



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Guide to the Digest

COMMENT ON BILLS

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

COMMENT ON REGULATIONS

This section contains the Legislation Review Committee's reports on Regulations in accordance with section 9 of the *Legislation Review Act 1987*.

Conclusions

PART ONE – BILLS

1. FISHING LEGISLATION AMENDMENT (RIGHT TO FISH) BILL 2019*

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

2. INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT (MINISTERIAL CODE OF CONDUCT – PROPERTY DEVELOPERS) BILL 2019*

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

Economic Rights

The Bill would provide that a Minister or Parliamentary Secretary must not remain or become a property developer. It may thereby impact on the economic rights of affected persons. However, the Committee acknowledges that Bill is intended to prevent Ministers and Parliamentary Secretaries from engaging in activities that may conflict with their role and functions. Further, the Bill provides for exceptions where such a conflict is not judged to be present. In the circumstances, the Committee makes no further comment.

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Ill-defined and wide power

The Bill would provide that a Minister or Parliamentary Secretary must not remain or become a property developer. However, a Minister or Parliamentary Secretary could do so where the person is a property developer only by virtue of being a spouse of a person; and where that other person's property developer business is not likely to give rise to a conflict of interest; and the Premier gives a ruling that the Premier approves the Minister or Parliamentary Secretary remaining or becoming a property developer in those circumstances.

The Bill may thereby grant the Premier a wide and ill-defined power affecting the rights and obligations of Ministers and Parliamentary Secretaries. The Committee acknowledges the anti-corruption objectives of the Bill. However, the Bill gives limited guidance as to how the Premier is to make a determination that the property developer business is 'not likely to give rise to a conflict of interest' other than that the Minister or Parliamentary Secretary is only a property developer because s/he is the spouse of a particular person. The Committee prefers administrative powers affecting rights and obligations to be drafted with sufficient precision so that their scope and content is clear. The Committee refers the matter to Parliament for consideration.

3. PILL TESTING BILL 2019*

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Broad delegation of administrative powers

The Bill would allow the Secretary of the Ministry of Health to delegate the exercise of any function or power under the proposed Act to a large class of persons, namely 'any Public Service employee'. There are no restrictions on the power to delegate e.g. restricting delegation to employees with a certain level of seniority or expertise. Given the Secretary's functions and powers under the proposed Act are significant – administering a pill testing licensing scheme – the Committee considers that the Bill should provide clarity about the persons to whom they can be delegated. The Committee refers to Parliament the question of whether the power of delegation is too broad.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

No requirement to give reasons for decision and non-reviewable decisions

The Bill provides that in making decisions about applications for a pill testing licence, the Secretary of the Ministry of Health is not required to give any reasons for the decision, and the decision is final and not subject to review. The Committee prefers that there be a requirement to provide reasons for administrative decisions and for administrative decisions to be subject to independent review to protect against the possibility of arbitrary decision-making. The Committee refers the matter to Parliament for consideration.

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

Matters left to regulations

Clause 23 of the Bill requires pill testing licensees to keep certain records and provide certain results to the Chief Health Officer, the Secretary of the Ministry of Health and the Commissioner of Police. However, more details about the kind of records to be kept, the results to be provided and the times and manner in which such information is provided are to be specified by regulation rather than primary legislation. The Secretary must also publish certain information about results in relation to pill testing services on the Ministry's website, if it is in the public interest. Details of the kinds of results that may be published is also left to the regulations.

The Committee notes that the pill testing services proposed by the Bill would be voluntary services and that persons who used them would be exempt from liability for certain possession and supply offences against the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*. However, it is unclear whether the matters left to the regulations may impact on personal rights and liberties. For example, the right to privacy may be impacted if personal information is required to be kept as part of the record-keeping requirements of pill testing licensees. The Committee prefers matters that impact on personal rights and liberties to be dealt with in primary legislation to foster an appropriate level of parliamentary oversight. The Committee refers clause 23 to Parliament to consider whether leaving the matters covered by that clause to the regulations is appropriate in the circumstances.

4. PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT (STATE OWNED CORPORATIONS) BILL 2019*

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

5. WORK HEALTH AND SAFETY AMENDMENT (REVIEW) BILL 2019

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

Right to privacy and privilege against self-incrimination

The Bill provides that an inspector can exercise the investigative powers in section 171 of the Act for up to 30 days without having to re-enter the workplace. The relevant investigative powers include requiring a person to produce documents or answer questions. A person may not refuse to answer a question or provide information or documents on grounds that it may incriminate the person. This may intrude upon the privacy rights of those involved, especially their right to freedom from arbitrary interference. It also compounds the impact of the abrogation of the privilege against self-incrimination.

However, the Committee notes that the current need for inspectors to re-enter a workplace to exercise these investigative powers may also affect the privacy rights of those involved. Further, it acknowledges the public interest in inspectors being able to effectively complete their investigations and ensure compliance with work health and safety laws in all areas of NSW. In addition the Committee notes that an individual's answer to a question or a document that they provide in accordance with section 171 is not generally admissible as evidence against the individual in civil or criminal proceedings. In the circumstances, and given this safeguard, the Committee makes no further comment.

Right to privacy - II

The Bill amends the *Work Health and Safety Act 2011* to allow certain information or documents obtained whilst exercising powers or functions under the Act to be shared with work health and safety regulators in other Australian jurisdictions. This may intrude on the privacy rights of the individuals involved as it potentially allows for the sharing of their personal and health information.

However, the Committee recognises that there is a public interest in the sharing of such information to ensure compliance with relevant WHS legislation and prevent risks to public health and safety. It also notes that the purpose of the amendment is to clarify the circumstances in which such information may be shared. It accordingly makes no further comment.

New offences

The Bill makes it an offence to enter into, provide or benefit from insurance or indemnity arrangements that would cover liability for a monetary penalty under the Act. The creation of these offences impacts the rights and liberties of individuals as previously unlawful conduct becomes unlawful. However, the Committee notes that the ability to enter into such arrangements may diminish the deterrent nature of the offences and recognises the public interest in ensuring compliance with WHS laws. It accordingly makes no further comment.

Part One – Bills

1. Fishing Legislation Amendment (Right to Fish) Bill 2019*

Date introduced	14 November 2019
House introduced	Legislative Council
Member responsible	The Hon. Mark Banasiak MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows—

(a) to amend the *Fisheries Management Act 1994* (the 1994 Act) as follows—

- (i) to constitute an independent statutory body to be known as the NSW Recreational Fishing Council (the NSWRF Council) and provide for its members, functions and procedure,
- (ii) to enable the NSWRF Council to order an audit of the recreational fishing trust funds established under the 1994 Act,
- (iii) to require the Minister to consult with the NSWRF Council in relation to priority species and commercial quantities of fish the subject of certain aggravated offences,
- (iv) to enable designated fishing activities to be declared or amended only by an amending Act,
- (v) to require the Minister to consult with the NSWRF Council and various other entities representing recreational fishing interests before revising existing fishery management strategies,
- (vi) to require the Minister to consult with the NSWRF Council before making or amending a fishing closure,
- (vii) to recommend the State provide compensation to commercial fishers for reduction in or loss of income due to a fishing closure,
- (viii) to recommend the State provide revenue from recreational fishing fees to assist in activities, to be administered by the NSWRF Council, that provide recreational fishing and boating infrastructure and educational programs to promote recreational fishing,
- (ix) to remove doubt that the official receipt issued for payment of a recreational fishing fee is evidence of the holder's authority to take fish,

- (x) to make it clear that a copy of a tax invoice issued on payment of a recreational fishing fee over the telephone or by electronic means is an official receipt for the purposes of the 1994 Act,
- (xi) to remove a general power of the Minister to take any other action available for the purpose of cancelling commercial fishing entitlements acquired under the 1994 Act,
- (xii) to remove a power of the Minister to require a fishing determination to be made by the Total Allowable Fishing Committee or the Secretary,
- (xiii) to require the Minister to consult with the NSWRF Council before directing the allocation of non-commercial fishing determinations,
- (xiv) to require the Secretary to undertake public consultation before making a fishing determination required by the regulations,
- (xv) to require the Minister to carry out public consultation when reviewing existing regulatory restrictions in light of non-commercial fishing determinations,
- (xvi) to limit the time within which the Share Management Fisheries Appeal Panel (the *Share Appeal Panel*) must set a date for the hearing of an appeal,
- (xvii) to limit the time within which the Share Appeal Panel must determine an appeal,
- (xviii) to enable a person who is eligible to make appeals in relation to the allocation of 2 or more classes of quota shares to elect to have the appeals heard together and to enable the regulations to prescribe a combined fee for these appeals,
- (xix) to require the Minister to consult with aquaculture permit holders before making a fishing closure relating to the area to which the permit applies,
- (xx) to replace the Minister's power to undertake research for the purposes of the 1994 Act with a power to engage researchers to carry out independent research for those purposes,
- (xxi) to prevent restrictions being imposed under any law on access to or across public land for the purpose of recreational fishing unless public consultation is first carried out,

(b) to amend the *Marine Estate Management Act 2014* (the 2014 Act) as follows—

- (i) to include as members of the Marine Estate Management Authority between 2 and 6 nominees of peak bodies representing recreational fishers and a nominee of the NSWRF Council,
- (ii) to provide for a 5-year moratorium on the declaration of marine parks,

- (iii) to prevent regulations under the 2014 Act from prohibiting recreational fishing in a marine park,
 - (iv) to prevent management rules for a marine park from prohibiting recreational fishing in a marine park,
 - (v) to prevent the Minister from prohibiting recreational fishing in a marine park by notification under the 2014 Act,
- (c) to make various consequential or ancillary amendments to those Acts, including making provision for matters of a savings or transitional nature.

BACKGROUND

2. The Bill proposes reducing certain Ministerial powers under the *Fisheries Management Act 1994* (the 1994 Act). The Minister would be required to consult with a new, independent statutory body, the NSW Recreational Fishing Council (NSWRF Council) before making various decisions, including revising an existing fishery management strategy (Schedule 1[3]), closing waters to fishing (Schedule 1[4]) and making regulations to specify commercial quantities of fish (Schedule 1[7]). In the Second Reading Speech, the Hon. Mark Banasiak MLC explained the reason that the Bill seeks to change the decision-making procedures under the 1994 Act:

For too long commercial and recreational fishing has been used as a political tool by the Minister of the day and the government of the day. The bill will remove the powers of that Minister. Under the current Fisheries Management Act, fishing closures, possession limits and restrictions on public lands can occur without consultation and without any warning to stakeholders at the Minister's discretion. That will not happen anymore.

3. The proposed NSWRF Council would include a Board consisting of 11 members, of whom 8 would be from peak bodies representing recreational fishers (Schedule 1[26]). Mr Banasiak stated:

The necessity of an independent statutory body is of utmost importance. The only people who should be making decisions about recreational fishing are those who are directly impacted by those decisions. They are stakeholders and have a direct interest in the industry.

4. The Bill also proposes amendments to the *Marine Estate Management Act 2014*, such as imposing a 5-year moratorium on the declaration of any new marine park (Schedule 2[2]) and preventing regulations from prohibiting recreational fishing in a marine park (Schedule 2[3]). Mr Banasiak stated the intention behind the proposed restrictions on marine parks:

Fishing is an integral Australian activity. It should be prioritised and protected. ... It is of utmost importance that we acknowledge our recreational, cultural and professional fishermen as best placed to report on environmental and stock depletion. It is in fishermen's best interest to ensure their resource is sustainably managed. Fishermen tell us that current legislation and regulation is not working.

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. Independent Commission Against Corruption Amendment (Ministerial Code of Conduct – Property Developers) Bill 2019*

Date introduced	14 November 2019
House introduced	Legislative Assembly
Member responsible	Ms Jodi McKay MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the NSW Ministerial Code of Conduct (which is set out in the Appendix to the Independent Commission Against Corruption Regulation 2017) to provide that Ministers and Parliamentary Secretaries must not remain or become property developers.
2. The Bill also amends the NSW Ministerial Code of Conduct to provide that—
 - (a) Minister or Parliamentary Secretary must take all reasonable steps to cease to be a property developer before or, if that is not practicable, as soon as practicable after appointment, and
 - (b) the Premier may give a ruling to approve a Minister or Parliamentary Secretary remaining or becoming a property developer in special specified circumstances, and
 - (c) a Minister or Parliamentary Secretary must promptly take steps to cease to be a property developer if the Premier, being satisfied that being a property developer has the potential to give rise to a conflict of interest, directs the Minister or Parliamentary Secretary to do so.

BACKGROUND

3. In the second reading speech, Ms Jodi McKay MP stated that:

The highest aim the of the bill is to restore public confidence in government decision-making. The public has every right to expect the highest standards from members of this place. They expect that those who have the privilege to sit in Cabinet are there to serve the interests of the people of New South Wales; not their own interests or the interests of those whom they know.

4. Ms McKay stated that these expectations are set out in the NSW Code of Conduct for Ministers of the Crown, which sits under the Independent Commission Against Corruption legislation and accompanying regulation, and that part 1 deals with prohibited interests. Ms McKay further stated that 'this section of the code of conduct needs to be amended' because 'there is nothing to prevent a property developer from taking a seat at the Cabinet table'.

5. Ms McKay also noted that specific legislative provisions for property developers already exist in NSW:

In New South Wales laws that ban property developers from making political donations have been in place since 2009... That change was not popular with everyone at the time, but it served to restore public confidence that developers were not making donations to obtain favourable planning decisions or gain information around planning decisions.

ISSUES CONSIDERED BY THE COMMITTEE

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

Economic Rights

6. Clause 3 of the Bill inserts proposed clause 4A into the schedule to the *Independent Commission Against Corruption Regulation 2017*. Clause 4A(1) would amend the NSW Ministerial Code of Conduct to provide that a Minister or Parliamentary Secretary must not remain or become a property developer.
7. However, clause 4A(3) would provide that a Minister or Parliamentary Secretary can remain or become a property developer where:
- (a) the person is a property developer only by virtue of being a spouse of a person, and
 - (b) that other person's property developer business is not likely to give rise to a conflict of interest, and
 - (c) the Premier gives a ruling that the Premier approves the Minister or Parliamentary Secretary remaining or becoming a property developer in those circumstances.

The Bill would provide that a Minister or Parliamentary Secretary must not remain or become a property developer. It may thereby impact on the economic rights of affected persons. However, the Committee acknowledges that Bill is intended to prevent Ministers and Parliamentary Secretaries from engaging in activities that may conflict with their role and functions. Further, the Bill provides for exceptions where such a conflict is not judged to be present. In the circumstances, the Committee makes no further comment.

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Ill-defined and wide power

8. As above, clause 3 of the Bill would provide that a Minister or Parliamentary Secretary must not remain or become a property developer.
9. However, clause 4A(3) would provide that a Minister or Parliamentary Secretary can remain or become a property developer where:
- (a) the person is a property developer only by virtue of being a spouse of a person, and
 - (b) that other person's property developer business is not likely to give rise to a conflict of interest, and

- (c) the Premier gives a ruling that the Premier approves the Minister or Parliamentary Secretary remaining or becoming a property developer in those circumstances.

The Bill would provide that a Minister or Parliamentary Secretary must not remain or become a property developer. However, a Minister or Parliamentary Secretary could do so where the person is a property developer only by virtue of being a spouse of a person; and where that other person's property developer business is not likely to give rise to a conflict of interest; and the Premier gives a ruling that the Premier approves the Minister or Parliamentary Secretary remaining or becoming a property developer in those circumstances.

The Bill may thereby grant the Premier a wide and ill-defined power affecting the rights and obligations of Ministers and Parliamentary Secretaries. The Committee acknowledges the anti-corruption objectives of the Bill. However, the Bill gives limited guidance as to how the Premier is to make a determination that the property developer business is 'not likely to give rise to a conflict of interest' other than that the Minister or Parliamentary Secretary is only a property developer because s/he is the spouse of a particular person. The Committee prefers administrative powers affecting rights and obligations to be drafted with sufficient precision so that their scope and content is clear. The Committee refers the matter to Parliament for consideration.

3. Pill Testing Bill 2019*

Date introduced	14 November 2019
House introduced	Legislative Council
Member responsible	Ms Cate Faehrmann MLC
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for pill testing services for the purposes of drug harm reduction in accordance with a licensing scheme to be administered by the Secretary of the Ministry of Health. The proposed Act provides for pill testing in respect of prohibited drugs, poisons, restricted substances, drugs of addiction and any other substances that would cause harm if ingested.
2. The Bill also provides that the possession and provision of prohibited drugs, poisons, restricted substances or drugs of addiction in accordance with a licence under the proposed Act will not constitute an offence under the *Drug Misuse and Trafficking Act 1985* or the *Poisons and Therapeutic Goods Act 1966*.

BACKGROUND

3. Ms Cate Faehrmann MLC, in her Second Reading Speech for the Bill, stated that it responds to some of the recommendations made by the NSW Deputy Coroner in relation to the inquest into the deaths of various persons at music festivals between December 2017 and January 2019. In particular, Ms Faehrmann, highlighted the following five recommendations of the Deputy Coroner that the Bill responds to:
 - i That the Department of Premier and Cabinet permits and facilitates Pill Testing Australia, The Loop Australia, or another similarly qualified organisation to run front of house medically supervised pill testing/drug checking at music festivals in NSW with a pilot date starting the summer of 2019–20.
 - ii That the Department of Premier and Cabinet, working with NSW Health and NSW Police, fund the establishment of a permanent drug checking facility, similar to the Dutch model known as the Drug Information Monitoring System (DIMS).
 - iii That the Department of Premier and Cabinet, working with NSW Health, research and support the development of technology to allow for the most sophisticated and detailed drug analysis to be made available on site at music festivals.
 - iv That the Department of Premier and Cabinet, working with NSW Health, research and support the development of early warning systems at music festivals generally and arising from front of house and/or back of house drug checking.
 - v That the Department of Premier and Cabinet, working with the NSW State Coroner, NSW Police, FASS and NSW Health, develop protocols for the open

sharing of information between these agencies regarding drug trends and monitoring of drug deaths.

ISSUES CONSIDERED BY THE COMMITTEE

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Broad delegation of administrative powers

4. Clause 30 of the Bill provides that the Secretary of the Ministry of Health may delegate the exercise of any function or power of the Secretary under the proposed Act, other than the power of delegation, to any Public Service employee.

The Bill would allow the Secretary of the Ministry of Health to delegate the exercise of any function or power under the proposed Act to a large class of persons, namely 'any Public Service employee'. There are no restrictions on the power to delegate e.g. restricting delegation to employees with a certain level of seniority or expertise. Given the Secretary's functions and powers under the proposed Act are significant – administering a pill testing licensing scheme – the Committee considers that the Bill should provide clarity about the persons to whom they can be delegated. The Committee refers to Parliament the question of whether the power of delegation is too broad.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

No requirement to give reasons for decision and non-reviewable decisions

5. Clause 14(3) of the Bill provides that the Secretary of the Ministry of Health is to give the applicant written notice of the determination of the application for a pill testing licence. However, the Secretary is not required to give any reasons for the decision.
6. Further, clause 14(4) provides that the Secretary's decision in relation to a pill testing licence application is final and is not subject to review.

The Bill provides that in making decisions about applications for a pill testing licence, the Secretary of the Ministry of Health is not required to give any reasons for the decision, and the decision is final and not subject to review. The Committee prefers that there be a requirement to provide reasons for administrative decisions and for administrative decisions to be subject to independent review to protect against the possibility of arbitrary decision-making. The Committee refers the matter to Parliament for consideration.

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

Matters left to regulations

7. Clause 23 of the Bill requires a pill testing licensee to notify the following persons within 24 hours after an analysis by their service yields a result of a kind prescribed by the regulations:
 - the Chief Health Officer
 - the Secretary of the Ministry of Health

- the Commissioner of Police.
8. A pill testing licensee is also required to:
 - keep records of any results of a kind prescribed by the regulations in relation to the services provided, and
 - provide those results to the persons mentioned above at the times, and in the manner, prescribed by the regulations.
 9. The regulations may prescribe a result by reference to the detection of a specified substance; or a substance of a specified kind; or the amount or purity of a substance detected.
 10. If the Secretary is satisfied that it is in the public interest to do so, the Secretary must publish, on the website of the Ministry, a notice providing information about any results prescribed by the regulations in relation to pill testing services.

Clause 23 of the Bill requires pill testing licensees to keep certain records and provide certain results to the Chief Health Officer, the Secretary of the Ministry of Health and the Commissioner of Police. However, more details about the kind of records to be kept, the results to be provided and the times and manner in which such information is provided are to be specified by regulation rather than primary legislation. The Secretary must also publish certain information about results in relation to pill testing services on the Ministry's website, if it is in the public interest. Details of the kinds of results that may be published is also left to the regulations.

The Committee notes that the pill testing services proposed by the Bill would be voluntary services and that persons who used them would be exempt from liability for certain possession and supply offences against the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*. However, it is unclear whether the matters left to the regulations may impact on personal rights and liberties. For example, the right to privacy may be impacted if personal information is required to be kept as part of the record-keeping requirements of pill testing licensees. The Committee prefers matters that impact on personal rights and liberties to be dealt with in primary legislation to foster an appropriate level of parliamentary oversight. The Committee refers clause 23 to Parliament to consider whether leaving the matters covered by that clause to the regulations is appropriate in the circumstances.

4. Privacy and Personal Information Protection Amendment (State Owned Corporations) Bill 2019*

Date introduced	14 November 2019
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Privacy and Personal Information Protection Act 1998* to remove the exclusion of State owned corporations from that Act and to extend that Act to State owned corporations that are not subject to the Commonwealth *Privacy Act 1988*.

BACKGROUND

2. The *Privacy and Personal Information Protection Act 1998* places restrictions on the collection of personal information by public sector agencies. In particular, section 8 provides:
 - (1) A public sector agency must not collect personal information unless:
 - (a) the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and
 - (b) the collection of the information is reasonably necessary for that purpose.
 - (2) A public sector agency must not collect personal information by any unlawful means.
3. Clause 3 of the Bill proposes to amend the definition of 'public sector agency' (under section 3 of the Act) to include: 'a State owned corporation that is not subject to the *Privacy Act 1988* of the Commonwealth'.
4. Currently the definition of public sector agency excludes State owned corporations such as water and energy companies. Those entities can opt into the Commonwealth privacy regime under the *Privacy Act 1988* (Cth) but it does not automatically apply to them.
5. The NSW Privacy Commissioner addressed this issue in 2015 in a report to Parliament.¹ The Privacy Commissioner observed that voluntary compliance with privacy legislation by State owned corporations meant consumers did not have a consistent level of privacy protection. Further, voluntary compliance did not provide an external review of complaint

¹ *Report of the Privacy Commissioner under Section 61B of the Privacy and Personal Information Protection Act 1998*, February 2015, at 5.2, pp 19-20.

handling. The Privacy Commissioner recommended that all NSW State owned corporations be subject to privacy regulation.²

6. In the second reading speech for the Bill, Mr Paul Lynch MP stated:

The justification for this bill commences with first principles. State-owned corporations hold quite substantial amounts of personal information about the people of New South Wales. It follows logically that SOC's should thus be included within the [Privacy and Personal Information Protection Act] regime. Other State agencies are included and the reasons for their inclusion apply equally to the inclusion of SOC's.

7. Mr Lynch previously introduced a bill in the same terms, the *Privacy and Personal Information Protection Amendment (State Owned Corporations) Bill 2016*.

ISSUES CONSIDERED BY THE COMMITTEE

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

² *Report of the Privacy Commissioner under Section 61B of the Privacy and Personal Information Protection Act 1998*, February 2015, Recommendation 3.

5. Work Health and Safety Amendment (Review) Bill 2019

Date introduced	12 November 2019
House introduced	Legislative Assembly
Minister responsible	The Hon. Kevin Anderson MP
Portfolio	Better Regulation and Innovation

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Work Health and Safety Act 2011* (WHS Act) and the regulations under that Act to—
 - (a) implement proposals based on recommendations made by the 2018 *Review of the model Work Health and Safety laws: Final report*; and
 - (b) make minor amendments to the Act recommended by the *Work Health and Safety Act 2011 Statutory Review Report* in relation to the application of the Act to dangerous goods and high risk plant.

BACKGROUND

2. The model Work Health and Safety (WHS) laws were developed between 2009 and 2011 following a comprehensive and independent 2008 National Review. They were subsequently implemented in NSW by the *Work Health and Safety Act 2011* (NSW) which commenced operation on 1 January 2012 to ‘provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces’.³
3. The *Work Health and Safety Act 2011 Statutory Review Report* was published by the NSW Department of Finance, Services and Innovation in June 2017. It identified a number of provisions specific to NSW that should be amended.
4. The final report of the *Review of the model Work Health and Safety Laws* was published in December 2018 (2018 Review).⁴ It was the first national review of the model WHS laws which was undertaken at the request of ministers with responsibility for WHS matters.
5. The Minister for Better Regulation and Innovation, the Hon. Kevin Anderson MP, noted in his Second Reading speech that the Bill:

...seeks to amend the *Work Health and Safety Act 2011* to expedite implementation in New South Wales of 12 proposals based on recommendations of a national review of the model *Work Health and Safety Act*, on which the New South Wales Act is based. The reforms are intended to make workers in New South Wales safer and are being expedited ahead of completion of the national

³ Section 3 *Work Health and Safety Act 2011* (NSW).

⁴ M Boland, [Review of the model Work Health and Safety laws: Final report](#), December 2018.

process to ensure that the issues in the *Work Health and Safety Act* identified by the national review do not continue to affect New South Wales workplaces.

Mr Anderson further stated that:

The amendments will address the ongoing issue of workplace deaths, strengthen support for the families of workplace victims, streamline investigations, and give workers and businesses greater clarity on aspects of the *Work Health and Safety Act*. These amendments will not affect the nature of the existing obligations of businesses to protect workers and others from risks to their health and safety.

6. According to the Second Reading speech, there were 47 work-related fatalities in NSW in 2018 and 62 in 2017. In addition, there were 32,998 serious injury or illness claims accepted in NSW in 2016-17.

ISSUES CONSIDERED BY THE COMMITTEE

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

Right to privacy and privilege against self-incrimination

7. Schedule 1[13] of the Bill amends section 171 of the WHS Act to extend the power of inspectors to require production of documents and answers to questions for 30 days after they or another inspector has entered a workplace under Division 3 of Part 9 of the Act. In its current form, the Act appears to limit this power to the time of entry to a workplace.
8. Section 172 of the WHS Act does not allow a person to refuse to answer a question or provide information or a document required by the inspector on grounds that it may incriminate the person or expose them to a penalty. However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.
9. The amendment proposed by the Bill accordingly allows for further impact on the privacy rights of those involved. The right to privacy protects against unlawful or arbitrary interference with a person's privacy, family, home and correspondence. It may also extend to a person's workplace. The amendment also affects the privilege against self-incrimination as extending the power of the inspector to require production of documents and answers to questions for 30 days after they entered the workplace subsequently increases the impact of the abrogation of the privilege against self-incrimination in section 172 of the Act.
10. The Committee notes that this amendment implements recommendation 17 of the 2018 Review. The 2018 Review considered that restricting the exercise of this power to the physical entry of a workplace:

is not pragmatic, as it is reasonable that an inspector may identify documents or information they require to support their investigation after they have left the workplace... [and] could potentially limit the efficiency and effectiveness of inspectors' investigations, particularly where the workplace is in a regional or remote location.⁵

⁵ M Boland, [Review of the model Work Health and Safety laws: Final report](#), December 2018, p 93.

The Bill provides that an inspector can exercise the investigative powers in section 171 of the Act for up to 30 days without having to re-enter the workplace. The relevant investigative powers include requiring a person to produce documents or answer questions. A person may not refuse to answer a question or provide information or documents on grounds that it may incriminate the person. This may intrude upon the privacy rights of those involved, especially their right to freedom from arbitrary interference. It also compounds the impact of the abrogation of the privilege against self-incrimination.

However, the Committee notes that the current need for inspectors to re-enter a workplace to exercise these investigative powers may also affect the privacy rights of those involved. Further, it acknowledges the public interest in inspectors being able to effectively complete their investigations and ensure compliance with work health and safety laws in all areas of NSW. In addition the Committee notes that an individual's answer to a question or a document that they provide in accordance with section 171 is not generally admissible as evidence against the individual in civil or criminal proceedings. In the circumstances, and given this safeguard, the Committee makes no further comment.

Right to privacy - II

11. Section 271 of the *Work Health and Safety Act 2011* prohibits the disclosure or sharing of information or documents gained whilst exercising powers or functions under the Act. However, there are some exceptions to the confidentiality requirement which may be found in section 271(3).
12. Schedule 1[19] of the Bill amends the *Work Health and Safety Act 2011* to allow any information or documents lawfully obtained or accessed by a person exercising a power or function under the Act to be shared with a corresponding regulator. It clarifies that information (including personal and health information) may be shared with work health and safety regulators in other Australian jurisdictions if relevant to a workplace incidents that is being investigated elsewhere.
13. This amendment impacts on the privacy rights of the individuals involved as it allows for the sharing of personal and potentially confidential information.

The Bill amends the *Work Health and Safety Act 2011* to allow certain information or documents obtained whilst exercising powers or functions under the Act to be shared with work health and safety regulators in other Australian jurisdictions. This may intrude on the privacy rights of the individuals involved as it potentially allows for the sharing of their personal and health information.

However, the Committee recognises that there is a public interest in the sharing of such information to ensure compliance with relevant WHS legislation and prevent risks to public health and safety. It also notes that the purpose of the amendment is to clarify the circumstances in which such information may be shared. It accordingly makes no further comment.

New offences

14. Schedule 1[20] proposes to insert section 272A into the *Work Health and Safety Act 2011* to prohibit obtaining insurance or indemnity arrangements that would cover liability for

a monetary penalty under the WHS Act. Entering into such an insurance contract or indemnity arrangement incurs a maximum penalty of \$25,000 for individuals and \$125,000 for corporations. The provision of such insurance or indemnity arrangements attracts a maximum penalty of \$50,000 for individuals and \$250,000 for corporations.

15. The creation of these offences impacts on the rights and liberties of individuals as previously lawful conduct becomes unlawful.
16. The Committee notes that the 2018 Review recommended that it should be an offence to: enter into a contract of insurance or other arrangement which covers the person's liability for a monetary penalty; provide insurance or a grant of indemnity for liability for a monetary penalty; and to take the benefit of such insurance or indemnity (recommendation 26). The rationale behind the recommendation was that it would 'ensure greater compliance with the model WHS laws by ensuring that monetary penalties act as an effective deterrent and are not nullified by being paid through insurance coverage or an indemnity'.⁶

The Bill makes it an offence to enter into, provide or benefit from insurance or indemnity arrangements that would cover liability for a monetary penalty under the Act. The creation of these offences impacts the rights and liberties of individuals as previously unlawful conduct becomes unlawful. However, the Committee notes that the ability to enter into such arrangements may diminish the deterrent nature of the offences and recognises the public interest in ensuring compliance with WHS laws. It accordingly makes no further comment.

⁶ M Boland, [Review of the model Work Health and Safety laws: Final report](#), December 2018, p 137.

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.

Appendix Two – Index- Letters received from Ministers and Members responding to Committee's comments

Number	Digest Number	Minister/Member and Date of Letter	Bills/Regulations Covered by Letter
1	1/57	Hon Anthony Roberts MP – 25 September 2019	<i>Crimes (Administration of Sentences) Amendment (Inmate Behaviour) Bill 2019</i>
2	1/57	Hon Shelley Hancock MP – 19 August 2019	<i>Local Government Amendment Bill 2019</i>
3	1/57	Hon Mark Speakman SC MP – 12 September 2019 (received)	<i>Crimes (Administration of Sentences) Amendment (Parole Supervision of Serious Sex Offenders) Regulation 2019</i> <i>Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2019</i> <i>Criminal Procedure Amendment (Penalty Notices for Drug Possession) Regulation 2019</i> <i>Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2019</i> <i>Uniform Civil Procedure (Amendment No 90) Rule 2019</i> <i>Young Offenders Amendment (Exempted Sexual Offences) Regulation 2019</i>
4	1/57	Hon Victor Dominello MP – 30 August 2019 (received)	<i>Motor Accidents Injuries Amendment Regulation 2019</i> <i>Motor Accident Guidelines – Version 4</i>
5	1/57	Hon John Barilaro MP – 3 October 2019 (received)	<i>Snowy Hydro Corporatisation Regulation 2019</i>
6	1/57	Hon Kevin Anderson MP – 26 September 2019	<i>Tow Truck Industry Amendment (Fees) Regulation 2018</i>
7	1/57	Hon Matt Kean MP – 12 November 2019	<i>Electricity Supply (General) Amendment Regulation 2019</i>
8	3/57	Hon Geoff Lee MP – 25 September 2019	<i>Apprenticeship and Traineeship Amendment Regulation 2019</i>
9	3/57	Hon Andrew Constance MP – 19 September 2019	<i>Road Transport (Driver Licensing) Amendment (Release of Photographs to ASIO) Regulation 2019</i>

INDEX- LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO COMMITTEE'S COMMENTS

10	4/57	Hon Mark Speakman SC MP – 13 November 2019 (received)	<i>Justice Legislation Amendment Bill 2019</i> <i>Administrative Decisions Review Regulation 2019</i> <i>Anti-Discrimination Regulation 2019</i> <i>Privacy and Personal Information Protection Regulation 2019</i>
11	5/57	Hon Andrew Constance MP – 1 November 2019 (received)	<i>Road Transport Amendment (Miscellaneous) Bill 2019</i>
12	6/57	Hon Brad Hazzard MP – 7 November 2019	<i>Health Records and Information Privacy Amendment (Health Records) Regulation 2019 (NSW)</i>
13	7/57	Hon Mark Speakman SC MP – 13 November 2019 (received)	<i>Statute Law (Miscellaneous Provisions) Bill (No 2) 2019</i>
14	7/57	Mr David Mehan MP – 14 November 2019	<i>Food Amendment (Seafood Country of Origin Labelling) Bill 2019</i>



The Honourable Anthony Roberts MP
Minister for Counter Terrorism and Corrections

CESC19/01438
Your Ref: LAC19/113

Ms Felicity Wilson MP
Chair
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000
Legislation.review@parliament.nsw.gov.au

Dear Ms  Wilson

Thank you for your correspondence of 7 August 2019 outlining the comments of the Legislation Review Committee in relation to the *Crimes (Administration of Sentences) Amendment (Inmate Behaviour) Bill 2019* and providing the opportunity to respond to the Committee's comments. The Bill was assented on 25 June 2019.

I note the issues raised by the Committee in accordance with Section 8A of the *Legislation Review Act 1987*. I provide the following comments:

Section 65A(2)(a) of the *Crimes Administration of Sentences Act 1999* (CAS Act) ensures that wherever the Act and Regulations specify a minimum level to which inmates are to be afforded certain rights or privileges, nothing in a behaviour management policy will permit them being reduced below that level. Accordingly, the Bill did not affect an inmate's right to humane treatment in detention.

This means that other than the modification of withdrawable privileges, Corrective Services NSW is not empowered to do anything under a behaviour management policy which is not already permitted by the Act.

This also ensures that wherever the Act and Regulations specify a minimum level to which inmates are to be afforded certain rights or privileges, nothing in a behaviour management policy will permit them being reduced below that level.

In relation to the claim the Bill permitted the imposition of "double punishment", the common law recognises that extra-curial punishment inflicted on an offender otherwise than by a court of law can be taken into account at sentencing and is to be afforded such weight as the sentencing court considers appropriate. Section 65A of the CAS Act does not override this common law principle.

With regard to the view that the Bill did not sufficiently define and limit the powers of the Commissioner, Section 65A(2)(a) of the CAS Act ensures that wherever the Act and Regulations specify a minimum level to which inmates are to be afforded certain rights or privileges, nothing in a behaviour management policy will permit them being reduced

below that level. Accordingly, the Bill did ensure that the administrative powers are sufficiently defined to ensure that the scope of the power is clear.

I trust the above information is of assistance to the Committee.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'AR', is written over the closing 'Yours sincerely'.

Anthony Roberts MP
Minister for Counter Terrorism and Corrections

25 SEP 2019



The Hon. Shelley Hancock MP
Minister for Local Government

Your ref: LAC19/113
Ref: A659241

Ms Felicity Wilson MP
Member for North Shore
Chair, Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

By email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson

Thank you for your correspondence of 7 August 2019 regarding comments made by the Legislation Review Committee (the Committee) about the (then) Local Government Amendment Bill 2019 (the Bill), as set out in Digest No. 1/57.

Firstly, I wish to acknowledge the Committee's work scrutinising bills and regulations that are to be considered by the NSW Parliament. Given the important role of the Committee in ensuring appropriate parliamentary scrutiny of legislation, I appreciate the opportunity to respond to the Committee's comments. I have carefully considered those matters raised in relation to the Bill and provide the advice set out below.

Provisions that commence by proclamation

I understand the Committee's view that Acts of Parliament should commence on a fixed date or on assent, to provide certainty to those who may be affected. As the Committee has noted in relation to other Bills, however, there are instances in which it is necessary to commence specific provisions at a later date by proclamation.

The Bill provides for Schedule 1 paragraphs 4 and 16-20 and Schedule 2.2 to commence by proclamation. These sections give effect to reforms which enable councils to delegate regulatory functions to other councils, exempt fees for commercial activities from certain requirements, and provide for a scheme for mutual recognition by councils of approvals. It is the Government's intention that regulations to support the Bill are made promptly to enable the commencement of the above provisions.

For each of these reforms, the Government has taken the view that all changes related to a specific reform should commence at the same time. This reduces confusion about the law and supports more effective and efficient education, compliance and enforcement measures. In relation to the principal provisions that give effect to the reform, it is necessary to commence the regulation by proclamation as it requires supporting detail and machinery provisions, which is required to be set out in regulations.

I can advise in relation to exempting fees for commercial activities from certain requirements, for example, it is intended that regulations be made that set out in detail precisely those commercial activities to which the exemption will apply and, in each case, which public notification and other legislative requirements do not apply to those fees. For further details about the remaining sections that require regulations to commence, please refer to the remainder of my advice to the Committee.

The jurisdiction of the Land and Environment Court

I understand that, in general, it is preferred that important matters are addressed in Acts of Parliament rather than subordinate legislation. In this regard, I note that the Bill enables regulations to be made to provide for appeals to the Land and Environment Court by applicants or approval holders dissatisfied with a council determination under a scheme for mutual recognition of approvals. They may also be made to confer discretion on the Court to award compensation payable by councils in certain circumstances.

The Bill primarily confers jurisdiction on the Land and Environment Court through Schedule 2.2, which amends section 18 of the *Land and Environment Court Act 1979*. It is acknowledged, however, that the Bill enables regulations to be made that provide for additional, specific matters. A decision has been made to provide for these specific details by regulation as they are anticipated to involve technical matters which must be set out in detail and may require urgent amendment in future.

Delegation of councils' regulatory functions

Finally, I note that the Committee has commented on sections of the Bill that permit a council to delegate certain regulatory functions to another council. These regulatory functions include matters relating to water supply, sewerage and drainage work, and waste management.

The Government is committed to ensure the effective regulation of works that have public health implications, given the importance of this matter to local communities across the State. Given that imperative, the Bill enables regulations to be made that prescribe certain regulatory functions that must not be delegated by one council to another, and, to limit the circumstances in which such a function may be delegated by one council to another.

The matters to be set out in regulations provide safeguards directed to securing public health and similar matters of critical importance. A number of the sectors regulated under these powers involve complex operations which are continually changing, with corresponding changes to the nature of council's regulatory functions in practice. Safeguards against future misuse and unanticipated changes must therefore be made through regulations as it is impossible for an Act to capture every circumstance known and that may arise.

Thank you for taking the time to bring these matters to the Government's attention.

Yours sincerely



The Hon. Shelley Hancock MP
Minister for Local Government

19 AUG 2019



Mark Speakman
Attorney General

IM19/17038
MAPS19/5102

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

legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~

Felicity

Digest No. 1/57 of the Legislation Review Committee

Thank you for your letter of 7 August 2019 providing a copy of the Legislation Review Committee's Digest No. 1/57.

Digest No. 1/57 reports on six Regulations subject to disallowance under my portfolio of responsibility. Those Regulations are the:

- Crimes (Administration of Sentences) Amendment (Parole Supervision of Serious Sex Offenders) Regulation 2019
- Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2019
- Criminal Procedure Amendment (Penalty Notices for Drug Possession) Regulation 2019
- Evidence (Audio and Audio Visual Links) Amendment (Bail Exemptions) Regulation 2019
- Uniform Civil Procedure (Amendment No 90) Rule 2019; and Young Offenders Amendment (Exempted Sexual Offences) Regulation 2019.

I have received and considered the issues raised by the Committee in respect of the Regulations. I wish to express my thanks for the Committee's thoughtful comments and careful consideration.

I look forward to receiving and reflecting on any future comments the Committee has on bills and regulations under my portfolio of responsibility.

Thank you for taking the time to write.

Yours sincerely

Mark Speakman
12 SEP 2019



The Honourable Victor Dominello MP
Minister for Customer Service

Our reference: COR-01384-2019
Your reference: D19/29005

Ms Felicity Wilson MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson

Felicity

Thank you for your correspondence relating to the Legislation Review Committee's comments in the Legislation Review Digest No 1/57, considering the *Motor Accident Injuries Amendment Regulation 2019* (Regulation) and the Motor Accident Guidelines version 4 (Guidelines).

Motor Accident Injuries Amendment Regulation 2019

Loss of earnings

The Regulation amends the definition of 'income from personal exertion' in the *Motor Accident Injuries Act 2017* (the Act) to exclude 'the monetary amount of any annual, sick or other leave entitlement'. This amendment benefits injured persons. It ensures that a person can receive weekly payments for loss of earnings even if that person had taken employer paid leave for their injury.

Legal advice received by the State Insurance Regulatory Authority (SIRA) indicated that without legislative clarification, individuals may not have been entitled to a payment for loss of earnings if they had received their full pay via an entitlement from employer paid leave.

The amendment clarifies that the monetary amount of any leave should not be considered as a person's income when determining if the person has had a loss of earnings as a result of an injury. I assure the Committee that no injured person is disadvantaged by this amendment. It enables injured persons to receive weekly payments for loss of earnings so that they can arrange with their employer to have their entitlement to paid leave restored.

Henry VIII clauses

I acknowledge the Committee's comments relating to the 'Henry VIII' clauses in the Act. These clauses lie within the legislative power of the NSW Parliament. They provide a flexible means of amending the Act in areas of administrative detail to support the smooth running of a modern complex statutory insurance scheme. Here, the regulation-making power allowed the Government to act quickly to safeguard the entitlement of injured persons to weekly payments for loss of earnings in cases where they had already taken employer paid leave for the injury.

Parliamentary oversight of the regulation was facilitated through notice of the regulation having to be tabled in Parliament. Further, either House of Parliament has the power to pass a resolution disallowing the regulation. This oversight is enhanced by the work of the Legislation Review Committee who may draw special attention to regulations for Parliament to consider further.

Motor Accident Guidelines version 4

Retrospectivity

I note the Committee's comments that the retrospective application of the Guidelines supports the delivery of the objects of the Act.

Right to privacy

I note the Committee's comments that the limited circumstances of when and where an insurer can conduct surveillance sufficiently safeguard the privacy of individuals.

Regulation of insurance premiums

I note the Committee's comments that SIRA's power to reject excessive insurer premiums supports the objects of the compulsory third-party insurance scheme to keep premiums affordable and promote fair market practices.

Requirement to provide insurance

I note the Committee's comments that the requirements for insurers to make third-party insurance policies readily accessible and available to all customers is consistent with the regime established under the Act to make insurance compulsory for all vehicle owners registered in NSW.

Non-reviewable Decision

The power of a claims assessor to issue a binding damages assessment on insurers is provided for by section 7.38 of the Act. The Guidelines only reiterate the law in section 7.38 of the Act.

Contact

I thank you and the Committee for the comments concerning the *Motor Accident Injuries Amendment Regulation 2019* and the Motor Accident Guidelines version 4.

Should you have any further queries, please contact Mary Maini, Executive Director, Motor Accidents Insurance Regulation on Mary.Maini@sira.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victor Dominello', with a large loop at the end.

Victor Dominello MP
Minister for Customer Service

30.8.19



The Hon. John Barilaro MP
Deputy Premier
Minister for Regional New South Wales
Minister for Industry and Trade

Ref: IRF19/5963

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



By email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson

Felicity

Thank you for your correspondence of 7 August 2019 on behalf of the Legislation Review Committee regarding the concerns it has with the *Snowy Hydro Corporatisation Regulation 2019* (regulation).

In 2018, the NSW Government secured the future of the Snowy 2.0 project (**Snowy 2.0**) by amending the *Snowy Hydro Corporatisation Act 1997* to enable Snowy Hydro Limited (**Snowy Hydro**) to obtain a lease under the *National Parks and Wildlife Act 1974*.

Snowy 2.0 is a crucial component to delivering energy security in NSW and involves an expansion of the existing scheme to increase its capacity and electrical output. As the work for Snowy 2.0 will mostly occur within the Kosciuszko National Park, there is a potential for any actions taken to facilitate the project to affect native title rights and interests.

The *Native Title Act 1993* (Cth) (**NT Act**) establishes a right to compensation for the extinguishment or impairment of native title. The changes made to the Snowy Act do not circumvent the operation of the NT Act, but instead ensure that those who seek to gain the commercial benefit from Snowy 2.0 are held responsible for paying any compensation arising from impacts to native title because of their conduct.

The regulation ensures there is legal certainty about who is responsible for any compensation that is payable because of impacts on native title rights and interests associated with Snowy 2.0. It does this by requiring Snowy Hydro (who gains the commercial benefit of the project) to indemnify the State for the compensation that is payable for any impact on native title rights and interests associated with Snowy 2.0 that are caused by the company's conduct.

I hope the above assists the Committee and addresses any concerns it has. Thank you for taking the time to bring this matter to my attention.

Yours sincerely


The Hon. John Barilaro MP
Deputy Premier
Minister for Regional New South Wales
Minister for Industry and Trade



The Honourable Kevin Anderson MP
Minister for Better Regulation and Innovation

*Our reference: COR-01391-2019
Your reference: D19/29005*

Ms Felicity Wilson MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear  Chair

Thank you for your correspondence about the changes to fees within the proposed *Tow Truck Industry Regulation 2019* (the proposed Regulation).

The proposed Regulation intends to update the Consumer Price Index (CPI) to be consistent with Fair Trading regulation practices.

You may be pleased to know that Schedule 2 of the proposed Regulation documents intended changes to the base year calculation rate for CPI, from the year March 2018 to March 2017. The CPI fees covered under this change relate to the fees that tow truck drivers charge their clients. This would result in a slight increase in fees tow truck drivers charge consumers.

In addition, twelve Regulations in the Customer Service portfolio use the March 2017 CPI as the base year. However, the current Tow Truck Industry Regulation 2008 (the current Regulation) uses March 2018. This has resulted in two fee units applying to portfolio schemes, being \$100 (March 2018 base year) and \$102.07 (March 2017 base year). Thus, it is proposed to change the tow truck CPI base year to be consistent with all other regulatory fee calculation rates in the portfolio.

We appreciate your consideration of the proposed Regulation. We will consider the proposal to allow for automatic CPI adjustment that takes deflation into account when further developing the changes to the proposed Regulation.

As you are aware, Fair Trading is remaking the current regulation, with changes to improve and enhance the regulatory framework. Key changes introduced in the proposed Regulation include:

- protecting consumers by improving compliance in the industry and ensuring all relevant information is provided to motorists
- reducing red tape, for example by removing unnecessary automatic licence cancellation
- exempting recreational vehicles (including caravans), licensed mechanics and multi-deck car carriers from licensing requirements where they do not represent a risk to consumers and businesses
- updating penalties for consistency, to reflect the nature of the offence and allow for an escalated compliance response, which is fairer both to the consumer and the industry
- strengthening provisions in relation to false or misleading information for consistency and as an appropriate deterrent for tow truck operators and drivers
- modernising the provisions for holding yards and tow truck equipment

- streamlining fee structures by changing the business hours requirements to reflect peak traffic and accident time periods in metropolitan Sydney, increasing the surcharge rate and allowing for additional fees to be charged for the removal of debris
- updating the Consumer Price Index (CPI) to be consistent with Fair Trading regulation practices.

Once again thank you for drawing these issues to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Anderson', with a long horizontal flourish extending to the right.

Kevin Anderson MP

Minister for Better Regulation and Innovation

26.9.2019



The Honourable Matt Kean MP
Minister for Energy and Environment

Ref: MD19/3296

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

By email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson *Fel*

Thank you for your correspondence of 7 August 2019 on behalf of the Legislation Review Committee (Committee) regarding the Electricity Supply (General) Amendment Regulation 2019 (Regulation).

The Regulation made changes to the savings, transitional and other provisions in Schedule 6 of the *Electricity Supply Act 1995* (Act). The Act authorises regulations to make changes to Schedule 6 in these circumstances.

The changes to the Act are necessary to support the extension of a prohibition in the Regulation that prevents retailers from remotely disconnecting or reconnecting electricity supply at a customer's premises.

They ensure that metering providers continue to be required to have safety management plans in place that satisfy the requirements of the *Code for safe installation of direct-connected whole current electricity metering in NSW: Minimum requirement for safety management systems of retailers and metering providers* before they install digital meters.

While the Committee's concerns about the use of Henry VIII clauses in these circumstances are noted, the use of such clauses in Australia and particularly in NSW is commonplace and in line with constitutional law.

As the Regulation must be tabled in Parliament, and is subject to disallowance by both Houses, it is not considered that this change could be said to be abdication of power and facilitates parliamentary scrutiny of any proposed changes.

If the Committee has any questions about this issue, they may contact Ms Teresa Hislop, Principal Legal Officer, Policy and Legislation at the Department of Planning, Industry and Environment on 9274 6210 or email Teresa.Hislop@planning.nsw.gov.au.

Yours sincerely

Matt Kean MP
Minister for Energy and Environment

12.11.19



The Hon. Dr Geoff Lee MP

Minister for Skills and Tertiary Education

Acting Minister for Sport, Multiculturalism, Seniors and Veterans

Ref: RML19/2946
19/12-004#94

Ms Felicity Wilson MP
Chair, Legislation Review Committee
Parliament of New South Wales
52 Martin Place
SYDNEY NSW 2000

Email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson *Felicity*

I write in response to your letter of 21 August 2019 in regards to the issues raised by the Legislation Review Committee relating to the *Apprenticeship and Traineeship Amendment Regulation 2019* (the Regulation).

Matters that should be set by Parliament

I understand the Committee considers it would be more appropriate to include an offence with a maximum penalty of \$11,000 in an Act rather than a regulation.

Section 81 of the *Apprenticeship and Traineeship Act 2001* (NSW) (the Act) expressly permits a regulation to create a penalty offence for the failure to keep certain documents and records with a maximum penalty of \$11,000, being 100 penalty units. By including this specific power in the Act, Parliament has considered the matter and deemed it able to be set by way of a regulation. The penalty for the relevant offence has therefore been set in accordance with the Act and the intentions of Parliament.

Increased Penalties

I understand that the Committee wishes to refer the increase in the maximum penalty for the offence, from \$550 to \$11,000, to Parliament for further consideration as to whether the proposed penalty is proportionate to the offence in question.

The Regulation creates the offence and sets the maximum penalty at 100 penalty units. However, Schedule 1 of the Regulation then specifies the amount payable for the relevant offence as \$2,750 (being 25 penalty units). A penalty that is 25 per cent of the maximum penalty amount represents an appropriate penalty level and is proportionate to the offence.

This percentage is also consistent with following advice received from the NSW Department of Justice in relation to the regulation on 30 May 2017:

Penalty notice amounts should be considerably lower than what a court might generally be expected to impose for the offence (generally 10% - 25% of the maximum penalty for the offence). Where the penalty notice offence can be committed by either a natural person or a corporation, higher penalty amounts should apply to corporations (usually double).

The relevant offence also only applies to corporations and is therefore unlikely to trespass on personal rights and liberties.

Thank you for the opportunity to respond to the above issues.

Yours sincerely


The Hon. Dr Geoff Lee MP
Minister for Skills and Tertiary Education
Acting Minister for Sport, Multiculturalism, Seniors and Veterans

24 SEP 2019



The Hon Andrew Constance MP
Minister for Transport and Roads
Leader of the House

Our Ref: 00890189
Your Ref: LAC19/113.03

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

Dear Ms Wilson

Thank you for your correspondence of 21 August 2019 regarding the *Road Transport (Driver Licensing) Amendment (Release of Photographs to ASIO) Regulation 2019* – tabled in the Legislation Review Digest No 3/57.

I appreciate the responsibilities and functions of the Committee and seek to assure it that the privacy and personal rights of driver licence holders in New South Wales were actively considered in the drafting of the amending Regulation.

Section 57 (1)(a) of the *Road Transport Act 2013* states that Roads and Maritime Services may release photographic images to Police. Further, s.57(1)(k) expressly envisages that Regulations may be made to expand the categories under which Roads and Maritime may release photographic images.

While the new Regulation is subordinate legislation, it was drafted to mirror s.23A of the *Privacy & Personal Information Act 1998* (“PPIPA”) which deals with the release generally of information to ASIO. On this basis, the NSW Privacy Commissioner, who was consulted before the Regulation was made, did not raise any concerns.

I can confirm that a Regulation has been in place since 2008 to permit Roads and Maritime to release photos for ASIO counter terrorism investigations. While the new 2019 Regulation expands ASIO’s access to include other functions, such as counter-espionage, by mirroring s.23 of PPIPA it is drafted to be significantly stricter than the 2008 Regulation.

Thank you for bringing this matter to my attention.

Yours sincerely

19/09/2019

The Hon. Andrew Constance MP
Minister for Transport and Roads
Leader of the House



Mark Speakman
Attorney General

D19/337608/DJ
MAPS19/6376

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

legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~ *Felicity*

Thank you for your letter dated 19 September 2019, providing a copy of the Legislation Review Committee (**LRC**)'s Digest No. 4/57. I have received and considered the issues raised by the LRC in respect of Digest No. 4/57.

Digest No. 4/57 reviews four Bills and six Regulations. Those Bills are the Children's Guardian Bill 2019, Justice Legislation Amendment Bill 2019, Lake Macquarie Smelter Site (Perpetual Care of Land) Bill 2019 and Petroleum (Onshore) Amendment (Coal Seam Gas Moratorium) Bill 2019. The Regulations are the Administrative Decisions Review Regulation 2019, Anti-Discrimination Regulation 2019, Biosecurity Amendment (Biosecurity Management Plans) Regulation 2019, Fisheries Management (Trout and Salmon) (Possession) Order 2019, Privacy and Personal Information Protection Regulation 2019 and Sporting Venues Authorities Regulation 2019.

I note the Justice Legislation Amendment Bill 2019 (which passed Parliament on 25 September 2019) and three of the Regulations (the Administrative Decisions Review Regulation 2019, the Anti-Discrimination Regulation 2019 and the Privacy and Personal Information Protection Regulation 2019) fall under my portfolio responsibility.

I would like to express my appreciation for the LRC's close consideration and thoughtful comments. They have helped to ensure that the Bill's scope, purpose and application are well understood by Members of Parliament and the wider community. I also asked the Department of Communities and Justice to consider the LRC's comments.

I look forward to receiving and reflecting on any future comments from the LRC.

Thank you for taking the time to write.

Yours sincerely

Mark Speakman



The Hon Andrew Constance MP
Minister for Transport and Roads
Leader of the House

Our Ref: 00912769

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

Dear Ms Wilson

Thank you for your correspondence about Legislation Review Digest No 5/57.

In 2015, the *Crimes Amendment (Off-road Fatal Accidents) Act* made changes to the *Road Transport Act 2013* (Road Transport Act) to extend the circumstances in which police can, in the event of a motor vehicle crash that results in a fatality, arrest a driver for blood and urine tests.

The amendments were introduced in light of a report by the Deputy State Coroner into the tragic deaths of two young individuals caused by a motor vehicle being driven in a paddock on private property. While the Deputy State Coroner's report did not make formal recommendations for change, it highlighted the limitations of the then current law where a fatal motor vehicle accident occurs on private property.

The 2015 changes amended Clause 12 of Schedule 3 to the Road Transport Act to insert a new definition of 'accident' and 'accident participant' to remove the existing distinction between on-road and off-road fatal accidents as it applies to the police power to arrest a driver for drug and alcohol testing. This meant that where a motor vehicle accident results in a fatality or likely fatality, police will have the power to arrest the driver for alcohol and drug testing, regardless of where the accident occurred.

However, the NSW Police Force recently raised a potential issue with the use of the term 'fatal accident' within Clause 12. The term 'fatal accident' also has a definition within Section 4 of the Road Transport Act to mean an accident involving a motor vehicle and occurring only on a road or road related area. The Police Force is of the view that this could cause confusion about the action a police officer can lawfully take in the event of an off-road fatal crash.

To address this concern, the *Road Transport Amendment (Miscellaneous) Bill 2019* will make a minor amendment to Clause 12 of Schedule 3 to remove any ambiguity in relation to a police officer's power to require blood and urine samples from a driver in a fatal motor vehicle accident, regardless of whether that accident occurs at an on or off-road location.

This change will ensure that the intent of the *Crimes Amendment (Off-road Fatal Accidents) Act 2015* is retained, without extending police powers or any obligation on drivers beyond what was intended by those amendments.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Constance', written in a cursive style.

01/11/2019

The Hon. Andrew Constance MP
Minister for Transport and Roads
Leader of the House




The Hon. Brad Hazzard MP
Minister for Health and Medical Research

Ms Felicity Wilson MP
Chair
Legislation Review Committee
Email: Legislation.Review@parliament.nsw.gov.au

Your ref LAC19/113.06

Our ref M19/5508


Dear Ms Wilson

Thank you for your letter about the Legislation Review Committee's (Committee) consideration of the *Health Records and Information Privacy Amendment (Health Records) Regulation 2019* (NSW) (Amending Regulation).

I appreciate the role and functions of the Committee in reviewing legislation and regulation and acknowledge the Committee's concerns about the Amending Regulation.

The Amending Regulation amends the *Health Records and Information Privacy Regulation 2017* (NSW) to provide that the HealtheNet and Clinical Health Information Exchange (CHIE) systems are not health records linkage systems for the purposes of health privacy principle (HPP) 15. This means that health information can be included in HealtheNet and the CHIE without express patient consent.

The HealtheNet and CHIE systems currently operate as part of the NSW Health electronic medical records system. They link summary patient information between local health districts and statutory health networks. NSW Health organisations have been able to include information in HealtheNet and the CHIE systems without express consent because clause 9 of the Health Records and Information Privacy Regulation 2007 treats NSW organisations as one organisation for the purpose of the HPPs.

The Amending Regulation will allow these systems to be used by other organisations that treat public patients, such as affiliated health organisations, such as St Vincent's Hospital at Darlinghurst, and contracted service providers, such as Northern Beaches Hospital. The inclusion of health information about public patients in these systems ensures that health information can be accessed electronically by clinicians irrespective of the hospital at which a public patient presents. Public patients have frequent interactions between different health organisations and clinical care can be integrated across health services. Access to timely and accurate health information is critical in ensuring patient safety and continuity of care.

The exclusion of HealtheNet and the CHIE systems from the definition of a health records linkage system ensures that health information about public patients can be included in HealtheNet and the CHIE without express patient consent. It is not always practicable to obtain patient consent before including patient information in HealtheNet and the CHIE. For example, it may not be possible to obtain consent if a patient presents to a health organisation unconscious or lacking the capacity to consent.

Importantly, while the Amending Regulation exempts HealtheNet and the CHIE from the definition of a health records linkage system, the use and disclosure of any information from HealtheNet and the CHIE is still subject to the other HPPs. The HPPs place strict controls around how health information is accessed, used and disclosed.

I acknowledge the Committee's concerns that the exemption from the definition of a health records linkage system is contained in regulation rather than the primary *Health Records and Information Privacy Act 2002* (NSW).

The HPPs are broad based privacy principles that apply to organisations when handling health information. However, the broad principles are not always suited to every program or system run by organisations. As such, there are various provisions in the HRIP Act allowing for exemptions and/or modifications to be made to the HPPs. This includes, the ability of the Minister to issue a privacy code of practice, the ability of the Privacy Commissioner to issue a public interest direction and the ability to make regulations to create exemptions to the HPPs. The different modes of exemptions are similar to the exemption powers in the *Privacy and Personal Information Protection Act 1998* (NSW).

A regulatory exemption power allows for flexibility while maintaining Parliamentary oversight. Either house of Parliament can review regulations and, if deemed appropriate, disallow a regulation.

Thank you again for your letter. If you would like more information, please contact Ms Gemma Broderick, Principal Legal Officer, NSW Ministry of Health, at gemma.broderick@health.nsw.gov.au or on 9391 9626.

Yours sincerely

A large, stylized handwritten signature in black ink, likely belonging to Brad Hazzard, is written over the signature line.

The Hon. Brad Hazzard MP
Minister for Health and Medical Research

- 7 NOV 2019



Mark Speakman
Attorney General
Minister for the Prevention of Domestic Violence

IM19/24775

Ms Felicity Wilson MP
Chair
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Parliament of New South Wales
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Legislation.Review@parliament.nsw.gov.au

Dear Ms Wilson

Digest No. 7/57 of the Legislation Review Committee

Thank you for your letter of 23 October 2019 providing a copy of the Legislation Review Committee's Digest No. 7/57.

Digest No. 7/57 reports on the amendments contained in the Statute Law (Miscellaneous Provisions) Bill (No 2) 2019. I have reviewed and considered the issues raised by the Committee in respect of the retrospectivity of the *Workers' Compensation (Dust Diseases) Act 1942* and the delegation of administrative powers.

I note the Committee makes no further comment regarding the retrospectivity of the proposed amendment to the *Workers' Compensation (Dust Diseases) Act 1942* other than acknowledging that the amendment does not create offences with retrospective application nor retrospectively removes rights.

In regards to the powers of delegation, I note that, in delegating any function under the named Acts, the Secretary of the Department of Customer Service would consider the appropriate level of seniority of staff to delegate each function to and further that the Acts will prohibit sub-delegation.

I thank the Committee for its considered comments with respect to these amendments and welcome any further comment.

Thank you for taking the time to write.

Yours sincerely

Mark Speakman

12 NOV 2019



David Mehan MP

STATE MEMBER FOR THE ENTRANCE

REF: 513/19/DM

14 November 2019

Ms. Felicity Wilson MP
Chair
Legislation Review Committee
Via email: legislation.review@parliament.nsw.gov.au

Dear Ms Wilson,

**Digest No. 7/57 of the Legislation Review Committee
Food Amendment (Seafood Country of Origin Labelling) Bill 2019**

Thank you for your comments on the Bill.

I acknowledge the Bill creates a new offence which would necessarily impact on the rights and liberties of persons who sell seafood to the public for immediate consumption by requiring those persons to advertise the country of origin of the seafood, a requirement which doesn't currently exist.

There are good public policy reasons for the labelling regulation proposed in this Bill. A number of studies have shown that the public believes seafood served in the food service industry is sourced from Australian waters even though most is imported. The Bill would allow the public to make an informed choice. I also note the existence of Commonwealth regulation which requires origin labelling for seafood sold by retail shops which supports choice in that sector.

In any event, the Bill has now lapsed in accordance with the standing orders.

Yours sincerely,

David Mehan MP
Member for The Entrance