



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

NO. 5/57 – 24 September 2019



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, 2019, 20pp, 30cm

Chair: Felicity Wilson MP

24 September 2019

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 5 of 57

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 5 of 57

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	1
1. NON-PROFIT BODIES (FREEDOM TO ADVOCATE) BILL 2019*	1
2. RIGHT TO FARM BILL 2019	3
3. ROAD TRANSPORT AMENDMENT (MISCELLANEOUS) BILL 2019	7
APPENDIX ONE – FUNCTIONS OF THE COMMITTEE	11

# Membership

CHAIR	Ms Felicity Wilson MP, Member for North Shore
DEPUTY CHAIR	The Hon Trevor Khan MLC
MEMBERS	Mr Lee Evans MP, Member for Heathcote Mr David Mehan MP, Member for The Entrance The Hon Leslie Williams MP, Member for Port Macquarie Ms Wendy Lindsay MP, Member for East Hills 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 2214
FACSIMILE	02 9230 3309
E-MAIL	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# 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. NON-PROFIT BODIES (FREEDOM TO ADVOCATE) BILL 2019\*

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

##### *Retrospectivity*

The Bill prohibits and invalidates terms in State agreements with non-profit bodies that restrict their advocacy on State law, policy or practice. This provision is to have retrospective application to any agreements containing such a term entered into before the commencement of the proposed Act. The Committee will generally comment where a Bill operates retrospectively as this is contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. However, the Committee notes that whilst the term will become void, any right, privilege, obligation or liability acquired in relation to that term will be unaffected. In the circumstances, the Committee makes no further comment.

### 2. RIGHT TO FARM BILL 2019

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

##### *Prevention of action for nuisance – property rights*

The Bill limits the circumstances under which a claim of nuisance can be brought against lawful agricultural activity on agricultural land. This may impact on the right of a person to enjoy their property without interference from the activities of a neighbour. However, the Committee notes that this immunity only applies where activity is carried out lawfully on agricultural land and where the land has been used for the purposes of agriculture for at least 12 months. In addition, the Committee acknowledges that the Bill is intended to address the business impact on farmers and associated costs in time, energy and money as they answer claims against them for lawful activity. In the circumstances, the Committee makes no further comment.

##### *Significantly increased penalties*

The Bill significantly increases the maximum penalty for the offence of aggravated unlawful entry on inclosed lands from \$5,500 to \$13,200 and/or imprisonment for 12 months. The potential penalties rise to \$22,000 or three years imprisonment if the offender is accompanied by two or more persons or if s/he does anything to put the safety of any person at serious risk. Large increases in penalties can result in excessive punishment where the penalty is not proportionate to the offence. However, the Committee acknowledges that the penalty increase is designed to better reflect the severity of the offences as well as the impact such offences have on farmers and primary production activities. It is also to account for the risks caused by trespassing on agricultural land and interfering with agricultural equipment and infrastructure. In the circumstances, the Committee makes no further comment.

##### *New offence*

The Bill introduces a new offence that applies to those who incite or direct trespass without committing trespass themselves, which could attract a maximum penalty of 12 months imprisonment. The Committee notes that the creation of new offences impacts upon the rights

and liberties of persons as previously lawful conduct becomes unlawful. However, the Committee acknowledges that the purpose of this offence is to address a gap in the legislation where people incite or direct trespass without actually committing it themselves. Given that there is a public interest in protecting the rights of farmers from trespass on their land and the attendant risks to themselves and others that may eventuate, the Committee makes no further comment.

### 3. ROAD TRANSPORT AMENDMENT (MISCELLANEOUS) BILL 2019

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

##### *Privacy – right to personal physical integrity and right to liberty*

The Bill clarifies that the power of a police officer to arrest certain persons involved in a motor vehicle accident, to enable them to have their blood and urine tested for alcohol or drugs, extends to accidents occurring off-road that result in the death of one or more persons. The Bill may thereby impact on the right of persons to personal physical integrity and liberty. However, the Committee notes that this power could only be used in respect of certain persons directly involved in a motor vehicle accident that results in a death and is designed so that police can properly investigate very serious motor vehicle accidents including those that occur off-road. In the circumstances, the Committee makes no further comment.





## Part One – Bills

### 1. Non-Profit Bodies (Freedom to Advocate) Bill 2019\*

Date introduced	19 September 2019
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch MP
	*Private Member's Bill

#### PURPOSE AND DESCRIPTION

1. The purpose of the Bill is to prohibit State agreements with non-profit bodies from restricting or preventing those bodies from commenting on, advocating support for or opposing changes to State law, policy or practice.

#### BACKGROUND

2. In his second reading speech for the Bill, Mr Paul Lynch MP referred to the increasing use by governments of non-profit bodies to carry out functions traditionally performed by the government and stated that 'NGOs should not have to choose between expressing their opinions and receiving funding'.
3. Mr Lynch noted arguments against restricting the advocacy work of non-profit bodies through funding agreements. Drawing on the work of the philosopher John Stuart Mill, Mr Lynch stated 'As Mill argued, one way of developing good policy and arriving at the best intellectual conclusion is to confront opposing views'.
4. Mr Lynch also noted practical arguments in this area:

NGOs will often have better detailed knowledge of problems and issues than any other body in their particular area of expertise. They are quite often exposed to an extensive client base. That means they have a better opportunity, in many cases, of seeing the systemic patterns that others do not see. On the other hand, because of their hands-on experience they deal with a multitude of individual cases, which can allow a level of insight and knowledge not available to decision-makers or other bodies.

5. In addition, Mr Lynch noted a 2014 Productivity Commission report, *Report into Access to Justice Arrangements* and stated:

Dealing with community legal centres [CLCs] the Commission said that CLC advocacy on systemic issues was an efficient use of resources. The Commission said about this '...strategic advocacy and law reform that seeks to identify and remedy systemic issues and so reduce the need for frontline services, should be a core activity'.

## ISSUES CONSIDERED BY THE COMMITTEE

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

6. Clause 5 of the Bill provides that an agency must not include a term in a State agreement with a non-profit body that restricts or prevents them from commenting on, advocating support for or opposing changes to State law, policy or practice. Clause 6 of the Bill extends the operation of clause 5 to State agreements entered into prior to the commencement of the proposed Act so that a prohibited term in a State agreement immediately before the commencement of the proposed Act becomes void. Accordingly, the Bill has some retrospective application. However, clause 6 further provides that any right, privilege, obligation or liability acquired, accrued or incurred under the prohibited term is unaffected despite the term becoming void.

**The Bill prohibits and invalidates terms in State agreements with non-profit bodies that restrict their advocacy on State law, policy or practice. This provision is to have retrospective application to any agreements containing such a term entered into before the commencement of the proposed Act. The Committee will generally comment where a Bill operates retrospectively as this is contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. However, the Committee notes that whilst the term will become void, any right, privilege, obligation or liability acquired in relation to that term will be unaffected. In the circumstances, the Committee makes no further comment.**

## 2. Right to Farm Bill 2019

Date introduced	17 September 2019
House introduced	Legislative Assembly
Minister responsible	The Hon. Adam Marshall MP
Portfolio	Agriculture and Western New South Wales

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) To prevent an action for the tort of nuisance being brought in relation to a commercial agricultural activity where it is occurring lawfully on agricultural land;
  - (b) To require a court to consider alternative orders to remedy a commercial agricultural activity that is found to constitute a nuisance rather than order the activity to cease;
  - (c) To extend the circumstances of aggravation for an offence of entering inclosed lands without permission or failing to leave inclosed lands when requested to do so and to increase the maximum penalty for the aggravated offence;
  - (d) To create an offence of directing, inciting, procuring or inducing the commission of the aggravated offence;
  - (e) To modify offences of leaving a gate open on inclosed lands to apply the offences where the gate is removed or disabled, to specify that a gate includes a cattle grid or any moveable thing used to inclose land and to increase the maximum penalties for the offences;
  - (f) To specify how proceedings for an offence under the *Inclosed Lands Protection Act 1901* are to be dealt with.

### BACKGROUND

2. In his Second Reading Speech regarding the Bill, the Hon. Adam Marshall MP, Minister for Agriculture and Western NSW noted that its purpose is to deter trespass on farms in NSW and to provide a defence to common law nuisance actions that concern normal farming activities. The Minister stated that in the lead up to the March 2019 election, the Government had made a commitment to introduce a right to farm bill:

This Government is committed to supporting and protecting our farmers who produce the commodities upon which we all rely...Strengthening the trespass legislation to support a farmer's right to farm uninhibited by illegal trespass activities and nuisance claims against them by neighbours was a key commitment of this Government, and this bill shows that we are delivering.

3. On the trespass aspect of the Bill, the Minister told Parliament that on-farm trespass is increasing and referred to research by the NSW Bureau of Crime Statistics and Research

which found a 27% increase in the number of recorded incidents of trespass on farms and rural properties since 2014. The Minister stated:

The tactics of animal rights groups who trespass on farms are becoming more organised and more aggressive, including illegally installing recording devices, conducting mass on-farm protests, illegally removing stock, and collecting and publishing farm locations and data.

4. The Minister noted that 'unlawful disruption by protestors is...very costly for farming businesses' and that it has safety implications:

Some unlawful trespass activity, including where masses of people can invade a farm to protest, exponentially increases the inherent dangers to both the farmer and the protestors themselves. Farm trespass, particularly of the scale and style we have recently experienced, presents multiple risks. Those risks relate to the safety of farmers, farm workers, farming families, emergency personnel, members of the public and farm animals.

5. On the aspect of the Bill that concerns nuisance, the Minister told Parliament:

...the bill will introduce new legislation to help protect lawful primary producers from conflict and interference caused by neighbours and other land users. This new law, known as a nuisance shield, is based on Tasmanian legislation—the Primary Industries Activities Protection Act 1995. The nuisance shield provides a defence to common law nuisance claims levelled at farmers for what are normal farming activities—the smells, sounds and realities of their work. It will also stop courts from imposing injunctions on farmers without first considering other options. This is the first step in enshrining a farmer's right to farm their land. I remind the House that farming is done for the benefit of every person in New South Wales to produce the food we eat and the clothes that we wear.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Prevention of action for nuisance – property rights*

6. Clause 4 of the Bill provides that lawful commercial agricultural activity on agricultural land does not constitute nuisance where the land has been used for agricultural purposes for at least 12 months. The tort of nuisance protects against unreasonable interference with a person's use or enjoyment of their land. Farming practices that may interfere with a neighbour's enjoyment of their land include such things as the noise of farm machinery or animals, smells, dust and the spraying of chemicals.
7. The Committee notes that limiting the right of a person to bring a civil action for nuisance and authorising what would otherwise be a tort may impact the right of a person to enjoy their property free from interference from the actions of their neighbour. In the Second Reading speech, the Minister noted that:

A legal nuisance occurs when there is a substantial, unreasonable and repeated or ongoing interference with the use or enjoyment of a neighbour's land. This means that even if a farmer is complying with all the conditions imposed upon them by the regulators and are models of best-practice operators they can still face legal action for creating a nuisance and potentially be shut down.

8. The Committee acknowledges evidence that local councils receive a number of nuisance complaints that concern compliant agricultural practices. The Minister told Parliament

that 'A considerable proportion of complaints received by local councils in peri-urban or regional areas regard compliant agricultural practices' and referred to a survey of local councils undertaken by the Department of Primary Industries and the University of Technology Sydney over the past three years during which 'Almost all [participating] local councils... reported receiving complaints about agricultural practices that met the council's requirements for the operation's legally compliant activity'.

9. The Committee also notes the business impact that complaints can have on farmers, with the Minister stating:

When neighbours make complaints about agricultural activities the farmer must expend time, energy and money to answer the complaints, even when those complaints are completely without merit. The Right to Farm Bill 2019 is a proactive step by the Government that seeks to minimise the likelihood of complaints about normal farming practices ever escalating to litigation. It will protect farmers from having orders imposed upon them by a court finding that their completely lawful activities constitute a nuisance. Such orders could severely disrupt production or impact the viability of the business.

**The Bill limits the circumstances under which a claim of nuisance can be brought against lawful agricultural activity on agricultural land. This may impact on the right of a person to enjoy their property without interference from the activities of a neighbour. However, the Committee notes that this immunity only applies where activity is carried out lawfully on agricultural land and where the land has been used for the purposes of agriculture for at least 12 months. In addition, the Committee acknowledges that the Bill is intended to address the business impact on farmers and associated costs in time, energy and money as they answer claims against them for lawful activity. In the circumstances, the Committee makes no further comment.**

#### *Significantly increased penalties*

10. Schedule 2[4] of the Bill amends the *Inclosed Lands Protection Act 1901* to increase the penalty for aggravated unlawful entry on inclosed lands. Aggravating factors include: interfering with the conduct of the business; doing anything that seriously risks the safety of a person; or introducing or increasing the risk of a biosecurity impact.
11. Currently, the offence of aggravated unlawful entry on inclosed lands attracts a maximum penalty of \$5,500. This will increase under the Bill to a maximum penalty of \$13,200 and/or imprisonment for 12 months. The maximum penalty increases further to \$22,000 or imprisonment for three years if the offender was accompanied by two or more persons at the time of the offence or if they do anything that puts the safety of any person at serious risk. The Minister told Parliament that these further increases reflect 'the severity of the risk caused by trespassing and interfering with agricultural equipment and infrastructure' and 'recognises that trespassing in a large group is significantly more intimidating and compounds risk to farming families, including children'.
12. The Minister further noted that NSW is the only State without a term of imprisonment for trespass and that:

The suite of measures contained in the Right to Farm Bill 2019 means New South Wales will have the toughest penalties for farm trespass in the country for this sort of offence. The penalties proposed will better reflect the severity of the offences and the impact that it has on farmers and primary production activities in this State.

The Bill significantly increases the maximum penalty for the offence of aggravated unlawful entry on inclosed lands from \$5,500 to \$13,200 and/or imprisonment for 12 months. The potential penalties rise to \$22,000 or three years imprisonment if the offender is accompanied by two or more persons or if s/he does anything to put the safety of any person at serious risk. Large increases in penalties can result in excessive punishment where the penalty is not proportionate to the offence. However, the Committee acknowledges that the penalty increase is designed to better reflect the severity of the offences as well as the impact such offences have on farmers and primary production activities. It is also to account for the risks caused by trespassing on agricultural land and interfering with agricultural equipment and infrastructure. In the circumstances, the Committee makes no further comment.

#### *New offence*

13. Schedule 2[5] of the Bill amends the *Inclosed Lands Protection Act 1901* to create a new offence of directing, inciting, counselling, procuring or inducing aggravated unlawful entry on inclosed lands. Offenders risk a maximum penalty of \$11,000 and/or imprisonment for 12 months.

The Bill introduces a new offence that applies to those who incite or direct trespass without committing trespass themselves, which could attract a maximum penalty of 12 months imprisonment. The Committee notes that the creation of new offences impacts upon the rights and liberties of persons as previously lawful conduct becomes unlawful. However, the Committee acknowledges that the purpose of this offence is to address a gap in the legislation where people incite or direct trespass without actually committing it themselves. Given that there is a public interest in protecting the rights of farmers from trespass on their land and the attendant risks to themselves and others that may eventuate, the Committee makes no further comment.

### 3. Road Transport Amendment (Miscellaneous) Bill 2019

Date introduced	18 September 2019
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Transport and Roads

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Road Transport Act 2013 and the regulations made under that Act as follows—
  - (a) to make further provision with respect to the removal of periods of disqualification from a person who is disqualified from holding a driver licence (a disqualified driver), in particular—
    - i. to provide for the reopening of proceedings in cases where the Local Court has removed a period of disqualification from a disqualified driver who was, because of the nature of their offence, ineligible to have the period of disqualification removed, and
    - ii. to ensure that convictions for offences under certain repealed road transport legislation are considered when determining whether to remove a period of disqualification from a disqualified driver, and
    - iii. to make it clear that a reference to the date of an offence is a reference to the date on which the offence was committed,
  - (b) to make it clear that the power of a police officer to arrest a person involved in an accident, for the purpose of enabling the person to be tested for alcohol and drug use, extends to accidents occurring off-road that result in the death of one or more persons,
  - (c) to require a motor vehicle to be assessed as a total economic loss before classifying the vehicle as a statutory written-off vehicle.

#### BACKGROUND

2. In his second reading speech to Parliament, the Hon. Andrew Constance MP, Minister for Transport and Roads, stated that 'The purpose of the bill is to amend road transport legislation to give effect to a number of reforms that will improve road safety'.
3. The first set of amendments contained in the Bill relate to the 2017 driver licence disqualification reforms that provide for a disqualified person to apply to have their disqualification removed in certain circumstances. The Minister told Parliament:

In October 2017 the Government introduced a number of reforms to provide a path back to lawful driving for a person who had demonstrated they had behaved responsibly by complying with their disqualification, and remaining offence free for a minimum period of two or four years depending on their driving history.

4. However, an issue was recently identified regarding the calculation of the offence-free period with the current legislation not nominating the date that should be used to determine when a person becomes eligible to apply for the removal of the disqualification by the Local Court. The Minister stated:

Considerable discussion of this issue has occurred between the legal community, including Local Court magistrates. A working group comprising representatives from the Transport and Stronger Communities clusters was established to implement and monitor these reforms. This working group considered possible remedies to address this anomaly, and concluded that in the interests of fairness and equity the offence-free period should be calculated from the date of offence in all cases.

5. The Bill amends the Road Transport Act 2013 ('the Act') accordingly.
6. In addition, the Minister noted that one of the cornerstones of the driver licence qualification reforms was to prohibit a person convicted from the most serious driving offences from making an application to the court to remove their disqualification. The Act currently lists the offences for which a person is not eligible to apply to have the disqualification removed and they include murder and manslaughter by use of a motor vehicle, hit and runs, and menacing driving. However, the Minister told Parliament that there have been a number of cases where the Local Court has removed a disqualification period for a person convicted of one of these offences. The Bill would amend the Act so that such an order can be returned to the Local Court for correction.
7. The second set of amendments contained in the Bill relate to police powers to gather evidence when investigating fatal off-road motor vehicle accidents. The amendments clarify that police can arrest a driver to conduct a blood and urine test regardless of where a motor vehicle crash occurred if it results in a fatality. The Minister told Parliament that this relates back to recommendations of the Deputy State Coroner following an incident where two young people were killed by a motor vehicle being driven on private property after which the driver could not be charged with an offence under the Act because the accident did not occur on a road or road-related area as defined by the Act. Amendments were made to the Act in 2015 to address this gap. However, the Minister noted police concerns that their operation may not have achieved the intended result, and that the Bill would introduce amendments to clarify and ensure that the intent of the 2015 amendments are satisfied.
8. The third set of amendments contained in the Bill clarify the circumstances for notifying written-off vehicles to the written-off vehicle registers. All Australian States and Territories have registers for written-off light vehicles to ensure that crashed vehicles that are structurally unsafe are not re-registered and driven on public roads. NSW also has a register for written-off heavy vehicles, which applies to vehicles over 4.5 tonnes.
9. The Bill would require a motor vehicle to be assessed as a total economic loss before classifying the vehicle as a statutory written-off vehicle to align requirements in NSW with those of other jurisdictions. The Minister explained that it is 'the current practice of motor vehicle assessors across Australia...only to notify a damaged light vehicle to the written-



off light vehicles register once it is declared to be a total loss'. However, the Minister further explained that under the Act the current definition of a written-off light vehicle includes a vehicle that has not been assessed as being a total loss, but that has sustained certain damage as prescribed under the Austroads national damage assessment criteria and the insurer has decided not to repair the vehicle. The Minister stated:

All other jurisdictions require that a vehicle must be declared a total loss by the motor vehicle assessor before it is written off and notified to the written-off light vehicle register. This position accords with current national industry practice. As I mentioned earlier, in New South Wales any damaged light vehicle that has been declared to be a total loss by a motor vehicle assessor must be written off and classified as a statutory write-off. A statutory written-off vehicle cannot be re-registered in New South Wales or, by national agreement, in any other jurisdiction and can only be used for spare parts or scrap metal. Therefore, it is critical that the New South Wales approach is aligned with the national practice to mitigate the risk of any financial impact to small business such as motor vehicle repairers.

10. Still on the subject of written-off vehicles, the Bill would make exemptions for written-off heavy vehicles that are currently provided for under ministerial order, permanent. The Minister explained:

During industry consultation and training undertaken before the implementation of the written-off heavy vehicles register, concerns were raised by industry about the need for damaged heavy vehicles to be notified to the register when the vehicle had sustained certain structural damage as identified under the Austroads national damage assessment criteria. This damage might include damage to the chassis rail or impact damage to the cabin.

Industry indicated that because of the modular construction of a heavy vehicle, a damaged chassis rail can be replaced and so can a damaged cabin, which means that the vehicle could be safely repaired and returned to its pre-accident condition, mitigating the need for it to be written off. Under these circumstances the vehicle would not be declared a total loss and should not be classified as a statutory write-off. As the current provisions of the Act, had they been applied, prohibit vehicles from being repaired when it is economical and safe to do so, heavy vehicle operators and repairers would likely experience serious financial impacts. Therefore, an order was made by the then Minister for Roads exempting notifiable heavy vehicles from certain provisions of the legislation for a period of up to 12 months to enable further time to assess the implications of these reforms on industry.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Privacy – right to personal physical integrity and right to liberty*

11. Schedule 1[10] of the Bill would amend schedule 3, clause 12(1)(b)(i) of the Road Transport Act 2013 ('the Act') to make clear that the power of a police officer to arrest an 'accident participant', to enable him or her to have his or her blood and urine tested for alcohol or drugs, extends to accidents occurring off-road that result in the death of one or more persons. Schedule 3, Clause 12(6) of the Act defines an 'accident participant' to mean a person who:

(a) at the time of an accident, was:

i. driving a motor vehicle involved in the accident, or

- ii. occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion, or
- iii. the holder of an applicable driver licence and occupying the seat in the motor vehicle next to a learner driver who was driving a motor vehicle involved in the accident, and

(b) is at least 15 years old.

12. In his second reading speech regarding the Bill, the Minister explained:

In 2015 an amendment to the Act extended the circumstances in which police can arrest a driver for blood and urine tests in the event of a fatal motor vehicle accident that occurred off-road. This amendment was intended to ensure that police have clear powers to arrest a driver for the purposes of conducting a blood and urine test regardless of where a crash occurred, if it resulted in or was likely to result in a fatality...

Clause 12 of schedule 3 to the Act deals with police powers to arrest persons involved in fatal accidents for blood and urine tests. The 2015 amendment introduced a specific definition of "accident" into clause 12 to cover both on-road and off-road accidents. However, the clause also makes use of the term "fatal accident", which is defined in the Act elsewhere for other purposes and includes only those that occur on a road or road-related area. Police have raised concerns that the inclusion of both these terms within the clause may cause confusion which, in turn, may compromise the ability of police to require a driver in an off-road fatal accident to provide blood and urine samples. This would clearly undermine the intent of the 2015 reforms. The amendment proposed by the bill before the House is seeking to clarify the provisions of the Act so that police can arrest a driver for blood and urine tests under the clause, irrespective of whether the accident occurred on- or off-road.

13. The Committee notes that by allowing certain persons to be arrested and required to provide blood and urine samples, the Bill may impact on the right to personal physical integrity, that is, the right for people to have autonomy over their own bodies, and the right to liberty.

**The Bill clarifies that the power of a police officer to arrest certain persons involved in a motor vehicle accident, to enable them to have their blood and urine tested for alcohol or drugs, extends to accidents occurring off-road that result in the death of one or more persons. The Bill may thereby impact on the right of persons to personal physical integrity and liberty. However, the Committee notes that this power could only be used in respect of certain persons directly involved in a motor vehicle accident that results in a death and is designed so that police can properly investigate very serious motor vehicle accidents including those that occur off-road. In the circumstances, 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.