



## Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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# Membership

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# Guide to the Digest

## COMMENT ON BILLS

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

## COMMENT ON REGULATIONS

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. NATIONAL REDRESS SCHEME FOR INSTITUTIONAL CHILD SEXUAL ABUSE (COMMONWEALTH POWERS) BILL 2018

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

#### *Right to privacy and confidentiality*

The Bill enables State institutions and other persons to share information requested by the Operator of the National Redress Scheme regarding an application. The Bill expressly provides that no State law prevents an institution or person from complying with this request, unless prescribed in the regulations or the rules (as the case may be).

This may operate to override the privacy and confidentiality protections afforded to individuals in the common law and in Acts such as the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

We note that disclosure of protected information is only permitted if it is for the relevant purpose in the official's capacity as an employee or officer of the government institution. Breach of these provisions can incur high penalties including up to 2 years imprisonment or 120 penalty points or both.

Given that rights to privacy and confidentiality must be balanced against other policy objectives, such as enabling those who have suffered child sexual abuse to receive redress, the Committee makes no further comment.

#### *Right to freedom from discrimination*

Eligibility for redress under the National Redress Act is limited to those who are Australian citizens or permanent residents. This trespasses against the right of individuals to not be discriminated against on the basis of their nationality or national origin.

Similarly, the Act also provides that persons in gaol, those who are subject to a security notice, and children who will not turn 18 before the scheme sunset day, cannot make an application for redress. Again, this may be seen to trespass against individuals on the basis of their nationality, age, or whether they are in gaol.

While there may be reasons for restricting the scheme in these ways, the second reading speech does not provide detail as to why these trespasses are justified in the circumstances. As such, the Committee draws this to the attention of Parliament.

#### *Entitlement to redress – Security notices*

The Bill provides that a person is not entitled to redress if they have received a security notice from the Home Affairs Minister. This limits a person's ability to access redress on the basis of their residency status. The Committee understands that these provisions are intended to ensure that redress is not afforded to a person that has been assessed as posing a security risk, which may be a genuine concern given the size and cost of the scheme. Consequently, the Committee makes no further comment on this issue.

*Bar on future civil liability of participating institutions*

The Bill provides that once a person accepts an offer of redress then that person releases and forever discharges civil liability for the abuse of the person by all participating institutions. This may infringe on a person's right to adequate compensation. However, the Committee notes that a person is able to decline an offer of redress, which does not preclude them from pursuing civil liability claims, but may mean that a person must ensure a timely and costly legal process in doing so. The Committee refers to Parliament whether it is appropriate to limit a person's right to pursue adequate compensation upon the acceptance of redress at a capped amount.

***Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8(1)(b)(ii) of the LRA****Entitlement to redress – Institutions ceasing to be participating institutions*

The Bill provides that an institution can cease to be a participating institution if a declaration to that effect is made under the Act. The Bill does not outline in what circumstances an institution is permitted to cease being a participating institution. The Committee is concerned that this may limit the right of applicants to access redress if an institution can opt-out of the scheme. The Committee refers this matter to Parliament for its further consideration.

***Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA****Matters deferred to rules*

The National Redress Act contained in Schedule 1 to the Bill defers certain matters relating to entitlement to and eligibility for redress under the National Redress Scheme to the rules. The question of what abuse is within the scope of the scheme is also deferred in part to the rules.

The Committee generally prefers that substantive matters such as these be addressed in principal legislation, which is subject to a greater level of parliamentary scrutiny. As such, the Committee notes that partially deferring these matters to the rules may be an inappropriate delegation of legislative power and draws this to the attention of Parliament.

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

The Bill refers powers of the State Parliament to the Commonwealth Parliament so that legislation relating to a National Redress Scheme can be passed and, in future, amended. Similarly, statutory rules can be made by the responsible Minister under the National Redress Act and will not be disallowable in NSW.

While there are some limits on the ability of the Commonwealth Parliament to amend the National Redress Act as set out in proposed sections 5 and 6 of the Bill, most potential amendments to the Act are unlikely to require agreement from the NSW Parliament.

As such, it is incumbent upon the Committee to note that the referral of powers to the Commonwealth Parliament insufficiently subjects the exercise of legislative power to parliamentary scrutiny of the NSW Parliament.

However, the Committee also notes that the creation of a National Redress Scheme, and the general nature of federalism itself, sometimes requires the State to refer its powers to the

Commonwealth to ensure national uniformity in particular matters. As such, the Committee makes no further comment.

*Assessment framework not subject to any disallowance*

The Minister may declare a method or matters to take into account when determining the amount of compensation or counselling or psychological services to be provided under the National Redress Act. However, this ‘assessment framework’ is excluded from the usual disallowance processes that apply at the Commonwealth level and also cannot be disallowed in the NSW Parliament.

The Committee notes that the framework may substantively impact the amount of redress that can be awarded to an applicant. In light of this, and in circumstances where both the Commonwealth and NSW Parliaments are unable to move a motion of disallowance, the framework may not be subject to an appropriate level of parliamentary scrutiny. As such, this matter is drawn to the attention of the Parliament.

*Commencement by proclamation*

The National Redress Act will be commenced by proclamation if the Act does not receive assent until on or after 1 July 2018. The Committee generally prefers that Acts do not commence by proclamation as this does not afford an appropriate level of parliamentary scrutiny over the start date of legislation. However, the Act does provide some certainty that the Act will commence no later than 6 months after it receives assent. For this reason, and given the administrative complexity of the National Redress Scheme, the Committee makes no further comment.

2. ROAD RULES AMENDMENT (SLOWING DOWN FOR POLICE AND INCIDENT RESPONSES VEHICLES) BILL 2018\*

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

PART TWO – REGULATIONS

1. CHILDREN (DETENTION CENTRES) AMENDMENT (PAROLE) REGULATION 2018

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

*Removal of entitlement to legal representation*

The Regulation appears to remove the entitlement of a juvenile detainee to legal representation when the Children’s Court is reconsidering whether that detainee should be released on parole or whether a parole order should be revoked. However, under the *Children (Detention Centres) Act 1987*, detainees still appear to have the right to legal representation in proceedings under Part 4C, which include proceedings relating to the reconsideration and revocation of parole. Accordingly, the Committee makes no further comment.

2. POINT TO POINT TRANSPORT (TAXIS AND HIRE VEHICLES) AMENDMENT (PASSENGER SERVICE LEVY) REGULATION 2018

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

*Right to review*



The regulation limits the amount of times that a taxpayer may object an assessment of liability. This may restrict a person's right to object to an incorrect assessment of liability. However, we note that this measure may be necessary to prevent unsubstantiated claims causing an administrative backlog. We also recognise that the regulation extends the period for making an objection from 30 to 60 days, which allows more time for an objection to be made from the date of the assessment. On this balance, the Committee makes no further comment.

## Part One – Bills

# 1. National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018

Date introduced	1 May 2018
House introduced	Legislative Assembly
Minister responsible	The Hon Mark Speakman SC MP
Portfolio	Attorney-General

### PURPOSE AND DESCRIPTION

1. The object of the Bill is to refer certain matters relating to the National Redress Scheme for Institutional Child Sexual Abuse (the National Redress Scheme) to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters.
2. The proposed Act is for the purposes of section 51 (xxxviii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament.
3. The Bill refers matters relating to institutional child sexual abuse as follows:
  - (a) The ‘text reference’, which provides for the enactment by the Commonwealth Parliament of the Bill for a proposed Commonwealth Act as set out in Schedule 1. The proposed Commonwealth Act is the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the National Redress Act).
  - (b) The ‘amendment reference’, which provides for the enactment of express amendments to the National Redress Act relating to redress for institutional child sexual abuse. The amendment reference is subject to limitations under clauses 5 and 6.

### BACKGROUND

4. The Bill has been introduced to facilitate the participation of NSW in the National Redress Scheme, which was a scheme recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). Subject to the passage of legislation, it is intended to commence on 1 July 2018 and run for 10 years.
5. According to the second reading speech, the Royal Commission found that civil litigation is not effective in providing adequate redress for many survivors. This led to a recommendation that the National Redress Scheme be developed, which involves three elements: a monetary payment of up to \$150,000; access to counselling and psychological support; and an apology from the responsible institution.

6. As outlined in the second reading speech, the Bill has three key features:
  - (a) A 'text reference': that is, a provision which enables the Commonwealth Parliament to enact the legislation establishing the National Redress Scheme.
  - (b) An 'amendment reference': that is, to enable the Commonwealth Parliament to make amendments to the National Redress Act (however, this is subject to some limitations);
  - (c) Schedule 1 of the Bill contains the National Redress Scheme for Institutional Child Sexual Abuse Act 2018.
7. An intergovernmental agreement has been signed by the Commonwealth, NSW, and Victoria, which sets out governance arrangements for the National Redress Scheme. The terms of reference for the National Redress Scheme board include the voting process for changes to the scheme. According to the second reading speech, any key change will require agreement from NSW.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Right to privacy and confidentiality*

8. Proposed section 10 of the Bill allows participating State institutions to give information to the administrator of the National Redress Scheme (the 'Operator') of the National Redress Scheme in response to a request made by the Operator in relation to an application under the scheme. Nothing in a law of the State prevents a State institution from complying with such a request, unless that law is prescribed in the regulations.
9. Proposed section 27 of the National Redress Act also provides that nothing in State law prevents a person from giving information that the person is requested to give to the Operator for the purposes of the scheme, unless that law is prescribed on the rules.
10. Part 4-3 of the National Redress Act further outlines the circumstances in which protected information may be disclosed by the Commonwealth Redress Scheme Operator (the Operator) if it is for the relevant purpose in the official's capacity as an employee or officer of the government institution.

**The Bill enables State institutions and other persons to share information requested by the Operator of the National Redress Scheme regarding an application. The Bill expressly provides that no State law prevents an institution or person from complying with this request, unless prescribed in the regulations or the rules (as the case may be).**

**This may operate to override the privacy and confidentiality protections afforded to individuals in the common law and in Acts such as the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.**

**We note that disclosure of protected information is only permitted if it is for the relevant purpose in the official's capacity as an employee or officer of the**

**government institution. Breach of these provisions can incur high penalties including up to 2 years imprisonment or 120 penalty points or both.**

**Given that rights to privacy and confidentiality must be balanced against other policy objectives, such as enabling those who have suffered child sexual abuse to receive redress, the Committee makes no further comment.**

#### *Right to freedom from discrimination*

11. Persons who are not Australian citizens or permanent residents are not eligible for redress under section 13 of the National Redress Act.
12. However, the Royal Commission recommended that a National Redress Scheme be extended to all persons under the Act, regardless of the citizenship or residency status of a person.<sup>1</sup>
13. The National Redress Act also provides in section 20 that certain persons cannot make an application for redress. This includes persons in gaol, persons subject to a security notice (being a notice which cancels their visa), or children who will not turn 18 before the scheme sunset day.

**Eligibility for redress under the National Redress Act is limited to those who are Australian citizens or permanent residents. This trespasses against the right of individuals to not be discriminated against on the basis of their nationality or national origin.**

**Similarly, the Act also provides that persons in gaol, those who are subject to a security notice, and children who will not turn 18 before the scheme sunset day, cannot make an application for redress. Again, this may be seen to trespass against individuals on the basis of their nationality, age, or whether they are in gaol.**

**While there may be reasons for restricting the scheme in these ways, the second reading speech does not provide detail as to why these trespasses are justified in the circumstances. As such, the Committee draws this to the attention of Parliament.**

#### *Entitlement to redress – Security notices*

14. Section 65 provides that a person is not entitled to receive an offer for redress if the person has received a security notice from the Home Affairs Minister that cancels their visa status as a permanent resident. This infringes on a person's ability to access fair compensation on the basis of their residency status.

**The Bill provides that a person is not entitled to redress if they have received a security notice from the Home Affairs Minister. This limits a person's ability to access redress on the basis of their residency status. The Committee understands that these provisions are intended to ensure that redress is not afforded to a person that has been assessed as posing a security risk, which may be a genuine concern given the size and cost of the scheme. Consequently, the Committee makes no further comment on this issue.**

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Redress and Civil Litigation Report](#), p 347.

*Bar on future civil liability of participating institutions*

15. Section 42(2)(c) of the National Redress Act provides that once a person accepts an offer of redress then that person releases and forever discharges civil liability for the abuse of the person (that is within the scope of the scheme) by all participating institutions determined to be responsible or to be associates of those responsible, and all officials of those responsible institutions and associates.
16. This may infringe on a person's right to an effective remedy. This provision effectively limits a person's ability to maximise the amount of redress available to survivors of childhood sexual abuse by institutions to the scheme's cap of \$150,000.
17. However the Committee recognises that this provision may be necessary to ensure the viability of the scheme.

**The Bill provides that once a person accepts an offer of redress then that person releases and forever discharges civil liability for the abuse of the person by all participating institutions. This may infringe on a person's right to adequate compensation. However, the Committee notes that a person is able to decline an offer of redress, which does not preclude them from pursuing civil liability claims, but may mean that a person must ensure a timely and costly legal process in doing so. The Committee refers to Parliament whether it is appropriate to limit a person's right to pursue adequate compensation upon the acceptance of redress at a capped amount.**

**Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8(1)(b)(ii) of the LRA***Entitlement to redress – Institutions ceasing to be participating institutions*

18. The Bill outlines that an institution can cease to be a participating institution if a declaration is made under section 116.

**The Bill provides that an institution can cease to be a participating institution if a declaration to that effect is made under the Act. The Bill does not outline in what circumstances an institution is permitted to cease being a participating institution. The Committee is concerned that this may limit the right of applicants to access redress if an institution can opt-out of the scheme. The Committee refers this matter to Parliament for its further consideration.**

**Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA***Matters deferred to rules*

19. Sections 12 and 13 of the National Redress Act outline when a person is entitled or eligible for redress under the scheme. However, those sections make a number of matters relating to the entitlement or eligibility of individuals subject to rules made under the Act; for example, see sections 12(3) – (4) and 13(2).
20. Similarly, section 14(2) provides that 'abuse of a person is within the scope of the scheme if the Act or rules prescribe that it is'.

**The National Redress Act contained in Schedule 1 to the Bill defers certain matters relating to entitlement to and eligibility for redress under the National**

**Redress Scheme to the rules. The question of what abuse is within the scope of the scheme is also deferred in part to the rules.**

**The Committee generally prefers that substantive matters such as these be addressed in principal legislation, which is subject to a greater level of parliamentary scrutiny. As such, the Committee notes that partially deferring these matters to the rules may be an inappropriate delegation of legislative power and draws this to the attention of Parliament.**

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

#### *Referral of powers*

21. The purpose of the Bill is to refer certain powers of the NSW Parliament to the Commonwealth Parliament, so that the Commonwealth can establish a National Redress Scheme.
22. Amendments to the National Redress Act will be made by the Commonwealth Parliament and as such will not be subject to scrutiny of the NSW Parliament. Statutory rules made under the Act will also not be subject to the disallowance processes of the NSW Parliament.
23. While most amendments will not require the agreement of the State, sections 5 and 6 of the Bill contain some limits on the power of the Commonwealth to amend the National Redress Act. For instance, section 5 of the Bill limits the ability of the Commonwealth to make any law which would prevent or limit the power to operate or establish a State redress mechanism. Such State redress mechanisms include NSW redress schemes for victims of institutional child sexual abuse, and the jurisdiction of a court or tribunal to grant compensation to such victims.
24. Section 6 of the Bill also provides that the Commonwealth will not have power to amend the National Redress Act in a way which would substantively remove or override a provision of the National Redress Act ‘that requires the agreement of the State.’
25. Although this phrase is not defined, the second reading speech suggests that these are limited to provisions in the proposed National Redress Act which would require the agreement of the State, such as the requirement in section 115 that a State agree to a State institution being declared by the Commonwealth Minister to be a ‘participating institution’ in the National Redress Scheme. Other examples of provisions in the National Redress Act which would require the agreement of the State are section 134 (State institutions being declared to be part of a participating group) and section 165 (listing of defunct institutions).
26. For completeness, it is noted that the Governor may at any time terminate the ‘text reference’ and the ‘amendment reference’: proposed section 7 of the Bill.

**The Bill refers powers of the State Parliament to the Commonwealth Parliament so that legislation relating to a National Redress Scheme can be passed and, in future, amended. Similarly, statutory rules can be made by the responsible Minister under the National Redress Act and will not be disallowable in NSW.**

**While there are some limits on the ability of the Commonwealth Parliament to amend the National Redress Act as set out in proposed sections 5 and 6 of the Bill, most potential amendments to the Act are unlikely to require agreement from the NSW Parliament.**

**As such, it is incumbent upon the Committee to note that the referral of powers to the Commonwealth Parliament insufficiently subjects the exercise of legislative power to parliamentary scrutiny of the NSW Parliament.**

**However, the Committee also notes that the creation of a National Redress Scheme, and the general nature of federalism itself, sometimes requires the State to refer its powers to the Commonwealth to ensure national uniformity in particular matters. As such, the Committee makes no further comment.**

*Assessment framework not subject to any disallowance*

27. Section 32 of the National Redress Act enables the Minister to declare a method or matters to take into account for the purposes of determining the amount of redress, including the amount of compensation and counselling or psychological services to be provided to a successful applicant (the ‘assessment framework’).
28. Subsection (3) provides that, although the assessment framework is a legislative instrument, section 42 of the *Legislation Act 2003* (Cth) does not apply. This means that the framework cannot be disallowed by the Commonwealth Parliament.
29. The assessment framework will also not be subject to the disallowance processes of the NSW Parliament because it is made pursuant to Commonwealth legislation.

**The Minister may declare a method or matters to take into account when determining the amount of compensation or counselling or psychological services to be provided under the National Redress Act. However, this ‘assessment framework’ is excluded from the usual disallowance processes that apply at the Commonwealth level and also cannot be disallowed in the NSW Parliament.**

**The Committee notes that the framework may substantively impact the amount of redress that can be awarded to an applicant. In light of this, and in circumstances where both the Commonwealth and NSW Parliaments are unable to move a motion of disallowance, the framework may not be subject to an appropriate level of parliamentary scrutiny. As such, this matter is drawn to the attention of the Parliament.**

*Commencement by proclamation*

30. Section 2 of the National Redress Act allows for the commencement of the Act by proclamation if the Act does not receive assent until on or after 1 July 2018. However, if the provisions do not commence within 6 months of assent, they commence on the day after the end of that period.

**The National Redress Act will be commenced by proclamation if the Act does not receive assent until on or after 1 July 2018. The Committee generally prefers that Acts do not commence by proclamation as this does not afford an appropriate level of parliamentary scrutiny over the start date of legislation.**

**However, the Act does provide some certainty that the Act will commence no later than 6 months after it receives assent. For this reason, and given the administrative complexity of the National Redress Scheme, the Committee makes no further comment.**



## 2. Road Rules Amendment (Slowing Down for Police and Incident Responses Vehicles) Bill 2018\*

Date introduced	3 May 2018
House introduced	Legislative Assembly
Member responsible	Ms Jodi McKay MP
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to require motorists to slow down and not increase speed when passing or overtaking a stationary or slow-moving police vehicle or incident response vehicle (which includes ambulances or other emergency vehicles),
  - (b) to require motorists to move over into another lane when approaching a slow-moving police vehicle or incident response vehicle travelling in the same lane as the motorist,
  - (c) to require motorists to give way to persons on foot near a stationary police vehicle or incident response vehicle.

### BACKGROUND

2. This Bill seeks to bring in measures to provide protection to emergency workers, tow truck drivers and roadside breakdown services when assisting motorists involved in accidents or car breakdowns.
3. In the second reading speech, Ms Jodi McKay MP, referred to the tragic accident in 2012 when Ms Sarah Frazer and Mr Geoff Clarke, a tow truck driver, were killed on the Hume Highway. After her car had broken down Ms Frazer pulled into the breakdown lane. However, the vehicle was unable to be completely moved out of the way of passing traffic travelling at high speed. Ms Frazer and Mr Clarke were struck by a heavy vehicle and killed.

### ISSUES CONSIDERED BY THE COMMITTEE

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

## Part Two – Regulations

### 1. Children (Detention Centres) Amendment (Parole) Regulation 2018

Date published	23 February 2018
Disallowance date	22 May 2018
Minister responsible	The Hon David Elliot MP
Portfolio	Corrections

#### PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Children (Detention Centres) Regulation 2015* as follows, as a result of the commencement of Part 4C of the *Children (Detention Centres) Act 1987*, which relates to parole for juvenile offenders:
  - (a) to update references to enabling provisions and expressions to reflect the new Part 4C,
  - (b) to set out the matters to be included in a report prepared by a juvenile justice officer for the purposes of the Children’s Court’s determination as to whether to release an offender on parole,
  - (c) to set out the obligations of a juvenile offender under the mandatory supervision condition of a parole order,
  - (d) to prescribe the matters that a juvenile justice officer is to take into account when determining whether to suspend a supervision condition of a parole order,
  - (e) to provide for notice to be given to the Secretary of changes to conditions of parole made by the Children’s Court,
  - (f) to require the Children’s Court to provide copies of reports and other documents proposed to be used by the Court in deciding whether to release an offender on parole if the Court is notified that the State, the Minister, the Attorney General or the Secretary intends to make a submission concerning the release on parole of a juvenile offender,
  - (g) to omit provisions that are no longer applicable to parole for juvenile offenders,
  - (h) to make it clear that the new provisions relating to conditions of parole orders do not extend to existing parole orders,
  - (i) to make other minor consequential amendments.

## ISSUES CONSIDERED BY THE COMMITTEE

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

2. The Regulation removes clauses 99(4) and 101(5) from the principal Regulation. These clauses entitled a juvenile detainee to legal representation when the Children's Court is reconsidering whether that detainee should be released on parole (clause 99(4)) or whether a parole order should be revoked (clause 101(5)).
3. However, section 80(a) of the *Children (Detention Centres) Act 1987* provides that any person entitled to make submission in relation to proceedings under Part 4C may be represented by a legal practitioner or, with the consent of the Court, any other person.

**The Regulation appears to remove the entitlement of a juvenile detainee to legal representation when the Children's Court is reconsidering whether that detainee should be released on parole or whether a parole order should be revoked. However, under the *Children (Detention Centres) Act 1987*, detainees still appear to have the right to legal representation in proceedings under Part 4C, which include proceedings relating to the reconsideration and revocation of parole. Accordingly, the Committee makes no further comment.**

## 2. Point to Point Transport (Taxis and Hire Vehicles) Amendment (Passenger Service Levy) Regulation 2018

Date published	23 February 2018
Disallowance date	22 May 2018
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Transport and Infrastructure

### PURPOSE AND DESCRIPTION

1. The object of this Regulation is to amend the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* as follows:
  - (a) to extend the grounds on which a person who is liable to pay the passenger service levy under the Act (a taxpayer) may object to an assessment of liability to pay the levy, so as to allow a taxpayer to make an objection if a third party fails to collect the levy amount or fails to pay the levy amount to the taxpayer, as directed by or agreed to with the taxpayer,
  - (b) to limit the number of objections that a taxpayer may make on the above grounds (to once on each ground) with respect to the same third party,
  - (c) to extend the period for making an objection on the above grounds (from 30 days to 60 days)

### ISSUES CONSIDERED BY THE COMMITTEE

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

##### *Right to review*

2. The Regulation amends the principal regulation to limit the number of objections that a tax payer may make to an assessment of liability to pay the passenger service levy if a third party fails to collect the levy amount or fails to pay the levy amount to the taxpayer.

**The regulation limits the amount of times that a taxpayer may object an assessment of liability. This may restrict a person's right to object to an incorrect assessment of liability. However, we note that this measure may be necessary to prevent unsubstantiated claims causing an administrative backlog. We also recognise that the regulation extends the period for making an objection from 30 to 60 days, which allows more time for an objection to be made from the date of the assessment. On this balance, the Committee makes no further comment.**

# Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

## **8A Functions with respect to Bills**

- 1 The functions of the Committee with respect to Bills are:
  - (a) to consider any Bill introduced into Parliament, and
  - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
    - i trespasses unduly on personal rights and liberties, or
    - ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
    - iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
    - iv inappropriately delegates legislative powers, or
    - v insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- 2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

## **9 Functions with respect to Regulations**

- 1 The functions of the Committee with respect to regulations are:
  - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
  - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
    - i that the regulation trespasses unduly on personal rights and liberties,
    - ii that the regulation may have an adverse impact on the business community,
    - iii that the regulation may not have been within the general objects of the legislation under which it was made,
    - iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- v that the objective of the regulation could have been achieved by alternative and more effective means,
  - vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
  - vii that the form or intention of the regulation calls for elucidation, or
  - viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

2 Further functions of the Committee are:

- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
- (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.