



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 62/56 – 16 OCTOBER 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, 24p 30cm

Chair: Ms Felicity Wilson MP

16 October 2018

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 62 of 56

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 62 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”.

Contents

Membership	ii
Guide to the Digest	iii
Conclusions	iv
PART ONE – BILLS	7
1. CIVIL LIABILITY AMENDMENT (ORGANISATIONAL CHILD ABUSE LIABILITY) BILL 2018	7
2. NATIONAL PARK ESTATE (RESERVATIONS) BILL 2018	9
3. PLASTIC SHOPPING BAGS (PROHIBITION ON SUPPLY BY RETAILERS) BILL 2018*	12
4. WORKERS COMPENSATION (FIREFIGHTERS' PRESUMPTIVE RIGHTS TO COMPENSATION) BILL 2018	13
PART TWO – REGULATIONS	14
1. ANZAC MEMORIAL (BUILDING) AMENDMENT BY-LAW 2018	14
2. CEMETERIES AND CREMATORIA AMENDMENT REGULATION 2018	16
3. ELECTORAL REGULATION 2018	19
APPENDIX ONE – FUNCTIONS OF THE COMMITTEE	21

Membership

CHAIR	Ms Felicity Wilson MP, Member for North Shore
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr Michael Johnsen MP, Member for Upper Hunter Mr David Mehan MP, Member for The Entrance The Hon Natasha Maclaren-Jones MLC The Hon Shaoquett Moselmane MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2226 / 02 9230 3382
FACSIMILE	02 9230 3309
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

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. CIVIL LIABILITY AMENDMENT (ORGANISATIONAL CHILD ABUSE LIABILITY) BILL 2018

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

Retrospectivity

The Committee notes that particular reforms in the Bill are drafted to apply retrospectively. The Committee will generally comment on provisions that apply retrospectively as they operate contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. However, the retrospectivity in this case extends the benefits of the reforms to survivors of historical child abuse and in these circumstances makes no further comment.

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

Commencement by proclamation

The Committee prefers legislation to commence on a fixed date or on assent, rather than by proclamation. The Committee notes that the majority of the Bill will commence on assent, however, some provisions will commence by proclamation.

The provisions to commence by proclamation enable victims of child abuse to bring civil proceedings against unincorporated organisations. The Committee has been advised that commencement by proclamation will assist the department with implementing these particular reforms. Namely, providing the courts time to update procedural rules and also provide affected parties time to arrange their affairs. In these circumstances the Committee makes no further comment.

2. NATIONAL PARK ESTATE (RESERVATIONS) BILL 2018

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

Boundary alterations by publication in the Gazette

Under the Bill, the Chief Executive of the OEH can publish a notice in the gazette to alter the boundaries of land described in Schedules 1 – 3 to the Act. These Schedules identify land that is currently State forest land, but which will become land reserved as national park land or state conservation area(s) or land which will be vested in the NPW Minister.

Before issuing such a notice, the Chief Executive must obtain approval from relevant Ministers and must certify that the altered description of the land does not result in a significant reduction in the size or value of national park estate land or state forest land. However, the Bill does not provide guidance as to the meaning of 'significant reduction'.

In addition, the notice does not appear to be subject to the usual disallowance processes that would apply if the description of the land in the Schedules was altered by, for example, regulation and required to be tabled in Parliament.

While these provisions appear standard for Bills of this nature, the Committee considers that there may be insufficient scrutiny applied to the exercise by the Chief Executive of adjusting the description of land and refers the issue to Parliament.

3. PLASTIC SHOPPING BAGS (PROHIBITION ON SUPPLY BY RETAILERS) BILL 2018*

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

4. WORKERS COMPENSATION (FIREFIGHTERS' PRESUMPTIVE RIGHTS TO COMPENSATION) BILL 2018

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

Retrospectivity

The Committee notes that the Bill is drafted to apply retrospectively in some cases. The Committee will generally comment on provisions that apply retrospectively as they operate contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. However, the retrospectivity in this case grants greater workers compensation protection to those affected by its provisions. In these circumstances, the Committee makes no further comment.

PART TWO – REGULATIONS

1. ANZAC MEMORIAL (BUILDING) AMENDMENT BY-LAW 2018

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

Freedom of movement

The By-law makes it an offence for a person to sit or lie on the steps of the Memorial Building. The offence attracts a maximum penalty of \$2,200.

The Committee acknowledges that the Memorial Building is of special significance and worthy of respect. The Committee also understands that the By-law has been introduced to help protect the Memorial Building in circumstances where some members of the public loiter on the steps at night.

However, the Committee notes that the new By-law may be seen to unduly trespass on an individual's right to freedom of movement. In particular, the Memorial Building is situated within a public park and, in this context, some may consider that sitting on the steps is not itself an act of disrespect or should not attract such a substantial monetary penalty.

The Committee therefore refers to Parliament the question of whether the new by-law, and the attached penalty, is appropriate in the circumstances.

2. CEMETERIES AND CREMATORIA AMENDMENT REGULATION 2018

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

Cultural and religious rights

The regulation outlines provisions for the renewal of interment rights for initial periods between 25 and 99 years. The Committee notes that the removal of interment rights of burial sites may be perceived as religiously or culturally offensive where it is the belief that human remains are

not be disturbed once they have been laid to rest. Therefore, this regulation may encroach on a person's religious and/or cultural rights.

The Committee recognises that the regulation is intended to alleviate pressures on availability and affordability of burial space. The regulation also contains notification requirements, disclosure requirements and cooling off periods concerning the expiry of renewable interment rights. The Committee understands that a Legislative Council committee is currently inquiring into this regulation and refers the regulation to Parliament for consideration of whether it unduly trespasses on a person's cultural and religious rights.

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

Impact to cemetery business community

The regulation outlines provisions for the renewal of interment rights of burial sites for initial periods between 25 and 99 years, which are to be available for exhumation if interment right is not renewed. The Committee notes that stakeholders have expressed concerns about the impact of the regulation on the cemetery business community. This includes concerns about the Work Health Safety and physiological impacts on cemetery employees involved in exhumation, as well as the associated administrative and operational costs. The Committee refers the regulation to Parliament for consideration of whether the business community is adversely affected by the regulation.

3. ELECTORAL REGULATION 2018

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

Right to privacy

The Committee notes that the regulation prescribes the NSW Ombudsman as a 'prescribed person' for the purposes of section 98 of the principal Act, which imposes a duty to assist the Children's Guardian with full and unrestricted access to records that are under the person's control. The Committee notes that this may infringe on a person's right to privacy by the sharing of private or confidential official records. However, the Committee acknowledges the purpose of the provision is to assist the Children's Guardian in reviewing child protection declarations made by electoral candidates. In these circumstances, the Committee makes no further comment.

Part One – Bills

1. Civil Liability Amendment (Organisational Child Abuse Liability) Bill 2018

Date introduced	26 September 2018
House introduced	Legislative Assembly
Minister responsible	The Hon Mark Speakman SC MP
Portfolio	Attorney General

Purpose and description

1. The objects of this Bill are:
 - a) to create a duty on organisations to prevent child abuse and to create a legal presumption that an organisation has breached the duty if a child for which it has responsibility is subjected to child abuse by an individual associated with the organisation, and
 - b) to make an organisation vicariously liable for child abuse committed by employees and persons akin to employees, and
 - c) to permit plaintiffs to bring civil child abuse proceedings against unincorporated organisations that may be liable for the abuse.

Background

2. This Bill implements further recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and completes the New South Wales Government's response to the recommendations.
3. In 2015, the Commission published its report *Redress and Civil Litigation* which contained recommendations focused on improving civil justice for survivors of institutional child sexual abuse. The report recommended the establishment of a national redress scheme for survivors of past abuse and also reforms to civil litigation.
4. In 2016, the NSW Government began implementing the recommendations to civil litigation, including removing the limitation periods for survivors to launch civil compensation claims. In May 2018, the NSW Government introduced legislation to opt into the National Redress Scheme and this Bill seeks to implement the remaining civil litigation recommendations.

Issues considered by the Committee

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

Retrospectivity

5. The Bill implements reforms requiring unincorporated organisations to appoint a proper defendant with legal personality to enable survivors of abuse to pursue civil claims. This reform implements a recommendation of the Royal Commission which identified that one of the challenges facing survivors was finding a proper defendant to sue as many religious organisations are unincorporated organisations with no legal personality.
6. The reforms apply retrospectively in order to enable survivors of historical abuse to sue a proper defendant with sufficient assets to satisfy a claim.

The Committee notes that particular reforms in the Bill are drafted to apply retrospectively. The Committee will generally comment on provisions that apply retrospectively as they operate contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. However, the retrospectivity in this case extends the benefits of the reforms to survivors of historical child abuse and in these circumstances makes no further comment.

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

Commencement by proclamation

7. The Bill provides for the commencement of the proposed Act on assent, other than the provisions that permit victims of child abuse to bring civil proceedings against unincorporated organisations.

The Committee prefers legislation to commence on a fixed date or on assent, rather than by proclamation. The Committee notes that the majority of the Bill will commence on assent, however, some provisions will commence by proclamation.

The provisions to commence by proclamation enable victims of child abuse to bring civil proceedings against unincorporated organisations. The Committee has been advised that commencement by proclamation will assist the department with implementing these particular reforms. Namely, providing the courts time to update procedural rules and also provide affected parties time to arrange their affairs. In these circumstances the Committee makes no further comment.

2. National Park Estate (Reservations) Bill 2018

Date introduced	27 September 2018
House introduced	Legislative Assembly
Minister responsible	The Hon Gabrielle Upton MP
Portfolio	Environment

Purpose and description

1. The object of the Bill is to transfer certain lands to the national park estate.
2. The Bill revokes the dedication of lands listed in Schedules 1, 2 and 3 as state forest. The lands in Schedule 1 and 2 are then to be reserved as national park and state conservation areas respectively. The land in Schedule 3 is then vested in the Minister administering Divisions 1 and 2 of Part 4 of the NPW Act (the NPW Minister) for the purposes of Part 11 of the *National Parks and Wildlife Act 1974* (NPW Act).
3. The above revocations and reservations are effective on 1 January 2019.
4. Under the Bill, the Chief Executive of the Office of the Environment and Heritage (OEH) may adjust the descriptions of the lands in Schedules 1 – 3. This may be done to alter the boundaries of the land for the purposes of effective management, to adjust boundaries to public roads and descriptions of easements, or to provide a more detailed description of the boundaries of the land.

Background

5. According to the second reading speech, the Bill facilitates the transfer of approximately 4,505 hectares of unproductive State forest lands to the national park estate. The Minister suggested that the transferred lands contribute to the connectivity and conservation value of the existing national park estate.
6. The second reading speech describes the five separate transfers under the Bill:
 - a) 2,080 hectares of Carrai State Forest to Willi Willi National Park. This contains some high-quality koala habitat and will be reserved pursuant to the NSW Government's Koala Strategy.
 - b) 120 hectares of Yarra State Forest to Budderoo National Park. This land is home to several threatened and endangered species.
 - c) 1,144 hectares of Mernot State Forest to Curracabundi State Conservation Area. This includes areas of rainforest and unique spinifex grassland and is a known habitat for many threatened species.
 - d) 647 hectares of Yengo State Forest will become the Yengo State Conservation Area. This land is of significant Aboriginal cultural heritage and ecological value.

- e) 500 hectares of Muldiva State Forest will be vested in NPW Minister. This land fronts the Nymboida River and is a habitat for threatened species including the koala and masked owl.

Issues considered by committee

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

Boundary alterations by publication in the Gazette

7. Proposed section 7 of the Bill enables the description of land in Schedules 1, 2 and 3 to be adjusted from time to time for reasons including:
 - a) to alter the boundaries for the purposes of the effective management of national park estate land and State forest land
 - b) to adjust the boundary of any land adjoining a public road
 - c) to include, remove or change a description of any easement or restriction to which the land is subject, or
 - d) to provide a more detailed description of the boundaries of the land.
8. The proposed section provides examples of when boundaries may be altered, including to 'follow distinctive land features, to provide access to land or to rationalise the boundaries of similar areas of land.' Similarly, the boundary of land adjoining a public road may be adjusted, for example, 'to enable the boundary to follow the formed path of the road or to provide an appropriate setback from the carriageway of the road.'
9. Proposed subsection 7(3) also provides that any adjustment of the description of land listed in a Schedule may involve removing it from the description of land in one Schedule and adding it to another Schedule. This suggests that adjusting the boundaries of land may result in land being 'reclassified', for example from national park (Schedule 1) to a state conservation area (Schedule 2).
10. The Chief Executive of the OEH (the 'Environment Agency Head') can adjust the description of land in a Schedule by publishing a notice on the NSW legislation website. The Environment Agency Head must certify in the notice that the adjustments 'will not result in significant reduction in the size or value of national park estate land or State forest land'. National park estate land is defined in the Bill to include land reserved under the NPW Act (e.g. land in Schedule 1 and 2) and land vested in the NPW Minister for the purposes of Part 11 of that Act (e.g. land in Schedule 3).
11. The Environment Agency Head can only publish such a notice if he or she obtains the approval of the NPW Minister, the Minister administering the *Forestry Act 2012*, and in some cases the Ministers administering the *Crown Land Management Act 2016* or the *Roads Act 1993*.
12. The Committee notes that the Bill also enables the NPW Minister to publish a notice in the gazette to make determinations in relation to whether certain access roads are included or excluded from a reservation under the Act (see proposed clauses 4(7) and 7(2) of Schedule 4 to the Bill).

13. It is further noted that provisions similar to proposed section 7 are common in Bills of this nature where there is a transfer of State forest to the national park estate.¹

Under the Bill, the Chief Executive of the OEH can publish a notice in the gazette to alter the boundaries of land described in Schedules 1 – 3 to the Act. These Schedules identify land that is currently State forest land, but which will become land reserved as national park land or state conservation area(s) or land which will be vested in the NPW Minister.

Before issuing such a notice, the Chief Executive must obtain approval from relevant Ministers and must certify that the altered description of the land does not result in a significant reduction in the size or value of national park estate land or state forest land. However, the Bill does not provide guidance as to the meaning of 'significant reduction'.

In addition, the notice does not appear to be subject to the usual disallowance processes that would apply if the description of the land in the Schedules was altered by, for example, regulation and required to be tabled in Parliament.

While these provisions appear standard for Bills of this nature, the Committee considers that there may be insufficient scrutiny applied to the exercise by the Chief Executive of adjusting the description of land and refers the issue to Parliament.

¹ See for example: *National Park Estate (Reservations) Act 2002*, s 11; *National Park Estate (Reservations) Act 2003*, s 9; *National Park Estate (Reservations) Act 2005*, s 10

3. Plastic Shopping Bags (Prohibition on Supply by Retailers) Bill 2018*

Date introduced	27 September 2018
House introduced	Legislative Assembly
Member responsible	Mr Michael Daley MP
	*Private Member's Bill

Purpose and description

1. The object of this Bill is to prohibit retailers from supplying plastic shopping bags to their customers.
2. This Bill contains provisions that:
 - a) prohibit retailers from supplying certain plastic shopping bags to their customers to carry goods bought, or to be bought, from the retailer. This does not prevent a retailer from charging a customer a fee for the provision of an alternative shopping bag;
 - b) provide for the Governor to make regulations under the proposed Act;
 - c) amends the *Protection of the Environment Operations Act 1997* (the 1997 Act) to extend the operation of the enforcement provisions of that Act to the proposed Act so that offences by retailers under the proposed Act can be investigated and prosecuted (including by penalty notice) under the 1997 Act.

Background

3. This Bill was introduced in August 2017 but lapsed in February 2018.
4. The Bill seeks to prohibit retailers from supplying certain plastic shopping bags to their customers. In the Second Reading Speech, Mr Daley stated that the Bill is modelled on legislation introduced in the Australian Capital Territory under which retailers cannot provide single-use lightweight polyurethane bags.
5. Mr Daley further stated that in New South Wales, up to 61 million bags are littered annually and enter the environment via runoff and wind.²

Issues considered by the Committee

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

² New South Wales, Parliamentary Debates, Legislative Assembly, 27 September 2018, p 7, Mr Michael Daley MP

4. Workers Compensation (Firefighters' Presumptive Rights to Compensation) Bill 2018

Date introduced	27 September 2018
House introduced	Legislative Assembly
Member responsible	Mr Guy Zangari MP*
	*Private Member's Bill

Purpose and description

1. The object of this Bill is to establish presumptive rights to workers compensation under the *Workers Compensation Act 1987* and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* for firefighters suffering from certain kinds of cancer.

Background

2. In his second reading speech, Mr Zangari noted that the bill is modelled on the *Commonwealth Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011*. That legislation provided firefighters with grounds to claim compensation if diagnosed with one or more of the listed cancers and met the requisite years of service to presume that such a cancer was an occupational disease.
3. Mr Zangari noted that similar legislation had been passed in the following state and territory jurisdictions: Australian Capital Territory (in 2011); Tasmania and Western Australia (in 2013); South Australia (in 2014); and the Northern Territory and Queensland (in 2015). The Victorian Government launched an inquiry into similar legislation in 2017.

Issues considered by the committee

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

Retrospectivity

4. Section 11 of the Bill states that the Act extends to existing occupational diseases before the commencement of the Act, including claims for workers compensation that have been rejected or withdrawn before the commencement of the section.

The Committee notes that the Bill is drafted to apply retrospectively in some cases. The Committee will generally comment on provisions that apply retrospectively as they operate contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. However, the retrospectivity in this case grants greater workers compensation protection to those affected by its provisions. In these circumstances, the Committee makes no further comment.

Part Two – Regulations

1. Anzac Memorial (Building) Amendment By-law 2018

Date published	3 August 2018
Disallowance date	LA: 23 October 18 LC: 13 November 18
Minister responsible	The Hon. David Elliott MP
Portfolio	Veterans Affairs

Purpose and description

1. The objects of this By-law are the following:
 - a) to ensure the By-laws apply to the land of which The Trustees of the Anzac Memorial Building (the trustees) have general control and management,
 - b) to allow persons to bring an assistance animal onto the land managed by the trustees,
 - c) to make it an offence for persons to sit or lie on the steps of the Memorial Building.
2. This By-law is made under the *Anzac Memorial (Building) Act 1923*, including section 9.

Issues considered by the Committee

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

Freedom of movement

3. The amending By-law creates a new By-law which makes it an offence for a person to sit or lie on the steps of the Memorial Building. The offence is punishable by a maximum of 20 penalty units, which is approximately \$2,200.

The By-law makes it an offence for a person to sit or lie on the steps of the Memorial Building. The offence attracts a maximum penalty of \$2,200.

The Committee acknowledges that the Memorial Building is of special significance and worthy of respect. The Committee also understands that the By-law has been introduced to help protect the Memorial Building in circumstances where some members of the public loiter on the steps at night.

However, the Committee notes that the new By-law may be seen to unduly trespass on an individual's right to freedom of movement. In particular, the Memorial Building is situated within a public park and, in this context, some may consider that sitting on the steps is not itself an act of disrespect or should not attract such a substantial monetary penalty.

The Committee therefore refers to Parliament the question of whether the new by-law, and the attached penalty, is appropriate in the circumstances.

2. Cemeteries and Crematoria Amendment Regulation 2018

Date published	22 June 2018
Disallowance date	LA: 23 October 2018 LC: 13 November 2018
Minister responsible	The Hon. Paul Toole MP
Portfolio	Lands and Forestry

Purpose and description

1. The object of this Regulation is to amend the *Cemeteries and Crematoria Regulation 2014* as a consequence of the commencement of Part 4 (Interment rights) of the Cemeteries and Crematoria Act 2013, as follows:
 - a) to specify the steps a cemetery operator must take:
 - i. to ascertain cultural or religious practices applying to the remains of a deceased person, and
 - ii. to notify the holders of renewable interment rights that are due to expire of their entitlement to renew the right and the fee for doing so,
 - b) to prescribe the period within which the executor or administrator of the estate of a person who has bequeathed an interment right must notify a cemetery operator of the death of the person,
 - c) to prescribe the period of the term of certain renewable interment rights (in substitution for the period provided for in the Act),
 - d) to require a cemetery operator to disclose to applicants for the grant or renewal of interment rights the fees and charges relevant to that type of interment right,
 - e) to provide for a cooling off period following the purchase or renewal of renewable interment rights and the circumstances in which the cooling off period may be waived,
 - f) to prescribe additional requirements with respect to human remains interred at a site that a cemetery operator must comply with before re-using the site following the expiration of a renewable interment right,
 - g) to require a cemetery operator to comply with certain notification requirements before removing a memorial of a deceased person pursuant to the Act and to retain the memorial for a period,
 - h) to provide for additional particulars that must be included in a cemetery operator's register,

- i) to prescribe certain events of which a cemetery operator must cause a register to be kept,
- j) to provide for the calling and holding of meetings of heritage advisory committees,
- k) to provide for matters of a savings or transitional nature.

Issues considered by the committee

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

Cultural and religious rights

2. The regulation sets out provisions regarding interment rights for burial sites and prescribes an initial period of renewable interment rights between 25 and 99 years. Burial sites that are not renewed may be reused and human remains are to be dealt with by the cemetery operator pursuant to the *Cemeteries and Crematoria Act 2013*.
3. The Committee notes that there is a current Legislative Council committee inquiry into the operation of this regulation,³ which has received submissions citing concerns from a number of religious and cultural organisations that cite the exhumation of burial sites encroaches on their religious practices that the deceased are to be buried in a permanent resting place and that the regulation should be consistent with the cultural and religious customs and practices of culturally diverse communities throughout New South Wales.⁴

The regulation outlines provisions for the renewal of interment rights for initial periods between 25 and 99 years. The Committee notes that the removal of interment rights of burial sites may be perceived as religiously or culturally offensive where it is the belief that human remains are not be disturbed once they have been laid to rest. Therefore, this regulation may encroach on a person's religious and/or cultural rights.

The Committee recognises that the regulation is intended to alleviate pressures on availability and affordability of burial space. The regulation also contains notification requirements, disclosure requirements and cooling off periods concerning the expiry of renewable interment rights. The Committee understands that a Legislative Council committee is currently inquiring into this regulation and refers the regulation to Parliament for consideration of whether it unduly trespasses on a person's cultural and religious rights.

³ Legislative Council Regulation Committee, Inquiry into the Cemeteries and Crematoria Amendment Regulation 2018, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2505#tab-members>

⁴ See submissions made by NSW Jewish Board of Deputies, Ethnic Communities' Council of NSW, NSW Aboriginal Land Council, Greek Orthodox Archdiocese of Australia, Australian and New Zealand Diocese of Russian Orthodox Church Outside of Russia, Catholic Metropolitan Cemeteries Trust, Serbian Diaspora Parliament to the Republic of Serbia, and Australia Chinese Workers Association.

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

4. The regulation sets out provisions regarding interment rights for burial sites and prescribes an initial period of renewable interment rights between 25 and 99 years. Burial sites that are not renewed may be reused and human remains are to be dealt with by the cemetery operator pursuant to the *Cemeteries and Crematoria Act 2013*.
5. The Committee notes that the regulation is subject to a current Legislative Council inquiry into its impact and implementation. In particular, the Committee refers to the submission made by Rookwood General Cemetery, which argues that 'there are considerable Workplace Health and Safety and psychological impacts on employees' that undertake exhumations. Rookwood General Cemetery also argued that there are significant costs to operators carrying out exhumations including an increase in staff payments, administration, advertising, training, restoration of the grave for reuse and storage of memorials.⁵

The regulation outlines provisions for the renewal of interment rights of burial sites for initial periods between 25 and 99 years, which are to be available for exhumation if interment right is not renewed. The Committee notes that stakeholders have expressed concerns about the impact of the regulation on the cemetery business community. This includes concerns about the Work Health Safety and physiological impacts on cemetery employees involved in exhumation, as well as the associated administrative and operational costs. The Committee refers the regulation to Parliament for consideration of whether the business community is adversely affected by the regulation.

⁵ Legislative Council Regulation Committee, Inquiry into the Cemeteries and Crematoria Amendment Regulation 2018, [Submission 118](#), Rookwood General Cemetery, p 4

3. Electoral Regulation 2018

Date published	29 June 2018
Disallowance date	LA: 23 October 2018 LC: 13 November 2018
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Premier

Purpose and description

1. The object of this Regulation is to make provision for matters that are required or authorised to be prescribed by the regulations as a consequence of the enactment of the *Electoral Act 2017*.
2. This Regulation:
 - a) prescribes the evidence of identity that must be provided in support of an application for enrolment or for a change of address of enrolment, and
 - b) sets out the procedures to be used in cases where the same person is relied on as a member by 2 or more political parties seeking registration (or continued registration) under the *Electoral Act 2017*, and
 - c) prescribes the Ombudsman as a person who has a duty to provide the Children's Guardian with access to records that the Children's Guardian reasonably requires for the purpose of exercising functions relating to child protection declarations by candidates, and
 - d) prescribes an additional requirement in relation to the electoral material that is to be made available for perusal by voters at declared facilities, and
 - e) prescribes the official mark that may be printed on ballot papers, and
 - f) provides, as a savings and transitional measure, that the *Parliamentary Electorates and Elections Act 1912* and the *Parliamentary Electorates and Elections Regulation 2008* continue to apply to by-elections held before the 2019 general election (and not the *Electoral Act 2017* and this Regulation), and
 - g) allows for the continued use of certain obsolete terms from the *Parliamentary Electorates and Elections Act 1912* in connection with the 2019 general election.

Issues considered by committee

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

Right to privacy

3. The regulation states that the office of the NSW Ombudsman is a 'prescribed person' for the purposes of section 98(4) of the *Electoral Act 2017*.

4. Section 98 of the *Electoral Act 2017* outlines provisions for the duty of a prescribed person to provide the Children's Guardian with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Children's Guardian reasonably requires access for the purpose of exercising functions under the Act. The functions of the Children's Guardian under the *Electoral Act 2017* are to investigate the accuracy of child protection declarations made by candidates to State elections.
5. Existing prescribed persons that have a duty to provide the Children's Guardian with records include the Registrar or other proper office of a court and the Commissioner of Police.⁶

The Committee notes that the regulation prescribes the NSW Ombudsman as a 'prescribed person' for the purposes of section 98 of the principal Act, which imposes a duty to assist the Children's Guardian with full and unrestricted access to records that are under the person's control. The Committee notes that this may infringe on a person's right to privacy by the sharing of private or confidential official records. However, the Committee acknowledges the purpose of the provision is to assist the Children's Guardian in reviewing child protection declarations made by electoral candidates. In these circumstances, the Committee makes no further comment.

⁶ *Electoral Act 2017*, s 98(4)(a) and (b)

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.