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Legislation Review Committee

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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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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. GOVERNMENT INFORMATION (PUBLIC ACCESS) AMENDMENT (RECKLESSLY DESTROYING GOVERNMENT RECORDS) BILL 2021*

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. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL 2021

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

Significant increase in penalties

The Bill significantly increases the maximum penalties for certain offences in the *Prevention of Cruelty to Animals Act 2012*. For the offence of animal cruelty (section 5) the maximum imprisonment term for individuals has been doubled and the maximum fines are eight times higher than the current amounts for both individuals and corporations. For the offence for aggravated cruelty (section 6), the maximum fines for individuals and corporations are five times higher than current amounts. For the offence of failing to provide an animal with food, drink or shelter (section 8), the maximum fines are three times higher.

The Committee notes that in November 2020 a similar Bill was introduced in Parliament providing for significant increases in penalties for offences under the *Prevention of Cruelty to Animals Act 2012*. In the Committee's Legislation Review Digest No.24, the Committee reviewed the provisions of that Bill. While acknowledging the Bill's intention of toughening the penalties for animal abuse offences, the Committee referred the increase in penalties to Parliament for its consideration on whether they are reasonable and proportionate.

The Committee echoes its position in regard to the significant increase in penalties contained in this Bill. The Committee notes the Bill's intent of providing penalties to serve as a deterrent for animal abuse and to reflect community expectations and standards. However, the increases are significant and it is appropriate to refer the provisions to Parliament for it to consider whether they are reasonable and proportionate.

3. ROAD TRANSPORT LEGISLATION AMENDMENT (DRINK AND DRUG DRIVING OFFENCE) BILL 2021

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

Strict Liability offences with significant penalties

The Committee notes that the Bill introduces new strict liability offences for drug and drink driving offences under section 111A, which carry maximum penalties ranging from 30 to 100 penalty units ($3,300 to $11,000) and/or 18 months to 2 years imprisonment, depending on the concentration of alcohol and whether it is a person's first offence. The Committee notes that strict liability offences do not require a mental element (e.g. intent or recklessness) to be proven for a person to be convicted. It is enough that the defendant drove a motor vehicle, and is found to have had an illicit drug in addition to the relevant concentration of alcohol present in their system at the time. The Committee generally comments on strict liability offences as they depart from the common law principle that *mens rea*, or the mental element,

is a relevant factor in establishing liability for an offence. This is of particular concern where significant penalties are attached, including the possibility of imprisonment.

The Committee notes that strict liability offences are not uncommon in regulatory settings, particularly relating to road safety, to encourage compliance and acknowledges the public safety and deterrence objectives of the Bill. However, given the significant penalties that are attached to the new strict liability offences, including imprisonment, the Committee refers the matter to the Parliament for its consideration.

Reversal of onus of proof

Proposed section 111A provides for a defence to a second or subsequent combined alcohol and drug driving offence where the defendant can prove, to the court's satisfaction, that the alcohol in their breath or blood was not caused by consuming an alcoholic beverage or another substance used for the purpose of consuming alcohol. Similarly, new clauses 32A and 32B provide that breath, blood, oral fluid and urine tests taken within a specified period of an event occurring are presumed to show the concentration of alcohol or presence of an illicit drug at the time of that event, unless the defendant proves otherwise.

These provisions may impact on the defendant's right to be presumed innocent, which is associated with the concept that the prosecution has the burden of proving a charge beyond reasonable doubt. The standard of proof for this defence – 'to the court's satisfaction' – may also provide uncertainty.

The Committee notes that the reversed onus of proof for the section 111A defence is in line with the approach to drink driving offences elsewhere in the Act, such as defences to novice drink driving (section 110(9)). Similarly new clauses 32A and 32B resemble existing clauses in Schedule 3 relating to proceedings for separate, pre-existing drug and drink driving offences (sections 110, 111 and 112 of the Act). However, given the significant penalties for these proposed offences (noted above) that may impact procedural fairness by reversing the onus of proof on the defendant, the Committee refers these provisions to the Parliament for their consideration of whether it is reasonable in the circumstances.

Mandatory penalties

The Bill expands the definition of 'mandatory interlock offence' to include new combined alcohol and drug driving offences under section 111A. Where a court convicts a person for an offences committed under this section, a mandatory interlock order must be made except in limited circumstances, such as where the person does not have access to a vehicle in which to install an interlock device. A person must also be automatically disqualified from holding a drivers licence for 2 to 6 years, with the court's discretion to order a longer or short period (if it thinks fit) with a minimum disqualification period of 12 months to 3 years depending on the offence.

The Committee notes that these provisions limit the discretion of the court which convicts a person of an offence against section 111A to determine the appropriate penalty for that offence. However, the Committee acknowledges that mandatory interlocks and disqualification periods can be distinguished from monetary or imprisonment penalties, as they are closely linked to considerations of public safety. The Committee also acknowledges the comments made in the second reading speech about the effectiveness of mandatory interlock programs in reducing the risk of reoffending. In the circumstances, the Committee makes no further comment.

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

Commencement by proclamation

The Committee generally prefers legislation to commence on assent, or a fixed date, to provide certainty for affected persons, particularly where the legislation in question creates new offences or otherwise affects individual rights or obligations. The Committee notes that a flexible start date may assist with the implementation of operational arrangements so that the police, courts and prosecutors can handle a new category of road transport offences. The Committee refers the matter to Parliament to consider whether commencement on proclamation is reasonable in the circumstances.

Part One – Bills

1. Government Information (Public Access) Amendment (Recklessly Destroying Government Records) Bill 2021*

Date introduced	11 February 2021
House introduced	Legislative Assembly
Member responsible	Ms Jodi McKay MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The Bill amends section 120 of *the Government Information (Public Access) Act 2009* (the Act) which provides that a person who destroys, conceals or alters any record of government information for the purpose of preventing the disclosure of the information as authorised or required by or under that Act is guilty of an offence.

2. The object of this Bill is to extend the offence to the reckless destruction, concealment and alteration of those kinds of government information records.

BACKGROUND

3. The Bill amends the *Government Information (Public Access) Act 2009* (the Act), which sets out the legislative framework for maintaining and advancing a system of responsible and representative democratic Government that is open, accountable, fair and effective. The object of the Act is to authorise and encourage the proactive public release of government information by agencies, and give members of the public an enforceable right to access government information. Under the Act, access to government information is only restricted when there is an overriding public interest against disclosure.[1]

4. The Bill amends the Act to create a new offence for reckless destruction, concealment and alteration of government information records for the purpose of preventing the disclosure of the information as authorised or required by the Act.

5. In her second reading speech, Ms McKay noted that:

> The object of the bill is to extend that offence to the reckless destruction, concealment and alteration of those types of government information records. It addresses a significant shortcoming in the existing law, which is that section 120 only applies to the intentional destruction of government information that must be proactively released. The bill broadens that provision so that the Parliament will ensure that the reckless destruction of government information that must be proactively released will also be an offence.

[1] *Government Information (Public Access) Act 2009*, s3.

6. While the additional term 'reckless' is not defined within the Bill, 'recklessness' is established in criminal law by proof of intention or knowledge.[2]

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] Crimes Act 1900 (NSW), s4A (Recklessness)

2. Prevention of Cruelty to Animals Amendment Bill 2021

Date introduced	9 February 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Adam Marshall MP
Portfolio	Agriculture and Western New South Wales

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Prevention of Cruelty to Animals Act 1979* (the POCTAA) as follows:

   a) to increase maximum penalties for certain offences,

   b) to enable certain powers of a court under the POCTAA, to make orders or discharge a defendant and issue a summons against an alternative person, to be available in relation to animal cruelty offences under sections 79, 80, 530 and 531 of the *Crimes Act 1900*,

   c) to allow a court, in proceedings for an animal cruelty offence, to make an interim order against a person if the court is satisfied that, were the person to be in charge of an animal, the person would be likely to commit an animal cruelty offence,

   d) to remove the maximum penalty available in proceedings brought before the Local Court.

BACKGROUND

2. In the Bill's second reading speech, the Hon. Adam Marshall MP, indicated that the Bill 'significantly increases the penalties for the most common animal cruelty offences.' Mr Marshall stated that 'penalties should reflect wherever possible community expectations and standards' and that the Bill:

> …will put in place the penalty regime that New South Wales needs to effectively punish those who engage in one of the lowest acts imaginable: the harming of animals, either negligently or deliberately.

3. Mr Marshall further commented that the Bill focuses on penalties for the most common animal cruelty offences: cruelty, aggravated cruelty and failure to provide food, drink and shelter. Mr Marshall noted that these offences make up 95 percent of charges laid under the POCTAA in the decade of July 2009 to June 2019.

4. The Bill also increases the range of orders a court may make under the POCTAA. Firstly, the Bill seeks to close a loophole by making the existing court orders available under the

POCTAA, also available for the more serious animal welfare related offences contained in the *Crimes Act 1900*.

5. Secondly, the Bill introduces interim disqualification orders which permit a court to prevent a person from acquiring new animals while court proceedings are ongoing.

ISSUES CONSIDERED BY THE COMMITTEE

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

Significant increase in penalties

6. The Bill increases the maximum penalties for the following offences:

- Cruelty to animals (section 5)
  Individuals – increased from 50 penalty units and/or 6 months imprisonment to 400 penalty units and/or 12 months imprisonment
  Corporations – increased from 250 penalty units to 2000 penalty units.

- Aggravated cruelty to animals (section 6)
  Individuals **–** increased from 200 penalty units and/or 2 years imprisonment to 1000 penalty units and/or 2 years imprisonment
  Corporations – increased from 1000 penalty units to 5000 penalty units

- Animals to be provided with food, drink or shelter (section 8)
  Individuals – increased from 50 penalty units and/or 6 months imprisonment to 150 penalty units and/or 6 months imprisonment
  Corporations – increased from 250 penalty units to 750 penalty units.

7. The Bill also increases the Penalty Infringement Notice amount for offences against sections 5 and 8 of the POCTAA. For the offence of cruelty the amount is increased from $500 to $1000 for individuals, and from $1500 to $5000 for corporations. For the offence of failure to provide food, drink and shelter the amount is increased from $200 to $500 for individuals, and from $1000 to $2500 for corporations

8. In the second reading speech, the Hon Adam Marshall MP, stated that with these increased penalties, New South Wales will have some of the highest penalties for animal welfare offences in Australia.

> **The Bill significantly increases the maximum penalties for certain offences in the *Prevention of Cruelty to Animals Act 1979*. For the offence of animal cruelty (section 5) the maximum imprisonment term for individuals has been doubled and the maximum fines are eight times higher than the current amounts for both individuals and corporations. For the offence for aggravated cruelty (section 6), the maximum fines for individuals and corporations are five times higher than current amounts. For the offence of failing to provide an animal with food, drink or shelter (section 8), the maximum fines are three times higher.**
>
> **The Committee notes that in November 2020 a similar Bill[3] was introduced in Parliament providing for significant increases in penalties for offences under**

[3] Prevention of Cruelty to Animals (Increased Penalties) Bill 2020

the *Prevention of Cruelty to Animals Act 1979*. In the Committee's Legislation Review Digest No.24,[4] the Committee reviewed the provisions of that Bill. While acknowledging the Bill's intention of toughening the penalties for animal abuse offences, the Committee referred the increase in penalties to Parliament for its consideration on whether they are reasonable and proportionate.

The Committee echoes its position in regard to the significant increase in penalties contained in this Bill. The Committee notes the Bill's intent of providing penalties to serve as a deterrent for animal abuse and to reflect community expectations and standards. However, the increases are significant and it is appropriate to refer the provisions to Parliament for it to consider whether they are reasonable and proportionate.

[4] Legislation Review Committee, Legislation Review Digest No.24/57, 17 November 2020

3. Road Transport Legislation Amendment (Drink and Drug Driving Offence) Bill 2021

Date introduced	10 Februrary 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Minister for Transport and Roads

PURPOSE AND DESCRIPTION

1. The object of the *Road Transport Legislation Amendment (Drink and Drug Driving Offence) Bill 2021* (the Bill) is to introduce a combined alcohol and drug driving offence under the *Road Transport Act 2013* (the Act) and provide for the penalties for the offence. The Bill makes other minor and consequential amendments.

BACKGROUND

2. The Bill follows the launch of the Government's 'Road Safety Plan 2021' in 2018, which featured targeted initiatives to address key areas of trauma and types of crashes occurring on New South Wales roads, including those involving drink and drug driving.

3. The reforms in the Bill were foreshadowed in November 2020, with the Minister for Transport and Roads announcing that 'harsher penalties would be thrown at those caught drink and drug driving' to 'send the message that this behaviour won't be tolerated'.[5]

4. In the second reading speech for the Bill, the Minister stated:

> The intention of the bill is to deter drivers from putting themselves and others at significant risk when driving with a mix of alcohol and prescribed illicit drugs in their system and to send a very clear and very loud message to the community that this high-risk behaviour will not be tolerated any further.
>
> The bill provides for higher penalties for the combined offence to reflect the greater road safety risk created by offending drivers. The range of penalties includes higher fines as well as licence and vehicle sanctions for people convicted of the combined drink and drug driving offence. It expands the mandatory alcohol interlock order to the combined offence and requires offenders to undertake a drink and drug driving education and behaviour-change program.'

[5] Transport for NSW, 'Major changes to road safety laws', 19 November 2020, https://www.transport.nsw.gov.au/news-and-events/media-releases/major-changes-to-road-safety-laws; Transport for NSW, 'Alcohol and other drugs', https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholdrugs/index.html#:~:text=The%20New%20South%20Wales%20Government,illicit%20drugs%20in%20your%20system.&text=A%20Bill%20to%20amend%20the,to%20Parliament%20in%20early%202021.

ISSUES CONSIDERED BY THE COMMITTEE

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

Strict Liability offences with significant penalties

5. The Bill inserts section 111A, which creates three new offences, which are 'combined' offences of drug and drink driving where previously only separate offences existed. Each combined offence is a strict liability offence, meaning there is no requirement to prove a mental element – for example, intent. Each offence also attracts a significant maximum penalty. This includes:

- driving with a 'high' range prescribed concentration of alcohol and presence of an illicit drug, which carries a maximum penalty of 50 penalty units ($5,500) or 2 years imprisonment or both for a first offence, and 100 penalty units ($11,000) or 2 years imprisonment or both for a second or subsequent offence.

- driving with a 'middle' range prescribed concentration of alcohol and presence of an illicit drug, which carries a maximum penalty of 30 penalty units ($3,300) or 18 months imprisonment or both for a first offence, and 60 penalty units ($6,600) or 2 years imprisonment or both for a second or subsequent offence.

- driving with a 'novice', 'special', or 'low' range prescribed concentration of alcohol with presence of an illicit drug, if the person has been convicted of another offence against section 111A within the previous 5 years. This carries a maximum penalty of 50 penalty units ($5,500) or imprisonment for 18 months or both.

6. In the second reading speech, the Minister noted:

> 'While the penalties are designed to be harsher, they are based on the existing penalty framework for drink and drug driving offences. The penalty framework includes fines, licence disqualification, alcohol interlocks, vehicle sanctions, prison term and requirement to attend an education and behaviour change program. All of these penalties and requirements currently exist for other separate drink or drug driving offences. However, in recognition of the increased risk of combining alcohol and drugs, the maximum penalties for the combined offence will be higher. In fact, they are more than the combination of separate drink and drug driving offences, reflecting the seriousness and increased risk of combining drugs and alcohol when behind the wheel.
>
> … Acknowledging the seriousness of the offence, penalties for second and subsequent combined drink and drug driving offences are around double that of a first combined offence. This is important to deterring repeat offending and is a current feature of road transport law.'

The Committee notes that the Bill introduces new strict liability offences for drug and drink driving offences under section 111A, which carry maximum penalties ranging from 30 to 100 penalty units ($3,300 to $11,000) and/or 18 months to 2 years imprisonment, depending on the concentration of alcohol and whether it is a person's first offence. The Committee notes that strict liability offences do not require a mental element (e.g. intent or recklessness) to be proven for a person to be convicted. It is enough that the defendant drove a motor vehicle, and is found to have had an illicit drug in addition to the relevant concentration of alcohol present in their system at the time. The

Committee generally comments on strict liability offences as they depart from the common law principle that *mens rea*, or the mental element, is a relevant factor in establishing liability for an offence. This is of particular concern where significant penalties are attached, including the possibility of imprisonment.

The Committee notes that strict liability offences are not uncommon in regulatory settings, particularly relating to road safety, to encourage compliance and acknowledges the public safety and deterrence objectives of the Bill. However, given the significant penalties that are attached to the new strict liability offences, including imprisonment, the Committee refers the matter to the Parliament for its consideration.

Reversal of onus of proof

7. Proposed section 111A(7) provides defences to a prosecution for a 'second or subsequent offence of combined alcohol and drug driving' under subsection (3) if:

- an element of the offence is that the defendant is alleged to have committed an offence under section 110(1) (i.e. driving a motor vehicle with a 'novice range' prescribed concentration of alcohol in their breath or blood), and
- the defendant proves to the court's satisfaction that, at the time they allegedly committed the offence, the presence of the alcohol in their breath or blood was not caused, in whole or in part, by consuming an alcoholic beverage or another substance used for the purpose of consuming alcohol.

8. The Bill also inserts new provisions into Schedule 3 to the Act, which specify the evidence of alcohol concentration or illicit drug presence that can be given in proceedings for an offence under section 111A.

9. New clause 32A(3) provides that the concentration of alcohol determined by a breath analysis or blood test, done within 2 hours after the event, is taken to be the concentration at the time of the event unless the defendant proves there was a lesser concentration. Similarly, new clauses 32B(2) and (3) provide that the presence of a prescribed illicit drug determined by an oral fluid, blood or urine analysis, done within 2 or 4 hours after the event (depending on the type of analysis), is taken to show the presence of that drug at the time of the event unless the defendant proves its absence.

Proposed section 111A provides for a defence to a second or subsequent combined alcohol and drug driving offence where the defendant can prove, to the court's satisfaction, that the alcohol in their breath or blood was not caused by consuming an alcoholic beverage or another substance used for the purpose of consuming alcohol. Similarly, new clauses 32A and 32B provide that breath, blood, oral fluid and urine tests taken within a specified period of an event occurring are presumed to show the concentration of alcohol or presence of an illicit drug at the time of that event, unless the defendant proves otherwise.

These provisions may impact on the defendant's right to be presumed innocent, which is associated with the concept that the prosecution has the burden of proving a charge beyond reasonable doubt. The standard of proof for this defence – 'to the court's satisfaction' – may also provide uncertainty.

The Committee notes that the reversed onus of proof for the section 111A defence is in line with the approach to drink driving offences elsewhere in the Act, such as defences to novice drink driving (section 110(9)). Similarly new clauses 32A and 32B resemble existing clauses in Schedule 3 relating to proceedings for separate, pre-existing drug and drink driving offences (sections 110, 111 and 112 of the Act). However, given the significant penalties for these proposed offences (noted above) that may impact procedural fairness by reversing the onus of proof on the defendant, the Committee refers these provisions to the Parliament for their consideration of whether it is reasonable in the circumstances.

Mandatory penalties

10. The Bill amends the definition of a 'mandatory interlock offence' in section 209 of the Act to include a 'combined alcohol and drug driving offence' against section 111A. The effect of this is that, pursuant to section 210 of the Act, a court that convicts a person of a combined alcohol and drug driving offence *must* make a mandatory interlock order (under section 212) or an interlock exemption order (under section 213).

11. A mandatory interlock order, as defined in section 211, disqualifies a person from holding a drivers licence for 5 years from the date of conviction, unless the person has held an interlock drivers licence for a specified period. In effect, an interlock drivers licence requires the holder to undertake an electronic breath test from a device attached to their car, each time they drive.

12. In relation to the mandatory interlock provisions, the Minister said in the second reading speech:

> 'In relation to the licence disqualification, alcohol interlock and education program, the penalty framework is not just about harsher penalties to punish those who have put themselves and the innocent at risk by mixing alcohol and prescribed illicit drugs. It also aims to sustain this behaviour change by supporting anyone who is caught to make better decisions into the future. Evidence shows that in-vehicle technologies such as alcohol interlocks are effective at preventing drink driving. Further, research also shows that effective behaviour change programs have the ability to change people's attitudes to alcohol, drugs and driving, with the clear aim of reducing recidivism. So, separately, interlocks and behaviour intervention are effective. But an approach that uses both together, combined with penalty sanctions, provides for a systemic approach to reducing the risk of offending over a sustained period of time, which is why it is important that we take this combined approach to people caught for the new combined offence.
>
> The bill requires that all offenders convicted of the new combined offence undertake an alcohol interlock for a period of time. This is consistent with existing drink driving offences whereby interlock orders apply to mid- and high-range alcohol first offences and all second and subsequent offences.'

13. Under section 212, a court may make an interlock exemption order instead of a mandatory interlock order. However, this can only be done in limited circumstances – where the offender does not have access to a vehicle in which to install an interlock device, or the offender has a medical condition which prevents them from taking a breath test, or it is the offender's first offence, the order would cause severe hardship, and an exemption is appropriate in all the circumstances.

14. The Bill also contains mandatory minimum periods for which a person must be disqualified from holding a drivers licence if they are convicted of a major offence against section 111A. These mandatory minimum periods range from 2 to 6 years depending on whether it is the defendant's first or subsequent major offence. These provisions also permit that the court may order a shorter or longer period of disqualification if it thinks fit, subject to minimum periods of disqualification ranging from 12 months to 3 years.

The Bill expands the definition of 'mandatory interlock offence' to include new combined alcohol and drug driving offences under section 111A. Where a court convicts a person for an offences committed under this section, a mandatory interlock order must be made except in limited circumstances, such as where the person does not have access to a vehicle in which to install an interlock device. A person must also be automatically disqualified from holding a drivers licence for 2 to 6 years, with the court's discretion to order a longer or short period (if it thinks fit) with a minimum disqualification period of 12 months to 3 years depending on the offence.

The Committee notes that these provisions limit the discretion of the court which convicts a person of an offence against section 111A to determine the appropriate penalty for that offence. However, the Committee acknowledges that mandatory interlocks and disqualification periods can be distinguished from monetary or imprisonment penalties, as they are closely linked to considerations of public safety. The Committee also acknowledges the comments made in the second reading speech about the effectiveness of mandatory interlock programs in reducing the risk of reoffending. In the circumstances, the Committee makes no further comment.

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

Commencement by proclamation

15. Section 2(1) of the Bill provides that, except as provided bisection (2), this Act commences on a day or days to be appointed by proclamation. Subsection 2(2) provides that schedule 2.6 commences on the date of assent to this Act.

The Committee generally prefers legislation to commence on assent, or a fixed date, to provide certainty for affected persons, particularly where the legislation in question creates new offences or otherwise affects individual rights or obligations. The Committee notes that a flexible start date may assist with the implementation of operational arrangements so that the police, courts and prosecutors can handle a new category of road transport offences. The Committee refers the matter to Parliament to consider whether commencement on proclamation is reasonable in the circumstances.

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.