



Legislation Review Committee

Correspondence received in response to the Legislation Review Committee
Digest No. 8/57 – 12 November 2019



TABLE OF CONTENTS

<i>Justice Legislation Amendment Bill (No 2) 2019</i> - Letter from the Hon Mark Speakman MP SC, Attorney General and the Minister for Prevention of Domestic Violence – 19 December 2019.....	2
<i>Justice Legislation Amendment Bill (No 2) 2019</i> - Letter from the Anthony Roberts MP, Minister for Counter Terrorism and Corrections – 30 January 2019	3
<i>Better Regulation Legislation Amendment Bill 2019; Design and Building Practitioners Bill 2019; Greyhound Racing Regulation 2019</i> - Letter from the Hon. Kevin Anderson MP, Minister for Innovation and Better Regulation – 11 March 2020	4



Mark Speakman
Attorney General

D19/620004/DJ

Ms Felicity Wilson MP
Chair of the Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

legislation.review@parliament.nsw.gov.au

Dear Ms Wilson,

Legislation Review Digest No. 8/57 dated 12 November 2019

Thank you for your letter of 13 November 2019, providing a copy of the Legislation Review Committee (LRC)'s Digest No. 8/57. I have received and considered the issues raised by the LRC in respect of Digest No. 8/57.

Digest No. 8/57 reviews 12 Bills and 5 Regulations. Those Bills are the Better Regulation Legislation Amendment Bill 2019, the Central Coast Drinking Water Catchments Protection Bill 2019, the Child Protection (Nicole's Law) Bill 2019, the Design and Building Practitioners Bill 2019, the Digital Restart Fund Bill 2019, the Environment Planning and Assessment (Territorial Limits) Bill 2019, the Justice Legislation Amendment Bill (No 2) 2019, the Liquor Amendment (Intoxication) Bill 2019, the Liquor Amendment (Harm Reduction Areas) Bill 2019, the Professional Engineers Registration Bill 2019, the Real Estate Services Council Bill 2019, and the State Revenue Legislation Further Amendment Bill 2019. The Regulations are the Film and Television Industry Regulation 2019, the Gaming Machines Regulation 2019, the Greyhound Racing Regulation 2019, the Parramatta Park Trust Regulation 2019, and the National Parks and Wildlife Regulation 2019.

I note that the Justice Legislation Amendment Bill (No 2) 2019 falls under my portfolio responsibility. I would like to express my appreciation for the LRC's close consideration and thoughtful comments. As you may be aware, those matters raised by the LRC were addressed in Parliamentary debate of the Bill, and have helped to ensure that the Bill's scope, purpose and application are well understood by Members of Parliament and the wider community.

I look forward to receiving and reflecting on any future comments the LRC has on Bills and Regulations under my portfolio responsibility.

Thank you for taking the time to write.

Yours sincerely

Mark Speakman
19 DEC 2019



The Honourable Anthony Roberts MP
Minister for Counter Terrorism and Corrections

CESC19/02176
IM19/29259
Your ref: LAC19/113.08

Ms Felicity Wilson MP
Chair
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000



Dear Ms  Wilson

Thank you for your letter of 13 November 2019 outlining the comments of the Legislation Review Committee in relation to the *Justice Legislation Amendment Bill (No 2) 2019* and providing the opportunity to respond to the Committee's comments. I note you have also written to the Attorney General and Minister for Police and Emergency Services regarding those aspects of the Bill which fall within their portfolio responsibilities.

I acknowledge your comments in relation to provisions which expand the information sharing arrangements to enable the Commissioner of Corrective Services to share information with an Australian Intelligence Agency.

As you have pointed out, the gathering of intelligence information by CSNSW sharing of information in relation to correctional facilities is already an established practice with law enforcement agencies and interstate correctional services agencies. The sharing of this information can suppress potential security threats, and prevent criminal acts from taking place within the correctional environment and the broader community.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Roberts'.

Anthony Roberts MP
Minister for Counter Terrorism and Corrections

30 JAN 2020



The Honourable Kevin Anderson MP
Minister for Better Regulation and Innovation

Our reference: COR-03961-2019

Ms Felicity Wilson MP
Chair
Legislation Review Committee
Parliament of New South Wales
By email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson MP

A handwritten signature in black ink that reads 'Felicity'.

Thank you for your correspondence on behalf of the Legislation Review Committee.

I have considered the Committee's comments in Digest No. 8/57 concerning the Better Regulation Legislation Amendment Bill 2019, the Design and Building Practitioners Bill 2019 and the Greyhound Racing Regulation 2019. The Department's response, as summarised below, is attached (**Tab A – Department Response to Digest No. 8/57**).

Better Regulation Legislation Amendment Bill 2019

The Department notes the Committee's preference for legislation to commence on a fixed date or on assent, particularly if proposed amendments affect the rights of individuals. Although this approach may provide greater clarity to affected parties, specifying a commencement date may be unfeasible in circumstances where many stakeholders are involved and the process of developing regulations is complex. A flexible start date enables comprehensive stakeholder consultation to be conducted and the implementation of necessary administrative arrangements prior to commencement.

The Department also notes the Committee's view that penalty provisions are better contained in principal legislation to foster an appropriate level of parliamentary oversight. The Department notes that the offence provision and penalty for failure to comply with trust account requirements is already contained in the Building and Construction Industry Security of Payment Regulation 2008. All that the amendment in the Better Regulation Legislation Amendment Bill 2019 was seeking to achieve was to increase the quantum of the existing penalty in the Regulation. The new penalty amount accords with increases to other penalties contained in the principal Act. The amendment to the Building and Construction Industry Security of Payment Act 1999 relating to this matter was passed by Parliament without comment.

Design and Building Practitioners Bill 2019

The Department notes the Committee's concerns regarding non-reviewable decisions that may affect an individual's reputational and economic rights. It is considered that the safeguards contained in the Bill are proportionate to the potential public safety risks and are appropriate to support natural justice.

The Bill also allows for a number of significant details to be prescribed in the regulations rather than the primary legislation. Providing these details in the regulations ensures that the requirements are appropriately refined and allow further public scrutiny through the publication of a Regulatory Impact Statement.

Greyhound Racing Regulation 2019

As observed by the Committee, the strict liability offences contained in the Regulation are appropriate to promote compliance and foster positive behavioural change within the greyhound racing industry. The sharing of personal information is also proportionately limited by safeguards that uphold procedural fairness. In these circumstances, the Department considers that the proposed provisions are appropriate and notes that the Committee makes no further comments.

For a detailed summary of the Department's response, please refer to **Tab A**.

Yours sincerely



Kevin Anderson MP

Minister for Better Regulation and Innovation

Date:

11.3.2020

Legislation Review Committee (Digest No. 8/57)

Department Response

Better Regulation Legislation Amendment Bill 2019

Inappropriately delegates legislative powers

Issue	Legislation	LRC comments	Department response
Commencement by proclamation	Various	<p>The Bill provides for certain amendments to commence on day(s) to be appointed by proclamation. The Committee generally prefers legislation to commence on a fixed date or on assent, particularly if it affects the rights and obligations of individuals.</p> <p>While a flexible start date may assist with implementing administrative arrangements, parties affected by the amendments may benefit from having certainty about when the changes apply to them.</p>	<p>The comments of the Committee are noted.</p> <p>Some of the amendments in the Bill require supporting Regulations. Specifying the exact commencement date for these amendments is unfeasible as the process of developing Regulations can be complex. The process generally involves many stakeholders including public consultation. It may also require extensive ICT changes to be made and the development of communication packages to advise industry of changes.</p> <p>It is anticipated that these administrative arrangements will adequately inform affected parties about the incoming changes and their impact upon commencement.</p>
Matters that should be dealt with in principal legislation	<i>Building and Construction Industry Security of Payment Act 1999</i>	The Bill significantly increases the maximum penalty that may be imposed by the regulations for failure to comply with trust account requirements for retention money.	<p>The comments of the Committee are noted.</p> <p>The offence provision and penalty for failure to comply with trust account requirements is already contained in the Building and Construction Industry Security of Payment</p>

Tab A – Department Response to Digest No. 8/57

Better Regulation Legislation Amendment Bill 2019

		<p>The Committee prefers penalty provisions to be contained in principal legislation to foster an appropriate level of parliamentary oversight. This is particularly the case where the penalties set are significant.</p>	<p>Regulation 2008. All that the amendment in the Better Regulation Legislation Amendment Bill 2019 was seeking to achieve was to increase the quantum of the existing penalty in the Regulation. The new penalty amount accords with increases to other penalties contained in the principal Act. The amendment to the Building and Construction Industry Security of Payment Act 1999 relating to this matter was passed by Parliament without comment</p>
--	--	--	--

Design and Building Practitioners Bill 2019

Makes rights, liberties or obligations dependent upon non-reviewable decisions

Issue	Legislation	LRC comments	Department response
<p>Non-reviewable decisions affecting reputational and economic rights</p>	<p><i>Design and Building Practitioners Bill 2019</i></p>	<p>The Bill allows the Secretary to publish a notice, warning persons of the risks of dealing with a specified practitioner or any other person the Secretary reasonably believes may have breached the Act or regulations. There does not appear to be provision for such a decision to be reviewed by the NSW Civil and Administrative Tribunal. Therefore, the Bill may allow a non-reviewable decision to be made that may affect the reputational and economic rights of persons concerned.</p>	<p>The comments of the Committee are noted.</p> <p>It is considered that the safeguards observed by the Committee are proportionate to the potential public safety risks and are appropriate to support natural justice.</p>

Tab A – Department Response to Digest No. 8/57

Design and Building Practitioners Bill 2019			
		The Bill does contain safeguards and the person concerned must generally be given the opportunity to make representations prior to such notices being published. In addition, there may be some cases where it is in the public interest for a warning notice to be published swiftly. Notwithstanding this, the Committee refers the provisions to Parliament to consider whether they are reasonable in the circumstances.	
Inappropriately delegates legislative powers			
Issue	Legislation	LRC comments	Department response
Matters that should be included in primary legislation	<i>Design and Building Practitioners Bill 2019</i>	<p>The Bill allows a number of significant details e.g. key definitions and offence provisions, to be dealt with in the regulations.</p> <p>The Committee acknowledges that such an approach will provide flexibility, allowing swifter implementation of the necessary arrangements to support a complex and comprehensive new scheme.</p> <p>However, the Committee prefers significant details such as these to be included in primary legislation to foster an appropriate level of parliamentary oversight.</p>	<p>The comments of the Committee are noted.</p> <p>The Bill sought to establish a range of new requirements on design and building practitioners. As observed by the Committee, allowing for details to be prescribed in the regulations is considered appropriate to ensure that the requirements are refined appropriately. It is noted that providing such details in the regulations will also ensure further public scrutiny and stakeholder consultation through the publication of a Regulatory Impact Statement.</p>

Tab A – Department Response to Digest No. 8/57

Greyhound Racing Regulation 2019			
Trespasses unduly on personal rights and liberties			
Issue	Legislation	LRC comments	Department response
Strict liability	<i>Greyhound Racing Regulation 2019</i>	<p>The Regulation contains a number of strict liability offences. The Committee generally comments on strict liability offences as they derogate from the common law principle that mens rea must be prove to hold a person liable.</p> <p>The Committee however notes that strict liability offences are not uncommon in regulatory settings to promote compliance and strengthen offence provisions. The Committee further notes that the Regulation is part of a wider reform process seeking to implement a number of recommendations of the Greyhound Industry Reform Panel. In the circumstances, the Committee makes no further comment.</p>	<p>The comments of the Committee are noted.</p> <p>As observed by the Committee, the strict liability offences in the Regulation apply to promote compliance and foster positive behavioural change within the industry.</p>
Right to privacy	<i>Greyhound Racing Regulation 2019</i>	<p>The Regulation allows the Greyhound Welfare and Integrity Commission to share personal information contained in registers associated with registered greyhounds, racing industry participants and trial tracks. This may impact on the privacy rights of the individuals involved.</p> <p>However, the Committee notes that such information is shared to select organisations involved in the regulation of greyhound racing,</p>	<p>The comments of the Committee are noted.</p> <p>As observed by the Committee, sharing of personal information is limited to relevant regulatory and enforcement bodies. The Regulatory Impact Statement for the Regulation also provides that the sharing of such information is 'critical to effective lifecycle tracking, identification of industry trends and</p>

Tab A – Department Response to Digest No. 8/57

Greyhound Racing Regulation 2019			
		<p>animal welfare and law enforcement bodies. The Commission may also refuse a request for access to information as long as reasons for the refusal are provided.</p> <p>In the circumstances, the Committee makes no further comment.</p>	<p>national monitoring of non-complying industry participants’.</p>