 Supreme Court case of *Kuypers v Ashton Coal Operations Pty Ltd*, which raised an issue of interpretation of an employer “in” the coal industry and may mean that under the current scheme some employers may not be required to have special insurance despite having workers in and about coal mines. In response to this, the Bill aims to provide for a fit-for-purpose compensation scheme that affords the same level of health and safety protection to all coal mine workers.

#### ISSUES CONSIDERED BY THE COMMITTEE

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

##### *Commencement by proclamation*

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

**The Committee generally prefers legislation to commence on assent or a fixed date. As the Bill implements a new compensation scheme for coal workers, commencement by assent or a fixed date may afford certainty to those affected**



**by the provisions to know when it will come into force. However, given that the Bill creates a new scheme and obligations for multiple employers and coal workers in various industries, the Committee notes that flexibility may be required to ensure the amendments have been effectively communicated.**

## 2. Environmental Planning and Assessment (Moratorium and Restrictions on Recovering Energy from Waste) Bill 2018\*

Date introduced	12 April 2018
House introduced	Legislative Assembly
Member responsible	Mr Stephen Bali MP
	*Private Members' Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to restrict energy-from-waste development (which is defined as the carrying out of development for the purposes of energy recovery from the thermal treatment of waste). This Bill:
  - a) permanently prohibits energy-from-waste development in those local government areas (including all of the Sydney Basin area) that are currently classified as critical zones for air pollutants for the purposes of the load-based licensing scheme established by the Protection of the Environment Operations (General) Regulation 2009, and
  - b) establishes a moratorium on energy-from-waste development in areas outside of the critical zones for air pollutants, and
  - c) provides for the regulations to lift the moratorium in its application to a particular area, but only after expert advice has been sought from the Standing Expert Advisory Body on Energy from Waste Technology that is established by this Bill, and
  - d) requires that advisory body to be consulted in relation to any application for development consent (including consent for State significant development) to carry out energy-from-waste development on land where the moratorium has been lifted.
  
2. Although the restrictions imposed by this Bill do not apply to energy recovery from the thermal treatment of waste that has been declared to be exempt waste fuel, such energy recovery:
  - a) may still be prohibited, or require development consent, under an environmental planning instrument, or require approval under the *Environmental Planning and Assessment Act 1979*, and
  - b) may be subject to licensing requirements and other obligations under the *Protection of the Environment Operations Act 1997*, the *Waste Avoidance and Resource Recovery Act 2001* and any other relevant legislation.

## BACKGROUND

3. In his second reading speech, Mr Stephen Bali MP noted that the Bill responds to the development proposal for a waste to energy incinerator proposed for Eastern Creek.
4. Mr Bali noted that “the incineration process brings about a range of airborne emissions which may have the potential to harm human health and the wider environment” and that safeguards must be established to take into account the health, safety and environment of all New South Wales residents.
5. In addition, the Bill would place a moratorium on energy-from-waste development in areas outside of the critical zones for air pollutants until the appropriate safeguards are in place.

## ISSUES CONSIDERED BY COMMITTEE

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

### 3. Farm Debt Mediation Amendment Bill 2018

Date introduced	11 April 2018
House introduced	Legislative Council
Minister responsible	The Hon. Niall Blair MLC
Portfolio	Primary Industries

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Farm Debt Mediation Act 1994* (the principal Act) to make further provision with respect to mediation required in relation to a farm debt before enforcement action may be taken to enforce the mortgage securing the debt.
2. In particular, the Bill:
  - a) clarifies the object of the principal Act in relation to farm debt matters that are not disputes, and
  - b) clarifies and extends the definitions of mediation, farm machinery and farming operation for the purposes of the principal Act, and
  - c) clarifies the operation of the principal Act with respect to restructured farm mortgages, and
  - d) clarifies that the principal Act does not, without express provision, affect or limit any civil right or remedy available apart from the principal Act, and
  - e) creates new offences relating to unauthorised enforcement action, and
  - f) makes further provision in relation to certificates prohibiting or permitting enforcement action without further mediation, and
  - g) makes further provision in relation to the accreditation of mediators and the conduct of mediation sessions (including costs of mediation), and
  - h) replaces the requirement to enter into Heads of Agreement following a successful mediation with a requirement to enter into a binding mediation agreement, and enables the cooling off period for the agreement to be waived or varied by agreement between the parties, and
  - i) provides for an internal review process for certain decisions of the Rural Assistance Authority (the Authority) relating to certificates and accreditations under the principal Act, and
  - j) enhances the powers of the Authority to request information in connection with an application or a mediation under the principal Act, and

- k) updates provisions relating to the service of documents, including by permitting service by email, and
- l) clarifies that the requirement to grant an exemption certificate is not affected by a provision of the principal Act that declares a waiver of mediation rights to be void, and
- m) makes other minor and consequential amendments, and
- n) enacts consequential savings and transitional provisions.

## BACKGROUND

3. This Bill seeks to improve the operation of farm debt mediation by encouraging farmers and creditors to pursue realistic solutions to financial challenges. The main amendments the Bill introduces include:
- extending the operation of the principal Act by amending the definition of farming operations to include operations such as on-farm and offshore aquaculture and farm forestry;
  - providing incentives for early mediation by enabling farmers to ask creditors to mediate before they default on their loan;
  - provisions for serving notices under the principal Act which set out clear timeframes for responding and more flexible options in certain circumstances;
  - introducing penalties where enforcement action is taken by a creditor contrary to the principal Act;
  - provisions clarifying the role of the mediator and the mediation process; and
  - provisions providing the Rural Assistance Authority with authority to request farmers and creditors provide information to assist with determining whether the principal Act applies.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Commencement by proclamation*

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

**The Committee generally prefers legislation to commence on assent or a fixed date. As the Bill introduces new measures relating to mediation processes, the Committee accepts there may need to be flexibility to ensure all interested parties are aware of the changes. The Committee makes no further comment.**

## 4. Transport Administration Amendment (Sydney Metro) Bill 2018

Date introduced	10 April 2018
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Transport

### PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend the *Transport Administration Act 1988* (the Act) to facilitate the development, implementation and operation of a metro in Sydney by constituting Sydney Metro as a corporation and to provide generally for the corporation's management and functions.
2. The Bill also makes consequential amendments to other legislation.

### BACKGROUND

3. Sydney Metro is a transport infrastructure project which involves the development of metro lines from northwest Sydney to the CBD, to be extended to southwest Sydney by 2024.
4. The Bill establishes Sydney Metro as a standalone transport agency and statutory corporation which has responsibility for developing and operation of the Metro.
5. In his second reading speech, the Minister noted that Sydney Metro will be part of the Transport cluster and will therefore be subject to the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998*.
6. The Minister also observed that Sydney Metro will have 'place-making' functions, such as the ability to acquire and develop land near the Metro stations for residential, retail and commercial purposes.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Right to privacy*

7. The Bill amends section 170 of the *Passenger Transport Act 2014* to allow RMS, TfNSW and the Sydney Metro to enter into an information sharing arrangement with each other or a relevant agency for the purpose of sharing or exchanging information held by the corporation or agency.
8. Such an arrangement can facilitate the exchange of the following information:
  - (a) information concerning possible breaches of the Act or the regulations;

- (b) information concerning the safe provision of a public passenger service;
  - (c) information concerning any proceedings commenced against the holder of an accreditation, driver authority or licence for offences with a maximum penalty of imprisonment for 12 months or more;
  - (d) any other information that may be prescribed by the regulations.
9. The Commissioner for Police, IPART and SafeWork NSW are examples of relevant agencies referred to in the section.

**The Bill amends the *Passenger Transport Act 2014* to allow RMS, TfNSW and the Sydney Metro to enter into information sharing arrangements with each other or relevant agencies, such as the Commissioner for Police. The information that can be shared relates to possible breaches of the Act, certain proceedings commenced against licence or accreditation holders, and the safe provision of public passenger services.**

**The Committee notes that the exchange of some types of information under the section may breach an individual's right to privacy, particularly as the regulations may also prescribe other information which can be shared. However, given that the information that is able to be shared is likely to be fairly narrow in scope and relates primarily to the safe and efficient delivery of public passenger services, the Committee makes no further comment.**

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

*Uncertain scope of potential powers to develop land*

- 10. Under proposed section 38D in the Bill, Sydney Metro is able to undertake development for a wide variety of purposes, including residential, retail, and commercial.
- 11. Sydney Metro will be able to do this on land in the 'locality' of an actual or proposed metro station, depot or stabling yard, as shown 'on a map adopted by an order of the Minister for Planning, made with the concurrence of the Minister, published in the Gazette for the purposes of this section.'
- 12. The Bill does not define the meaning of 'locality'.

**Under the Bill, Sydney Metro can acquire and develop land for residential, retail and commercial purposes on land in the locality of an actual or proposed metro station, depot or stabling yard. The land on which Sydney Metro can do this will be shown on a map adopted by an order of the Minister for Planning, made with the concurrence of the Minister for Transport, and which will be published in the Gazette.**

**In light of Sydney Metro's powers under the Bill to acquire and develop land for a wide variety of purposes, and because 'locality' is not defined in the Bill, the Committee is concerned that the map is not subject to an appropriate level of parliamentary scrutiny. The Committee draws this to the attention of Parliament.**

*Matters subject to the regulations*

13. The Bill expresses that a number of provisions are 'subject to the regulations', including provisions relating to the operation of the Sydney Metro Board and the advisory committees convened by the Board.
14. In particular, clause [42] in Schedule 1 of the Bill provides that 'subject to the regulations, section 38L...does not apply in relation to the first financial year of operation of Sydney Metro.'

**Several matters in the Bill are expressed to be 'subject to the regulations'. For example, the Bill notes that 'subject to the regulations', Sydney Metro's corporate plan is not required to be published in the first financial year of operation. The phrase 'subject to the regulations' may in theory allow the regulations to provide that the corporate plan is not required to be published for further financial years.**

**Accordingly, the Committee notes that the inclusion of 'subject to the regulations' may not afford the affected provisions in the Bill an appropriate level of Parliamentary scrutiny. The Committee draws this matter to the attention of Parliament.**

*Commencement by proclamation*

15. The Bill provides for the Act to commence on a day or days to be appointed by proclamation.

**The Committee generally prefers legislation to commence on assent or a fixed date. Given that the transition from the Sydney Metro delivery office to a standalone transport agency may involve some administrative complexity, the Committee makes no further comment.**



## Part Two - Regulations

### 1. Terrorism (High Risk Offenders) Regulation 2018

Date published	19 January 2018
Disallowance date	LA: 1 May 2018 LC: 15 May 2018
Minister responsible	The Hon. Mark Speakman MP
Portfolio	Attorney-General

#### PURPOSE AND DESCRIPTION

1. The objects of this Regulation are:
  - (a) to prescribe matters for the purposes of the definitions of prescribed terrorism intelligence authority and relevant expert in the *Terrorism (High Risk Offenders) Act 2017*, and
  - (b) to prescribe the circumstances and the kind of offender information that the Attorney General can require for the purposes of section 58 of that Act.
2. This Regulation is made under the *Terrorism (High Risk Offenders) Act 2017*, including sections 4(1) (definitions of prescribed terrorism intelligence authority and relevant expert), 58(1) and 74 (the general regulation-making power).

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Privacy*

3. Section 58 of the *Terrorism (High Risk Offenders) Act 2017* (the Principal Act) provides that the Attorney General may in circumstances prescribed by the regulations, by order in writing served on a person, require that person to provide the Attorney General with offender information of a kind prescribed by the regulations, that is in the person's possession or under the person's control.
4. The Principal Act notes that non-compliance by a person who has been served an order may result in a maximum penalty of 100 penalty units or imprisonment for two years or both for an individual [section 58(2)].
5. Clause 7 of the *Terrorism (High Risk Offenders) Regulation 2018* specifies the kinds of offender information which the Attorney General may require a compellable person to provide. Such information includes, amongst others:

- psychological or other medical reports about the eligible offender;
- reports, records or other documents about applications for compensation made in respect of the eligible offender;
- reports, records or other documents containing information about the eligible offender's membership, or the membership of associates of the eligible offender, in a club, association or other organisation;
- reports, records or other documents about the eligible offender's educational history (including the offender's behaviour at an educational institution);
- letters or correspondence of the eligible offender to an associate or family member;
- books, magazines, pamphlets or other publications possessed by the eligible offender containing material advocating support for engaging in any terrorist acts.

**The Committee notes that clause 7 of the regulation provides a range of documents which the Attorney General may require a person to provide. Such information includes letters of correspondence to an associate or family member; and reports, records or other documents relating to the eligible offender's employment history, educational history and financial situation.**

**The Committee notes the wide range of documents required to be produced may infringe on an individual's right to privacy, especially in the instance where the information may have no direct connection to an eligible offender's current behaviour, such as their educational history. The Committee refers this matter to Parliament for special consideration.**

# 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.