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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. COAL AND GAS LEGISLATION AMENDMENT (LIVERPOOL PLAINS PROHIBITION) BILL 2021*

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

Economic rights

The Bill prohibits the grant of a new authorisation to mine or the grant of a new petroleum title in the Liverpool Plains and cancels any approved authorisation to mine or petroleum title in the Liverpool Plains if prospecting or mining operations have not commenced. Further, the Bill provides that compensation is not payable by the State because of any direct or indirect consequence of the operation of these sections, including conduct under the authority of the enactment.

These provisions may impact on the economic or property rights of individuals with a stake in, or control over, mining licenses in the Liverpool Plains areas. Additionally, compensation is not available for any detriment incurred by the operation of these sections or conduct under the authority of the enactment.

However, the granting of a mining or petroleum license is associated with businesses and corporate entities. The Committee notes that it is generally concerned with individual rights and liberties in regards to Bills, rather than those associated with corporate ownership. Accordingly, it makes no further comment.

2. PAYROLL TAX AMENDMENT (JOBS PLUS) BILL 2021

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

Privacy

The Bill provides that a Jobs Plus administrator may disclose to another Jobs Plus administrator information in relation to a Jobs Plus agreement, including personal information and confidential information. This may impact the privacy rights of those individual to whom the personal or confidential information relates.

However, the Committee notes that under the Bill, personal information has the same meaning as within the *Privacy and Personal Information Protection Act 1998*, which carries certain safeguards under that Act regarding the retention, use and disclosure of that information. The Committee also notes that the information may only be shared for the purposes of assisting a Jobs Plus administrator to exercise a function under this section, including to assist the relevant Minister to give effect to the agreement, or in connection with the administration of a taxation law. In these circumstances, the Committee makes no further comment.

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

No objection to revocation of agreement

The Bill provides that the relevant Minister may revoke the wage exemptions under a Jobs Plus agreement on the grounds, or in the circumstances, specific by the agreement. The effect of such a revocation is that the wages are taken to never have been exempt wages and the employer is liable to pay payroll tax on the wages even where the employer had relied on the initial exemption as the reason for not paying payroll tax. The Chief Commissioner must also assess or reassess the employer's liability to pay payroll tax on the wages accordingly. The Bill provides that, for the purposes of section 9(3)(c) of the *Taxation Administration Act 1996,* the Chief Commissioner is authorised to make a reassessment under this section until 1 July 2033.

Additionally, the Bill provides that an employer who enters into a Jobs Plus agreement cannot lodge an objection with the Chief Commissioner under the Taxation Administration Act 1996 to an assessment or reassessment under this section on the grounds that the relevant Minister has revoked an exemption under this section. This may make the rights and obligations of employers unduly dependent on the non-reviewable decision of the Minister to revoke payroll tax exemptions. Accordingly, the Committee refers these provisions to the Parliament for its consideration.

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

Delegation of Ministerial functions

Proposed subsection 66F(9) provides that the relevant Minister may delegate their functions to another Jobs Plus administrator, but cannot delegate a function to a tax officer and cannot delegate this power of delegation. The Committee notes that Ministerial function may only be delegated to a Jobs Plus administrator, which includes the relevant Minister, a tax officer, a person employed in the Department of Premier and Cabinet, and a person employed in Investment NSW. This grants a wide power of delegation to the Minister to any of these persons, excluding tax officers.

Despite these requirements, the Committee notes that the Bill does not provide restrictions on this power to delegate, such as restricting delegation to people with certain qualifications or expertise. The Committee also notes that the Minister's functions include the power to enter into Jobs Plus agreements, which specify that certain wages are exempt from payroll tax requirements, as well as the power to revoke such agreements. Given this, the Committee considers the Bill should provide more clarity about the persons to whom the functions can be delegated. In the circumstances, the Committee refers this matter to Parliament for its consideration.

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

Jobs Plus agreements not subject to parliamentary scrutiny

Subsection 66F(1) provides that the relevant Minister is authorised on behalf of the State to enter into, and give effect to, a Jobs Plus agreement that may specify that certain wages are exempt from payroll tax. The Bill also provides that a Minister may revoke such an exemption on the grounds, or in the circumstances, specified by the agreement.

The Committee notes that, unlike regulations, there is no requirement that a Jobs Plus agreement to be tabled and therefore is not subject to disallowance. This may subject such an agreement and its terms, particularly regarding exemptions of payroll tax and revocations of such exemptions, to insufficient parliamentary scrutiny. The Committee therefore refers this matter to Parliament for its consideration.

3. PETROLEUM (ONSHORE) AMENDMENT (CANCELLATION OF ZOMBIE PETROLEUM EXPLORATION LICENCES) BILL 2020*

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

4. PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (CLEAN AIR) 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*.

5. RESIDENTIAL TENANCIES AMENDMENT (REASONS FOR TERMINATION) BILL 2021*

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

Retrospectivity, property rights and freedom of contract

The Bill amends the *Residential Tenancies Act 2010* to remove the ability for landlords to issue a termination notice for a fixed or period tenancy agreement without grounds. The proposed amendments to section 84(1) and 85(1) provide that a landlord may give a notice of termination only in certain circumstances, including where the landlord or a person associated with the landlord intends to immediately occupy the residential premises or to immediately repair, renovate or reconstruct the premises after the notice takes effect. The Bill also provides that the landlord may give a termination notice on the grounds that an act or omission of the tenant, or of any person who although not a tenant is occupying or jointly occupying the residential premises, has endangered the safety of an occupier of neighbouring premises, or another reason prescribed by the regulations.

In limiting landlords' and proprietors' rights under tenancy and occupancy agreements and relevant legislation, the Bill may impact on the property rights of landlords. As the provisions would apply to existing tenancy agreements, this Bill also acts retrospectively. The Committee generally comments on provisions drafted to have retrospective effect, especially where they retrospectively limit rights, because they impact on the rule of law principle that a person is entitled to know the law to which they are subject at any given time. Similarly, by limiting the ability of the landlord or proprietor to exercise their rights under an existing agreement, the Bill may impact on freedom of contract – the freedom of parties to choose the contractual terms and obligations to which they are subject. The Committee refers the provisions to the Parliament for their consideration.

6. STATUTE LAW (MISCELLANEOUS PROVISIONS) 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*.

7. TAX ADMINISTRATION AMENDMENT (COMBATING WAGE THEFT) BILL 2021

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

Significant increase in penalties

The *Tax Administration Amendment (Combating Wage Theft) Bill 2021* makes a number of amendments to the *Taxation Administration Act 1996*, including increasing the maximum penalties attached to a number of existing offences, and inserting a new offence for tax evasion.

The amendments more than double the monetary penalties applicable to a range of provisions relating to keeping records and providing accurate information to the Chief Commissioner of

Taxation. For two existing offences and the new offence, the amendments also insert a custodial penalty of 2 years imprisonment. Many of the amended offences are strict liability offences, meaning that no mental element (e.g. intent) is required to be proven. Many are also executive liability offences, meaning that a director of a company can be liable if they ought to have known about an offence and failed to take reasonable steps to prevent it.

The Committee will generally comment where significant penalties can be imposed without a requirement to establish actual knowledge or intent on the part of the accused. This is based on the common law principle that the mental element of an offence is relevant to the imposition of liability. The Committee also generally comments where penalties for offences are significantly increased – particularly where custodial sentences are imposed – as these may impact on the right to liberty.

The Committee acknowledges that strict and executive liability offences, with significant penalties attached, are often used in regulatory settings to encourage compliance. Further, the Committee acknowledges the object of the Bill, to deter underpayment of wages by employers. However, given the significant increase in penalties for multiple offences, and the inclusion of new custodial sentences, the Committee refers the Bill to Parliament to consider whether the changes are proportionate.

Privacy – additional circumstances in which personal information can be disclosed

The Bill makes further amendments to the *Taxation Administration Act 1996* which expand the circumstances in which, and the persons to whom, tax officers are permitted to disclose information obtained in the administration of a taxation law.

Specifically, the amendments provide that information can be disclosed to the Fair Work Ombudsman and to the Secretary of the Department of Premier and Cabinet, for the purposes of administering functions under the *Fair Work Act 2009* and the *Long Service Leave Act 1995* respectively. Further, the Bill inserts a new section 83A, which allows for information to be disclosed where the Fair Work Ombudsman has concluded, or the Chief Commissioner is satisfied, that an employer has underpaid wages to an employee.

These provisions may impact on an individual's right to privacy. In particular, the Committee notes that the Bill does not comprehensively provide for the factors which a tax officer must take into account when deciding whether to disclose information under section 83A, nor what types of information can be disclosed. Rather, these details are left to be determined in guidelines issued by the Minister.

The Committee generally prefers that provisions which could impact on individual rights and liberties be included in primary, rather than subordinate legislation or non-disallowable instruments. In these circumstances, the Committee refers the matter to Parliament for its consideration.

8. WORK HEALTH AND SAFETY AMENDMENT (INDUSTRIAL MANSLAUGHTER) BILL 2021*

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

Overlapping criminal offences

The *Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021* introduces two new offences to the *Work Health and Safety Act 2011* (WHS Act). Sections 34D and 34E make it an offence if a person 'conducting a business or undertaking', or a senior officer of the business,

engages in negligent or reckless conduct which causes the death of a person at a workplace. The maximum penalty for individuals under both offences is 25 years imprisonment.

The Committee considers it to be generally undesirable for there to be significant duplication or overlap of criminal offences. This makes the law applicable to individuals hard to ascertain and understand, and can create unfairness where penalties differ between offences. The Committee notes that the two offences contained in the Bill may overlap with the existing offence of manslaughter as it is defined under section 18 of the *Crimes Act 1900* (taking into account the 'note' in Part 2, Division 5 of the WHS Act), and with the offence of gross negligence or reckless conduct, as it exists under section 31 of the WHS Act. While the maximum penalty for manslaughter is also 25 years imprisonment, the maximum penalty for an individual contravening section 31 of the WHS Act ranges from 3,465 to 6,925 penalty units, or 5 years imprisonment, or both.

The Committee acknowledges the public safety objectives of the Bill, and the various inquiries and reviews on which its provisions are based. In addition, the Committee acknowledges the safeguards included in the Bill, including the requirement that officers of a corporation must be mentally culpable – that is, they must be negligent or reckless – before they can be liable for an offence. The Committee also notes that the existing offence of manslaughter, with which the proposed provisions have the most overlap, has an identical maximum penalty. However, given the seriousness of the offence and the significant criminal penalties that may be incurred, the Committee refers these provisions to the Parliament for consideration.

Broad definitions within criminal offence

As noted above, the Bill creates a new offence for industrial manslaughter, which carries a maximum penalty of 25 years imprisonment for an individual or 100,000 penalty units ($11,000,000) for a body corporate.

The Committee notes that the Bill's provisions contains definitions that are quite broad. For example, an *executive officer* of a body corporate means a person who is concerned with, or takes part in the corporation's management, whether or not the person is a director or the person's position is given in the name of executive officer. Similarly, a *senior officer* means an executive officer, or the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions. This allows a broad range of positions within an organisation to fall under the definitions of executive officer and senior officer and subject to the offence of industrial manslaughter. This may affect the certainty of to whom the provisions apply.

The Committee also notes that the elements of the offence are quite broad, including that an offence can be committed if a worker or other person dies, or is injured and later dies, at the workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking. It therefore applies to a broad range of individuals, including those that are not workers, and whether or not they are carrying out work activities.

The Committee acknowledges the public safety objectives of the Bill, and the requirement that officers of a corporation must be mentally culpable – that is, they must be negligent or reckless – before they can be liable for an offence. However, the broad definitions contained within the offence may affect the certainty of who can be prosecuted for the offence and their obligations under the Act. As previously noted, given the seriousness of the offence and the significant

criminal penalties attached, the Committee refers the provisions to Parliament for consideration.

PART TWO – REGULATIONS

1. FISHERIES MANAGEMENT (BLUE SWIMMER CRAB POSSESSION LIMIT) ORDER 2021

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

Altered possession limit with substantial penalties

The *Fisheries Management (Blue Swimmer Crab Possession Limit) Order 2021* effectively reduces the possession limit for blue swimmer crabs with a measurement of between 6cm and 6.5cm from 20 to zero, for certain licence holders. The Order may have an adverse effect on commercial fishing operators, particularly as the penalty for contravening a possession limit is substantial for both corporations and individuals.

The maximum penalty under the Act for breaching a possession limit is $110,000 for corporations and $22,000 for individuals or 6 months' imprisonment, or both. Alternatively, a penalty notice of $500 may be issued. The Committee notes the conservation objects of the *Fisheries Management Act 1994*, under which the Order is made, and the fact that a minimum measurement of 6cm previously existed for blue swimmer crabs. Accordingly, the Committee makes no further comment.

2. PRIVATE HEALTH FACILITIES AMENDMENT (COVID-19 PRESCRIBED PERIOD) REGULATION 2021

The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII clause

The Regulation inserts a new clause 23A into the *Private Health Facilities Regulation 2017*, which has the effect of deferring the repeal date of section 12A of the *Private Health Facilities Act 2007.* This is made possible by a Henry VIII clause in section 12A(3) of the Act, which provides that section 12A will be repealed on 26 March 2021, or a later date prescribed by the regulations.

The Committee generally prefers amendments to an Act, including repeal dates of certain provisions, to be made by an amending Bill rather than by subordinate legislation. This is to foster an appropriate level of parliamentary oversight. In this case, the amendment is limited to extending by another year the special conditions applicable to private health facility licences during the COVID-19 pandemic. The Committee acknowledges the public health and safety objectives of section 12A, and the benefits of having a flexible repeal date, given the ongoing challenges posed by the COVID-19 pandemic. In these circumstances, the Committee makes no further comment.

3. PUBLIC HEALTH AMENDMENT (COVID-19 SPITTING AND COUGHING) REGULATION (NO 4) 2020

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

Penalty notice offences – right to a fair trial

The *Public Health Amendment (COVID-19 Spitting and Coughing) Regulation (No 4) 2020* allows a penalty notice of $5,000 to be issued to an individual who contravenes the *Public Health (Spitting and Coughing) Order (No 4) 2020* by intentionally spitting or coughing on a public office

or on another worker while the worker is at the worker's place of working or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

In its previous Digests 13/57, 17/57 and 25/57, the Committee commented on earlier versions of this Regulation, which similarly provided that a penalty notice of $5,000 could be issued to a person who contravened earlier versions of the Order. Consistent with its previous comments, the Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. The Committee also notes that $5,000 is a significant monetary amount to be imposed on an individual by way of penalty notice.

Individuals retain the right to elect to have their matter heard and decided by a Court. However, individuals may be incentivised not to do so, as the maximum penalty is significantly higher, and includes imprisonment.

The Committee acknowledges there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. This is particularly the case given the extraordinary conditions created by COVID-19, where public institutions, including courts, need to facilitate social distancing. Given these factors, the Committee makes no further comment.

The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Matters that should be included in primary legislation

As noted above, the Regulation allows a penalty notice of $5,000 to be issued to an individual who contravenes the *Public Health (COVID-19 Spitting and Coughing) Order (No 4) 2020* by intentionally spitting or coughing on a public official or on another worker while the worker is at the worker's place of work or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

Consistent with its comments in Digests 13/57, 17/57 and 25/57, the Committee generally prefers significant matters to be dealt with in primary rather than subordinate legislation. This includes provisions that set down large on-the-spot penalties for offending. This would foster a greater level of parliamentary oversight concerning the provisions.

Given the severe circumstances surrounding the COVID-19 pandemic, the Committee acknowledges the importance of relevant authorities having sufficient flexibility to respond quickly to emerging public health issues. Being able to include significant matters in subordinate legislation may further this objective, meaning that responses are not delayed by the need for an amending Bill. Given the extraordinary circumstances, the Committee makes no further comment.

Part One – Bills

1. Coal and Gas Legislation Amendment (Liverpool Plains Prohibition) Bill 2021*

Date introduced	5 May 2021
House introduced	Legislative Council
Member responsible	Ms Cate Faehrmann MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are—

   (a) to prohibit the grant of new authorisations to mine or prospect for material under the *Mining Act 1992* on land in the Liverpool Plains, and

   (b) to prohibit the grant of new petroleum titles under the *Petroleum (Onshore) Act 1991* for petroleum mining operations on land in the Liverpool Plains, and

   (c) to ensure pending applications for authorisations or petroleum titles for land in the Liverpool Plains are taken to be refused, including applications for the renewal of expired petroleum titles, and

   (d) to cancel approved authorisations or petroleum titles for land in the Liverpool Plains if prospecting or mining operations have not commenced, and

   (e) to provide that compensation is not payable by or on behalf of the State because of the operation of this proposed Act.

BACKGROUND

2. The Bill amends the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991,* which sets out the legislative framework for the discovery and development of mineral resources and petroleum in New South Wales, having regard to the need to encourage ecologically sustainable development.

3. The provisions of the Bill amend the Acts to prohibit the granting of new authorisations to mine or prospect, prohibits the granting of new petroleum titles, refuse pending applications for such authorisations or petroleum titles, and cancel approved authorisations if prospecting or mining has not yet commenced. It also provides that compensation is not payable by the State because of the operation of the Bill's provisions.

4. In her second reading speech, Ms Faerhmann cited the reason for specifying the Liverpool Plains area was due to its significance to agriculture, indigenous heritage, and koala population.

ISSUES CONSIDERED BY THE COMMITTEE

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

Economic rights

5. Schedule 1 of the Bill inserts proposed section 10B to the *Mining Act 1992* to prohibit the grant of a new authorisation to mine or prospect any material on land in the Liverpool Plains, which provides that an application for an authorisation made but not finally determined before the commencement of the proposed Act is taken to be refused. Section 10B also cancels an approved authorisation for land in the Liverpool Plains if prospecting or mining operations have not commenced.

6. Schedule 2 of the Bill inserts proposed Part 2A into the *Petroleum (Onshore) Act 1991* to prohibit the grant of a new petroleum title under the *Petroleum (Onshore) Act 1991* for land in the Liverpool Plains. Part 2A provides that an application for a petroleum title made but not finally determined before the commencement of the proposed Act is taken to be refused. Further, an application for an expired, unused petroleum title may not be enlivened by way of the *Petroleum (Onshore) Act 1991*, section 20 and is also taken to be refused.

7. Under the Bill, Liverpool Plains is defined as land within the following areas:

    a) the local government area of Liverpool Plains Shire,

    b) the local government area of Gunnedah Shire,

    c) the town of Boggabri,

    d) the town of Rocky Glen,

    e) the town of Bomera,

    f) the town of Premer.

8. The Bill provides that compensation is not payable by or on behalf of the State because of the operation of the proposed sections, or because of a direct or indirect consequence of the operation of the sections, including conduct under the authority of the enactment.

9. Under the Bill, conduct includes an act or omission, whether unconscionable, misleading deceptive or otherwise.

    The Bill prohibits the grant of a new authorisation to mine or the grant of a new petroleum title in the Liverpool Plains and cancels any approved authorisation to mine or petroleum title in the Liverpool Plains if prospecting or mining operations have not commenced. Further, the Bill provides that compensation is not payable by the State because of any direct or indirect consequence of the operation of these sections, including conduct under the authority of the enactment.

    These provisions may impact on the economic or property rights of individuals with a stake in, or control over, mining licenses in the Liverpool Plains areas.

Additionally, compensation is not available for any detriment incurred by the operation of these sections or conduct under the authority of the enactment.

However, the granting of a mining or petroleum license is associated with businesses and corporate entities. The Committee notes that it is generally concerned with individual rights and liberties in regards to Bills, rather than those associated with corporate ownership. Accordingly, it makes no further comment.

2. Payroll Tax Amendment (Jobs Plus) Bill 2021

Date introduced	5 May 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Treasury

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Payroll Tax Act 2007*—

   (a) to exempt employers from liability to pay payroll tax on wages that are the subject of Jobs Plus agreements, and

   (b) to extend an exemption under the Act in relation to the Aged Care Workforce Retention Grant Opportunity program of the Commonwealth.

BACKGROUND

2. This Bill amends the *Payroll Tax Act 2007* to provide for the creations of Jobs Plus agreements, which exempt employers from liability to pay payroll tax on wages under such an agreement. The Bill also extends an exemption in relation to the Aged Care Workforce Retention Grant Opportunity program of the Commonwealth.

3. As noted by the Minister in his second reading speech, the Jobs Plus agreements are to act as an incentive program to attract businesses to New South Wales:

> There has never been a better time for businesses to set down their roots in New South Wales and hit the ground running in a post-pandemic world. That is why last year we established Jobs Plus, an incentive program to encourage more businesses to call New South Wales home. Program guidelines released in December 2020 identify the eligibility criteria for businesses to qualify for this program. To be eligible, businesses must create at least 30 new full-time equivalent jobs in New South Wales, with employment activity initiated before 30 June 2022 and completed by 30 June 2024.

4. The Minister further noted the requirements for businesses to be a part of a Jobs Plus agreement and the relevant incentives:

> An employer looking to engage in the Jobs Plus Program must also be a revenue-generating business and have at least 20 full-time equivalent staff for ABN registered businesses, or 80 full-time equivalent staff for foreign-owned entities, to be eligible for support. Jobs Plus is our invitation to the national and global business community to take advantage of all New South Wales has to offer and create jobs for our people in the process. By targeting fast-growing companies from interstate and across the globe to expand in New South Wales, this program will strengthen the New South Wales economy by creating or supporting up to 25,000 new jobs. One of the key incentives in the Jobs Plus Program is a complete exemption from payroll tax for up to four years for every new job created, provided the business has created at

least 30 net new jobs. This bill gives effect to that incentive by amending the Payroll Tax Act 2007 to exempt wages of identified positions under the Jobs Plus Program from payroll tax.

ISSUES CONSIDERED BY THE COMMITTEE

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

Privacy

5. The Bill inserts section 66F to the *Payroll Tax Act 2007* and provides for payroll tax exemptions for employers under Jobs Plus agreements.

6. Proposed subsection 66F(8) provides that a Jobs Plus administrator may disclose to another Jobs Plus administrator information in relation to a Jobs Plus agreement, including personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* and confidential information.

7. This information may be shared for the purposes of assisting a Jobs Plus administrator to exercise a function under this section, including to assist the relevant Minister to give effect to the agreement, or in connection with the administration of a taxation law.

> **The Bill provides that a Jobs Plus administrator may disclose to another Jobs Plus administrator information in relation to a Jobs Plus agreement, including personal information and confidential information. This may impact the privacy rights of those individual to whom the personal or confidential information relates.**
>
> **However, the Committee notes that under the Bill, personal information has the same meaning as within the *Privacy and Personal Information Protection Act 1998*, which carries certain safeguards under that Act regarding the retention, use and disclosure of that information. The Committee also notes that the information may only be shared for the purposes of assisting a Jobs Plus administrator to exercise a function under this section, including to assist the relevant Minister to give effect to the agreement, or in connection with the administration of a taxation law. In these circumstances, the Committee makes no further comment.**

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

No objection to revocation of agreement

8. Subsection 66F(4) provides that the relevant Minister may, by written notice issued to an employer who enters into a Jobs Plus agreement, revoke the exemption under this section on the grounds, or in the circumstances, specified by the agreement.

9. Subsection 66F(5) provides that the effect of the revocation includes that:

   (a) the wages are taken never to have been exempt wages under this section

   (b) the employer is liable to pay payroll tax on the wages even if the relevant Minister revokes the exemption under this section after the employer relies on the exemption as the reason for not paying payroll tax on the wages,

(c) the Chief Commissioner must assess or reassess the employer's liability to pay payroll tax on the wages accordingly.

10. For the purposes of section 9(3)(c) of the *Taxation Administration Act 1996,* the Chief Commissioner is authorised to make a reassessment under this section until 1 July 2033.

11. Subsection 66F(7) provides that an employer who enters into a Jobs Plus agreement cannot lodge an objection with the Chief Commissioner under the Taxation Administration Act 1996, Part 10, Division 1 to an assessment or reassessment under this section on the grounds that the relevant Minister has revoked an exemption under this section.

The Bill provides that the relevant Minister may revoke the wage exemptions under a Jobs Plus agreement on the grounds, or in the circumstances, specific by the agreement. The effect of such a revocation is that the wages are taken to never have been exempt wages and the employer is liable to pay payroll tax on the wages even where the employer had relied on the initial exemption as the reason for not paying payroll tax. The Chief Commissioner must also assess or reassess the employer's liability to pay payroll tax on the wages accordingly. The Bill provides that, for the purposes of section 9(3)(c) of the *Taxation Administration Act 1996,* the Chief Commissioner is authorised to make a reassessment under this section until 1 July 2033.

Additionally, the Bill provides that an employer who enters into a Jobs Plus agreement cannot lodge an objection with the Chief Commissioner under the Taxation Administration Act 1996 to an assessment or reassessment under this section on the grounds that the relevant Minister has revoked an exemption under this section. This may make the rights and obligations of employers unduly dependent on the non-reviewable decision of the Minister to revoke payroll tax exemptions. Accordingly, the Committee refers these provisions to the Parliament for its consideration.

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

Delegation of Ministerial functions

12. Proposed subsection 66F(9) provides that the relevant Minister may delegate their functions to another Jobs Plus administrator.

13. However, subsection 66F(9) also provides that the Minister cannot delegate a function to a tax officer, and cannot delegate this power of delegation.

14. Section 66F(11) provides that a Jobs Plus administrator means each of the following:

(a) the relevant Minister

(b) a tax officer

(c) a person employed in the Department of Premier and Cabinet

(d) a person employed in Investment NSW

Proposed subsection 66F(9) provides that the relevant Minister may delegate their functions to another Jobs Plus administrator, but cannot delegate a function to a tax officer and cannot delegate this power of delegation. The Committee notes that Ministerial function may only be delegated to a Jobs Plus administrator, which includes the relevant Minister, a tax officer, a person employed in the Department of Premier and Cabinet, and a person employed in Investment NSW. This grants a wide power of delegation to the Minister to any of these persons, excluding tax officers.

Despite these requirements, the Committee notes that the Bill does not provide restrictions on this power to delegate, such as restricting delegation to people with certain qualifications or expertise. The Committee also notes that the Minister's functions include the power to enter into Jobs Plus agreements, which specify that certain wages are exempt from payroll tax requirements, as well as the power to revoke such agreements. Given this, the Committee considers the Bill should provide more clarity about the persons to whom the functions can be delegated. In the circumstances, the Committee refers this matter to Parliament for its consideration.

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

Jobs Plus agreements not subject to parliamentary scrutiny

15. Proposed subsection 66F(1) provides that the relevant Minister is authorised on behalf of the State to enter into an agreement with an employer that is expressed to be for the purposes of this section (a Jobs Plus agreement), and to give effect to the agreement.

16. Subsection 66F(2) provides that, without limiting the matters that may be specified by a Jobs Plus agreement, the agreement must specify the kinds of wages that are exempt wages under this section, and the grounds on which, or the circumstances in which, the relevant Minister may revoke an exemption under this section.

17. Subject to this section, wages are exempt if they are paid or payable by an employer who enters into a Jobs Plus agreement, and they are wages of a kind that is specified by the agreement to be exempt wages under this section.

18. Subsection 66F(4) also provides that the Minister may revoke an exemption by written notice under this section on the grounds, or in the circumstances, specified by the Jobs Plus agreement. The Bill provides for a new scheme to exempt certain wages from payroll tax requirements.

Subsection 66F(1) provides that the relevant Minister is authorised on behalf of the State to enter into, and give effect to, a Jobs Plus agreement that may specify that certain wages are exempt from payroll tax. The Bill also provides that a Minister may revoke such an exemption on the grounds, or in the circumstances, specified by the agreement.

The Committee notes that, unlike regulations, there is no requirement that a Jobs Plus agreement to be tabled and therefore is not subject to disallowance. This may subject such an agreement and its terms, particularly regarding exemptions of payroll tax and revocations of such exemptions, to insufficient parliamentary

scrutiny. The Committee therefore refers this matter to Parliament for its consideration.

3. Petroleum (Onshore) Amendment (Cancellation of Zombie Petroleum Exploration Licences) Bill 2020*

Date introduced	5 May 2021
House introduced	Legislative Council
Member responsible	Mr Justin Field MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Petroleum (Onshore) Act 1991* as follows—

   (a) to provide that an exploration licence expires at the end of its term unless renewed,

   (b) to cancel exploration licences that remain in force because of a pending renewal application.

BACKGROUND

2. The *Petroleum (Onshore) Amendment (Cancellation of Zombie Petroleum Exploration Licences) Bill 2020* (the Bill) amends the *Petroleum (Onshore) Act 1991* (the Act).

3. The Act sets out a legislative framework for the regulation of titles for petroleum prospecting and mining, compensation to landholders for the loss or damage as a result of mining operations and to encourage ecologically sustainable development.

4. All petroleum exploration and production activity in NSW must be conducted in accordance with a petroleum title issued under the Act. The Act provides mechanisms for the Government to regulate exploration and production by granting titles.

5. A petroleum exploration licence gives the holder the exclusive right to explore for petroleum within the exploration licence area, during the term of the licence. The purpose of the exploration is to locate areas where resources may be present and establish the quality, quantity of the resource and the viability of extracting the resource.[1]

6. Section 20 of the Act provides that if an application for the renewal of a title has not been withdrawn or otherwise finally disposed of before the date on which the title would expire, the title continues in force until the date on which the application is withdrawn or otherwise finally disposed of.

[1] NSW Government Mining, Exploration and Geoscience, About petroleum titles.

7. In his second reading speech, Mr Field noted that the Bill aimed to remove expired coal seam gas exploration licences that have expired but remain dormant and continue in force under Section 20 of the Act.

ISSUES CONSIDERED BY 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*.

4. Protection of the Environment Operations Amendment (Clean Air) Bill 2021*

Date introduced	5 May 2021
House introduced	Legislative Assembly
Member responsible	Ms Abigail Boyd MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to improve air quality by providing for the standards of concentration for emissions of certain air impurities, being nitrogen dioxide, nitric oxide, sulfur dioxide, solid particles and mercury, that are not to be exceeded in relation to coal-fired power stations in New South Wales.

BACKGROUND

2. The *Protection of the Environment Operations Amendment (Clean Air) Bill 2021* (the Bill) amends the *Protection of the Environment Operations Act 1997* (the Act).

3. The Act sets out the legislative framework for the protection, restoration and enhancement of the quality of the environment in NSW, and has regard to the need to maintain ecologically sustainable development.

4. In her second reading speech, Ms Boyd noted that the intention of the Bill was to protect people's health by 'setting stricter limits on toxic emissions and effectively mandating the installation of emission control technology…' for the five active coal-power stations in NSW.

5. Ms Boyd further noted:

> The bill aims to improve air quality in New South Wales by standardising allowable concentrations of emissions of air pollutants from the remaining coal-fired power stations in New South Wales. It sets allowable limits that must not be exceeded for nitrogen dioxide, nitric oxide, sulphur dioxide, solid particles and mercury.
>
> The bill amends section 128 of the Protection of the Environment Operations Act 1997 by the insertion of a new clause which states that the occupier of a coal-fired power station must not carry on any activity or operate any plant in the power station that causes or permits the emission of an air impurity in excess of the amount specified.

6. Ms Boyd noted that her colleague, Ms Cate Faehrmann MLC had introduced a prior iteration of this Bill in 2018, which was reviewed in the Legislative Review Committee Digest 65/56.[2]

[2] Legislation Review Committee, *Protection of the Environment Operations (Clean Air) Bill 2018*, Legislation Review Digest No 65 – 20 November 2018, p 12.

ISSUES CONSIDERED BY 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*.

5. Residential Tenancies Amendment (Reasons for Termination) Bill 2021*

Date introduced	6 May 2021
House introduced	Legislative Assembly
Member responsible	Ms Julia Finn MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Residential Tenancies Act 2010* (the Act) to remove the right of landlords to terminate residential tenancy agreements without grounds and to specify additional reasons for which landlords may terminate residential tenancy agreements.

BACKGROUND

2. The Bill amends the *Residential Tenancies Act 2010*, which sets out the legislative framework for residential tenancy agreements and the rights and obligations of landlords and tenants.

3. Under the provisions of the Bill, landlords would be permitted to terminate a fixed term agreement or periodic agreement only in the circumstances where a family member is to immediately occupy the premises, or to immediately repair, renovate or reconstruct the residential premises.

4. In her second reading speech, Ms Finn noted that the Bill intended to remove the ability for landlords to issue no-reason evictions and require that reasons are provided for ending a tenancy agreement.

5. Ms Finn further stated that the Bill aimed to protect tenants while also intending to prevent any detriment to the landlords:

> There is a history of no-grounds eviction being used to evict tenants in retaliation for asserting their rights, such as overdue repairs or maintenance or discrimination. Without addressing no-reason eviction, it is possible that landlords will evict tenants during the transition period and afterwards so they can re-let the property at a higher weekly rent and potentially expose evicted tenants to overheated rental markets across the State. Changes to no-grounds evictions is not to the detriment of landlords because the private member's bill includes additional specific grounds for termination such as the premises needing renovation or the landlord moving in. The changes will disadvantage only those landlords who use no-reason eviction to get out of doing the right thing by their tenants.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity, property rights and freedom of contract

6. The Bill amends sections 84(1) and 85(1) of the Act to remove the right of a landlord to terminate a fixed term agreement or a periodic agreement without grounds. Instead, the substituted provisions permit a landlord to terminate a fixed term agreement or a periodic agreement –

    a) if the landlord, or a person with a close family relationship to the landlord, intends to occupy the residential premises, or

    b) if the landlord intends to repair, renovate or reconstruct the premises in a way that reasonably requires the tenant to vacate the premises, or

    c) if the tenant, or another occupier of the premises, has endangered the safety of an occupier of neighbouring premises, or

    d) for another reason prescribed by the regulations.

    The Bill amends the *Residential Tenancies Act 2010* to remove the ability for landlords to issue a termination notice for a fixed or period tenancy agreement without grounds. The proposed amendments to section 84(1) and 85(1) provide that a landlord may give a notice of termination only in certain circumstances, including where the landlord or a person associated with the landlord intends to immediately occupy the residential premises or to immediately repair, renovate or reconstruct the premises after the notice takes effect. The Bill also provides that the landlord may give a termination notice on the grounds that an act or omission of the tenant, or of any person who although not a tenant is occupying or jointly occupying the residential premises, has endangered the safety of an occupier of neighbouring premises, or another reason prescribed by the regulations.

    In limiting landlords' and proprietors' rights under tenancy and occupancy agreements and relevant legislation, the Bill may impact on the property rights of landlords. As the provisions would apply to existing tenancy agreements, this Bill also acts retrospectively. The Committee generally comments on provisions drafted to have retrospective effect, especially where they retrospectively limit rights, because they impact on the rule of law principle that a person is entitled to know the law to which they are subject at any given time. Similarly, by limiting the ability of the landlord or proprietor to exercise their rights under an existing agreement, the Bill may impact on freedom of contract – the freedom of parties to choose the contractual terms and obligations to which they are subject. The Committee refers the provisions to the Parliament for their consideration.

6. Statute Law (Miscellaneous Provisions) Bill 2021

Date introduced	5 May 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman SC MP
Portfolio	Attorney-General

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to—

   (a) make minor amendments to various Acts and instruments (Schedule 1), and

   (b) amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and

   (c) amend certain other Acts and instruments for the purpose of effecting statute law revision relating to the change of name of First State Superannuation (Schedule 3), and

   (d) repeal an instrument (Schedule 4), and

   (e) make other provisions of a consequential or ancillary nature (Schedule 5).

BACKGROUND

2. The *Statute Law (Miscellaneous Provisions) Bill 2021* amends a range of Acts and Regulations, as part of the Statute Law Revision Program.[3] Pursuant to circulars previously issued by the Department of Premier and Cabinet, Bills that are part of this Program must be non-controversial and contain no more than minor policy changes. They are generally limited to the following matters –

   (a) Minor amendments proposed by government agencies.

   (b) Minor amendments by way of pure statute law revision proposed by the Parliamentary Counsel.

   (c) Repeals of obsolete or unnecessary Acts (subject to any remaining operative provisions being transferred to other appropriate Acts), proposed by government agencies or the Parliamentary Counsel.

[3] See: NSW Department of Premier & Cabinet Circular, C2019-07 Statute Law Revision Program, C2019-02 Statute Law Revision Program

(d) Savings and transitional provisions.

3. Equally, Bills are generally not permitted to include controversial matters, or make amendments that increase sentences of imprisonment or monetary penalties, create new offences, or prejudice individual rights.

4. In the second reading speech for the introduction of this Bill, the Attorney-General referred to statute law bills as an 'effective method for making minor policy changes and maintaining the quality of the New South Wales statute book by removing typographical errors, updating cross-references and repealing redundant provisions'.

5. The Attorney-General described Schedule 1 to the Bill as containing 'policy changes of a minor and non-controversial nature'; Schedule 2 as 'deal[ing] with purely statute law matters consisting of minor technical changes to legislation that the Parliamentary Counsel considers appropriate for inclusion'; Schedule 3 as amending Acts and regulations to reflect am organisation's change in name from 'First State Superannuation' to 'Aware Superannuation Fund'; and Schedule 4 as repealing Acts and instruments that are 'redundant or of no practical utility'.

ISSUES CONSIDERED BY 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*.

7. Tax Administration Amendment (Combating Wage Theft) Bill 2021

Date introduced	6 May 2021
House introduced	Legislative Council
Minister responsible	The Hon. Damien Tudehope MLC
Portfolio	Finance and Small Business

PURPOSE AND DESCRIPTION

1. The objects of the *Tax Administration Amendment (Combating Wage Theft) Bill 2021* (the Bill) are as follows—

    (a) to provide for measures to deter the underpayment of wages, including by allowing—

        i. the Chief Commissioner to reassess payroll tax liabilities more than 5 years after an initial assessment in certain circumstances of underpayment of wages, and

        ii. tax officers to disclose information to the Commonwealth Fair Work Ombudsman to assist in investigations of underpayment of wages and to the Secretary of the Department of Premier and Cabinet to assist in investigations of breaches of the *Long Service Leave Act 1995*, and

        iii. tax officers to disclose certain information about an employer in certain circumstances of underpayment of wages,

    (b) to increase penalties, or introduce higher penalties for second or subsequent offences, for certain offences,

    (c) to create an offence of knowingly evading or attempting to evade tax.

BACKGROUND

2. In the second reading speech for the introduction of this Bill, the Hon. Damien Tudehope MLC, Minister for Finance and Small Business, noted that the Bill is aimed at 'deter[ing] the underpayment of wages by employers' in NSW. The Minister emphasised that 'wage theft is a serious issue and deserves serious action to deter, penalise and send a clear message that employees deserve to be paid what they are properly due.'

3. However, the Minister noted, 'the bill does not seek to criminalise wage theft'. Rather, it is aimed at 'provid[ing] confidence to the people of New South Wales that Revenue NSW is doing its job when it comes to collecting avoided payroll tax on wage theft—and payroll tax generally—on behalf of families, businesses and local communities around the State.'

ISSUES CONSIDERED BY COMMITTEE

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

Significant increase in penalties

4. Schedule 1 to the Bill makes a number of amendments to the *Taxation Administrative Act 1996* (the Act), including increasing the maximum penalty –

    (a) for the offences in sections 48(1), 49(2), 51, 52, 53(1) and 57, relating to failure to keep records or lodge documents – from 100 penalty units ($11,000) to 250 penalty units ($25,700).

    (b) for the offences in sections 55 and 56, relating to giving false or misleading information or deliberately omitting information – from a flat 100 penalty units ($11,000) to a graded penalty of 500 penalty units ($55,000) for a first offence and 1,000 penalty units ($110,000) or 2 years imprisonment, or both, for a second or subsequent offence.

    (c) For the offences in sections 54 and 58, relating to wilfully destroying records and falsifying or concealing identity – from 100 penalty units ($11,000) to 500 penalty units ($55,000).

5. As the Minister commented in the second reading speech, there are offences which 'are not specific to wage theft', but 'may be relevant to instances of wage underpayment', and generally 'relate to taxpayer behaviour generally that is associated with avoiding or minimising tax or otherwise hindering Revenue NSW's compliance activities'.

6. Except for the offences under sections 50, and 54-56, the offences under the sections above are largely strict liability offences.

7. Pursuant to section 121 of the Act, almost all of the above offences (except for those under sections 51, 52 and 53) are also executive liability offences. This means that, if a corporation commits the offence, a director or individual involved in the management of the corporation is liable, if –

    - they knew or ought reasonably to have known that the offence would be or was being committed, and

    - failed to take all reasonable steps to prevent or stop the commission of the offence.

8. In addition, Schedule 1 to the Bill inserts a new section 58A into the Act, making it an offence to 'knowingly evade or attempt to evade tax'. The maximum penalty for this offence is 1,000 penalty units ($110,000) or 2 years imprisonment, or both.

    The *Tax Administration Amendment (Combating Wage Theft) Bill 2021* makes a number of amendments to the *Taxation Administration Act 1996*, including increasing the maximum penalties attached to a number of existing offences, and inserting a new offence for tax evasion.

    The amendments more than double the monetary penalties applicable to a range of provisions relating to keeping records and providing accurate information to

the Chief Commissioner of Taxation. For two existing offences and the new offence, the amendments also insert a custodial penalty of 2 years imprisonment. Many of the amended offences are strict liability offences, meaning that no mental element (e.g. intent) is required to be proven. Many are also executive liability offences, meaning that a director of a company can be liable if they ought to have known about an offence and failed to take reasonable steps to prevent it.

The Committee will generally comment where significant penalties can be imposed without a requirement to establish actual knowledge or intent on the part of the accused. This is based on the common law principle that the mental element of an offence is relevant to the imposition of liability. The Committee also generally comments where penalties for offences are significantly increased – particularly where custodial sentences are imposed – as these may impact on the right to liberty.

The Committee acknowledges that strict and executive liability offences, with significant penalties attached, are often used in regulatory settings to encourage compliance. Further, the Committee acknowledges the object of the Bill, to deter underpayment of wages by employers. However, given the significant increase in penalties for multiple offences, and the inclusion of new custodial sentences, the Committee refers the Bill to Parliament to consider whether the changes are proportionate.

Privacy – additional circumstances in which personal information can be disclosed

9. Schedule 1 to the Bill also amends section 82 of the Act, and inserts a new section 83A. Both of these sections relate to the circumstances in which a tax officer is permitted to disclose information obtained under or in relation to administration of a taxation law.

10. Section 82 of the Act currently provides that a tax officer may disclose information:

    (a) with the consent of the person to whom the information relates, or

    (b) in certain circumstances, for example, in accordance with a requirement or authorisation conferred under another Act, or

    (c) to certain persons, including the NSW Crime Commissioner, the Australian Securities and Investments Commission, the Commissioner of the Australian Federal Police, the Auditor General, the Legal Services Commissioner, etc.

11. In relation to this provision, the Minister commented in his second reading speech:

In administering payroll tax, Revenue NSW often obtains information about employers and their employees' wages. This information may be relevant and helpful to the Fair Work Ombudsman when investigating wage theft. In a similar capacity, this information may assist Industrial Relations NSW within the Department of Premier and Cabinet in investigating potential breaches of the Long Service Leave Act 1955. Currently, Revenue NSW is not able to disclose information to either the Fair Work Ombudsman or to Industrial Relations NSW, and the proposed amendments contained in the bill will allow them to do so.

12. The proposed amendment to section 82 would insert, as additional persons whom information can be disclosed:

(a) the Fair Work Ombudsman, for the purpose of assisting with the performance of its functions under the *Fair Work Act 2009*, and

(b) the Secretary of the Department of Premier and Cabinet, for the purpose of investigating a breach of the *Long Service Leave Act 1995*.

13. Proposed section 83A provides that a tax officer may also disclose information about an employer if –

(a) an investigation by the Fair Work Ombudsman has been finalised, and has found that the employer has not complied with its obligations under the *Fair Work Act 2009*, resulting in underpayment of wages to an employee, and an inaccurate assessment of the employer's liability to pay payroll tax under the *Payroll Tax Act 2007*, OR

(b) an investigation has not been carried out, but the Chief Commissioner is satisfied that the employer has underpaid wages to an employee, similarly resulting in an inaccurate assessment of the employer's payroll tax liability.

14. Subsection 83A(4) provides that the Minister for Finance and Small Business must issue guidelines for the exercise of the discretion to disclose information under this section, which may be amended, revoked or replaced from time to time.

15. Pursuant to subsection (7), the guidelines may include provisions about what information may be disclosed, where and for how long the information is to be published, and the matters that a tax officer should consider in exercising a discretion to disclose information (such as the scale of underpayment of wages, the employer's history of compliance, etc.).

The Bill makes further amendments to the *Taxation Administration Act 1996* which expand the circumstances in which, and the persons to whom, tax officers are permitted to disclose information obtained in the administration of a taxation law.

Specifically, the amendments provide that information can be disclosed to the Fair Work Ombudsman and to the Secretary of the Department of Premier and Cabinet, for the purposes of administering functions under the *Fair Work Act 2009* and the *Long Service Leave Act 1995* respectively. Further, the Bill inserts a new section 83A, which allows for information to be disclosed where the Fair Work Ombudsman has concluded, or the Chief Commissioner is satisfied, that an employer has underpaid wages to an employee.

These provisions may impact on an individual's right to privacy. In particular, the Committee notes that the Bill does not comprehensively provide for the factors which a tax officer must take into account when deciding whether to disclose information under section 83A, nor what types of information can be disclosed. Rather, these details are left to be determined in guidelines issued by the Minister.

The Committee generally prefers that provisions which could impact on individual rights and liberties be included in primary, rather than subordinate legislation or non-disallowable instruments. In these circumstances, the Committee refers the matter to Parliament for its consideration.

8. Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021*

Date introduced	5 May 2021
House introduced	Legislative Council
Member responsible	The Hon. Adam Searle MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of the *Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021* (the Industrial Manslaughter Bill) is to amend the *Work Health and Safety Act 2011* (WHS Act) to insert a new Part 2A into the Act to create two new offences relating to industrial manslaughter.

2. The first offence (proposed section 34D) provides that a person conducting a business or undertaking commits an offence if a worker or other person dies at a workplace, or is injured at a workplace and later dies, and the death is caused by the conduct of the person conducting the business or undertaking and that person is negligent or reckless about causing the death.

3. The second offence (proposed section 34E) provides that a senior officer of a person conducting a business or undertaking also commits an offence if a worker or other person dies at a workplace, or is injured at a workplace and later dies, and the death is caused by the conduct of the senior officer and the senior officer is negligent or reckless about causing the death.

BACKGROUND

4. In the second reading speech for the introduction of the Industrial Manslaughter Bill, the Hon. Adam Searle MLC noted the intention of the Bill to overhaul safety standards of works and create serious penalties for not upholding the responsibility of care.

5. Mr Searle referred to a range of inquiries concerning the issue of creating an industrial manslaughter offence, including –

    (a) the 2020 report of the Portfolio Committee No. 1 – Premier and Finance, which reviewed the *Work Health and Safety Amendment (Review) Bill 2019*. The Committee's report noted a 'divergence of views on the issue of the appropriateness of introducing an offence of industrial manslaughter' in that Bill, and was 'of the view that stakeholders should continue to engage in this issue'.[4]

[4] Portfolio Committee No. 1 – Premier and Finance, Report 49 – Work Health and Safety Amendment (Review) Bill 2019, March 2020

(b) the 2018 independent review of model workplace health and safety laws, known as the Boland Review. That report recommended the introduction of an industrial manslaughter offence, 'to address increasing community concerns that there should be a separate ... offence where there is a gross deviation from a reasonable standard of care that leads to a workplace death', and 'to address the limitations of the criminal law when dealing with breaches of WHS duties'.[5]

(c) the 2018 inquiry of the Education and Employment References Committee in the Federal Senate, which similarly recommended the creation of an industrial manslaughter offence.[6]

6. Finally, Mr Searle referred to Queensland and Victoria as states which have previously introduced industrial manslaughter offences, noting that the drafting of the present Bill is particularly influenced by the Queensland provision.

ISSUES CONSIDERED BY COMMITTEE

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

Overlapping criminal offences

7. The Industrial Manslaughter Bill amends the WHS Act to create two new offences. Section 34D provides that a person conducting a business or undertaking commits an offence if –

(a) a worker or other person dies at a workplace, or is injured at a workplace and later dies, whether or not in the course of carrying out work for the business or undertaking, and

(b) the first person's conduct causes the death of the worker or other person, and

(c) the first person is negligent or reckless about causing the death of the worker or other person by the conduct.

8. The maximum penalty for this offence is 25 years imprisonment for an individual, and 100,000 penalty units ($11,000,000) for a body corporate.

9. Section 34E makes similar provision for an offence applicable to individuals who are a 'senior officer' of a business or undertaking. The maximum penalty for that offence is 25 years imprisonment. Pursuant to section 34B(2), for the purposes of these offences, a person's conduct 'causes' death if it 'substantially contributes' to the death. Section 34C provides for exceptions to the offences – in particular, stipulating that the offences do not apply to volunteers.

10. The Bill proposes that the new offence provisions be inserted at the end of Part 2, Division 5 of the WHS Act – 'Offences and Penalties'. Also located in that Division, section 31 of the WHS Act currently provides that a person commits a category 1 offence if the person –

[5] Safe Work Australia, Review of the model Work Health and Safety laws: Final Report, December 2018, see recommendation 23b, see pp. 10, 16.

[6] The Senate – Education and Employment References Committee, They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia, October 2018, see pp. 58-59.

(a) has a health and safety duty, and

(b) without reasonable excuse, engages in conduct that exposes an individual to whom a duty is owed to a risk of death or serious injury or illness, and

(c) the person –

(i) engages in the conduct with gross negligence, or

(ii) is reckless as to the risk to an individual of death or serious injury or illness.

11. The maximum penalty for a category 1 offence is –

(a) for an individual conducting a business or undertaking, or an officer of a business or undertaking – 6,925 penalty units ($761,650) or 5 years imprisonment, or both,

(b) for another individual – 3,465 penalty units ($381,150) or 5 years imprisonment, or both,

(c) for a body corporate – 34,630 penalty units ($3,809,300).

12. However, Mr Searle noted in his second reading speech that the NSW work safety regulator has never prosecuted a category 1 offence under the WHS Act.

13. Further, the WHS Act was amended in 2020 to insert a 'note' into the Act, at the top of Division 5. That note remains in the Act, and reads as follows:

> This Division sets out offences, and penalties for the offences, in relation to the health and safety duties imposed by Divisions 2, 3 and 4 of Part 2. In certain circumstances, the death of a person at work may also constitute manslaughter under the *Crimes Act 1900* and may be prosecuted under that Act. See section 18 of the *Crimes Act 1900*, which provides for the offence of manslaughter, and section 24 of that Act, which provides that the offence of manslaughter is punishable by imprisonment for 25 years.

14. In the second reading speech for the introduction of the Bill which inserted the note, the Minister for Better Regulation and Innovation said:[7]

> It has long been the case that, where appropriate, a work-related death can be prosecuted as manslaughter by criminal negligence. This is an offence for which the Crimes Act imposes a maximum penalty of 25 years' imprisonment. But the availability of this offence to prosecute work-related deaths is not well known or well understood in the community. The insertion of the note will make it clear to employers, businesses, workers and the community more broadly that anyone who causes the death of a worker through negligence faces serious criminal sanction.

15. 'Manslaughter' is defined in the *Crimes Act 1900* effectively in opposition to the offence of 'murder'. Section 18(1)(a) provides that murder is taken to have been committed where the accused –

[7] The Hon. Kevin Anderson MP, Minister for Better Regulation and Innovation, Work Health and Safety Amendment (Review) Bill 2019 – Second Reading Speech, 12 November 2019

- commits an act or omission,
- causing death,
- with reckless indifference to human life, OR with intent to kill or inflict grievous bodily harm, OR during the commission of another crime punishable for imprisonment for life or for 25 years.

16. Section 18(1)(b) then provides that 'every other punishable homicide shall be taken to be manslaughter'. Section 18(2) further excludes acts and omissions that are not malicious, or for which there is a lawful excuse, or where the accused kills a person 'by misfortune only'.

The *Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021* introduces two new offences to the *Work Health and Safety Act 2011* (WHS Act). Sections 34D and 34E make it an offence if a person 'conducting a business or undertaking', or a senior officer of the business, engages in negligent or reckless conduct which causes the death of a person at a workplace. The maximum penalty for individuals under both offences is 25 years imprisonment.

The Committee considers it to be generally undesirable for there to be significant duplication or overlap of criminal offences. This makes the law applicable to individuals hard to ascertain and understand, and can create unfairness where penalties differ between offences. The Committee notes that the two offences contained in the Bill may overlap with the existing offence of manslaughter as it is defined under section 18 of the *Crimes Act 1900* (taking into account the 'note' in Part 2, Division 5 of the WHS Act), and with the offence of gross negligence or reckless conduct, as it exists under section 31 of the WHS Act. While the maximum penalty for manslaughter is also 25 years imprisonment, the maximum penalty for an individual contravening section 31 of the WHS Act ranges from 3,465 to 6,925 penalty units, or 5 years imprisonment, or both.

The Committee acknowledges the public safety objectives of the Bill, and the various inquiries and reviews on which its provisions are based. In addition, the Committee acknowledges the safeguards included in the Bill, including the requirement that officers of a corporation must be mentally culpable – that is, they must be negligent or reckless – before they can be liable for an offence. The Committee also notes that the existing offence of manslaughter, with which the proposed provisions have the most overlap, has an identical maximum penalty. However, given the seriousness of the offence and the significant criminal penalties that may be incurred, the Committee refers these provisions to the Parliament for consideration.

Broad definitions within criminal offence

17. As noted above, the Bill creates a new offence for industrial manslaughter, which carries a maximum penalty of 25 years imprisonment for an individual or 100,000 penalty units for a body corporate.

18. Proposed section 34D provides that a person conducting a business or undertaking commits an offence if a worker or other person dies at a workplace, or is injured at a workplace and later dies, and the death is caused by the conduct of the person conducting

the business or undertaking and that person is negligent or reckless about causing the death.

19. Proposed section 34E provides that a senior officer of a person conducting a business or undertaking also commits an offence if a worker or other person dies at a workplace, or is injured at a workplace and later dies, and the death is caused by the conduct of the senior officer and the senior officer is negligent or reckless about causing the death.

20. Under the Bill, an *executive officer* of a body corporate means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

21. A *senior officer* of a person conducting a business or undertaking means

(a) if the person is a body corporate—an executive officer of the body corporate, or

(b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.

As noted above, the Bill creates a new offence for industrial manslaughter, which carries a maximum penalty of 25 years imprisonment for an individual or 100,000 penalty units ($11,000,000) for a body corporate.

The Committee notes that the Bill's provisions contains definitions that are quite broad. For example, an *executive officer* of a body corporate means a person who is concerned with, or takes part in the corporation's management, whether or not the person is a director or the person's position is given in the name of executive officer. Similarly, a *senior officer* means an executive officer, or the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions. This allows a broad range of positions within an organisation to fall under the definitions of executive officer and senior officer and subject to the offence of industrial manslaughter. This may affect the certainty of to whom the provisions apply.

The Committee also notes that the elements of the offence are quite broad, including that an offence can be committed if a worker or other person dies, or is injured and later dies, at the workplace at which work is carried out for the business or undertaking, whether or not in the course of carrying out work for the business or undertaking. It therefore applies to a broad range of individuals, including those that are not workers, and whether or not they are carrying out work activities.

The Committee acknowledges the public safety objectives of the Bill, and the requirement that officers of a corporation must be mentally culpable – that is, they must be negligent or reckless – before they can be liable for an offence. However, the broad definitions contained within the offence may affect the certainty of who can be prosecuted for the offence and their obligations under the Act. As previously noted, given the seriousness of the offence and the significant criminal penalties attached, the Committee refers the provisions to Parliament for consideration.

Part Two – Regulations

1. Fisheries Management (Blue Swimmer Crab Possession Limit) Order 2021

Date tabled	LA: 16 March 2021 LC: 16 March 2021
Disallowance date	LA: 22 June 2021 LC: 23 June 2021
Minister responsible	The Hon. Adam Marshall MP
Portfolio	Agriculture and Western New South Wales

PURPOSE AND DESCRIPTION

1. The *Fisheries Management (Blue Swimmer Crab Possession Limit) Order 2021* (the Order) is made under section 17C of the *Fisheries Management Act 1994* (the Act) and will remain in force for 5 years from its commencement on 30 April 2021.

2. This Order is made in conjunction with the *Fisheries Management (Blue Swimmer Crab Fishing Closure) Notification 2021*, made under section 8 of the Act.

ISSUES CONSIDERED BY THE COMMITTEE

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

Altered possession limit with substantial penalties

3. The Order provides that, notwithstanding Table 1 in clause 6 of the *Fisheries Management (General) Regulation 2019*, a possession limit of zero is imposed for Blue Swimmer Crabs with a measurement of less than 6.5cm.

4. Table 1 in clause 6 of the Regulation provides that the 'minimum measurement' for a blue swimmer crab is –

    - 6.5cm for a holder of an endorsement in a share management fishery or southern fish trawl restricted fishery, and

    - 6cm in any other case.

5. Further, Schedule 1 to the Regulation provides that the possession limit for blue swimmer crabs is 20.

6. Without the Order in place, a person who does not hold an endorsement for a share management or southern fish trawl restricted fishery would be permitted under the Regulation to possess up to 20 blue swimmer crabs, provided they are over 6cm.

7. In effect, the Order changes that person's possession limit for blue swimmer crabs that are between 6cm and 6.5cm long from 20 to zero.

8. As provided in section 17B of the Act, where there is an inconsistency between the possession limits imposed by the regulations and by a Ministerial order, the limit imposed by Ministerial order prevails.

9. Under section 18 of the Act, contravention of a possession limit is an offence with a maximum penalty of 1,000 penalty units ($110,000) for a corporation, and 200 penalty units ($22,000) or imprisonment for 6 months (or both) for an individual. For a second or subsequent offence, the maximum penalty for an individual or corporation is double.

10. Pursuant to section 276 of the Act, schedule 8 to the *Fisheries Management (General) Regulation 2019* provides that section 18 is a penalty notice offence, such that a penalty notice of $500 may be issued instead of the matter proceeding to court.

11. The overarching object of the Act is 'to conserve, develop and share the fishery resources of the State for the benefit of present and future generations'. More specifically, the objects include 'to conserve fish stocks and key fish habitats', 'to promote viable commercial fishing and aquaculture industries', and 'to appropriately share fisheries resources between the users of those resources'.

The *Fisheries Management (Blue Swimmer Crab Possession Limit) Order 2021* effectively reduces the possession limit for blue swimmer crabs with a measurement of between 6cm and 6.5cm from 20 to zero, for certain licence holders. The Order may have an adverse effect on commercial fishing operators, particularly as the penalty for contravening a possession limit is substantial for both corporations and individuals.

The maximum penalty under the Act for breaching a possession limit is $110,000 for corporations and $22,000 for individuals or 6 months' imprisonment, or both. Alternatively, a penalty notice of $500 may be issued. The Committee notes the conservation objects of the *Fisheries Management Act 1994*, under which the Order is made, and the fact that a minimum measurement of 6cm previously existed for blue swimmer crabs. Accordingly, the Committee makes no further comment.

2. Private Health Facilities Amendment (COVID-19 Prescribed Period) Regulation 2021

Date tabled	LA: 23 March 2021 LC: 23 March 2021
Disallowance date	LA: 25 June 2021 LC: 10 August 2021
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health and Medical Research

PURPOSE AND DESCRIPTION

1. The object of the *Private Health Facilities Amendment (COVID-19 Prescribed Period) Regulation 2021* is to postpone the date on which special statutory provisions enacted in response to the COVID-19 pandemic are repealed.

2. This Regulation is made under the *Private Health Facilities Act 2007*, including sections 12A and 65 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII clause

3. The Regulation amends the *Private Health Facilities Regulation 2017* by inserting a new clause 23A. That clause provides that section 12A of the *Private Health Facilities Act 2007* will be repealed at the beginning of 26 March 2022.

4. Section 12A was inserted into the Act as part of a collection of measures in response to the COVID-19 pandemic contained in the *COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020*.

5. In the second reading speech for the introduction of that Bill, the Attorney-General noted that additional conditions on private health facility licences 'may be necessary to manage resources or coordinate health services to ensure an appropriate supply of personal protective equipment for more serious cases across the entire New South Wales health system, both public and private, during this crisis'. As an example, the Attorney-General suggested that 'additional conditions may include limiting the types of elective surgeries that can be undertaken' in a facility.

6. Accordingly, section 12A(1) provides that a licence for a private health facility may be subject to any conditions that the Secretary for the Department of Health considers necessary, having regard to the COVID-19 pandemic, to protect the health and safety of the public, manage resources or ensure the provision of balanced and coordinated health services throughout the State.

7. Section 12A(2) provides that a condition may be imposed when a licence is issued or amended by the Secretary.

8. Section 12A(3) provides that section 12A will be repealed, and any conditions imposed revoked, on 26 March 2021 or a later day prescribed by the regulations, not later than 26 March 2022.

The Regulation inserts a new clause 23A into the *Private Health Facilities Regulation 2017*, which has the effect of deferring the repeal date of section 12A of the *Private Health Facilities Act 2007.* This is made possible by a Henry VIII clause in section 12A(3) of the Act, which provides that section 12A will be repealed on 26 March 2021, or a later date prescribed by the regulations.

The Committee generally prefers amendments to an Act, including repeal dates of certain provisions, to be made by an amending Bill rather than by subordinate legislation. This is to foster an appropriate level of parliamentary oversight. In this case, the amendment is limited to extending by another year the special conditions applicable to private health facility licences during the COVID-19 pandemic. The Committee acknowledges the public health and safety objectives of section 12A, and the benefits of having a flexible repeal date, given the ongoing challenges posed by the COVID-19 pandemic. In these circumstances, the Committee makes no further comment.

3. Public Health Amendment (COVID-19 Spitting and Coughing) Regulation (No 4) 2020

Date tabled	LA: 9 February 2021 LC: 16 February 2021
Disallowance date	LA: 6 May 2021 LC: 8 June 2021
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Minister for Health and Medical Research

PURPOSE AND DESCRIPTION

1. The *Public Health Amendment (COVID-19 Spitting and Coughing) Regulation (No 4) 2020* is made under the *Public Health Act 2010*, including sections 118 and 134 (the general regulation-making power).

2. The object of this Regulation is to allow for the issue of penalty notices for an offence against section 10 of the *Public Health Act 2010* involving a contravention of a Ministerial direction under the *Public Health (COVID-19 Spitting and Coughing) Order (No 4) 2020* about intentionally spitting or coughing on:

    - a public official or
    - another worker while the worker is at the worker's place of work or travelling to or from the worker's place of work,

    in a way that is likely to cause fear about the spread of COVID-19.

3. The *Public Health (COVID-19 Spitting and Coughing) Order (No 4) 2020* commenced on 17 December 2020 and repeals and remakes the *Public Health (Spitting and Coughing) Order (No 3) 2020*. The original *Public Health (COVID-19 Spitting and Coughing) Order 2020* commenced on 9 April 2020, and has now been remade three times.[8] These orders are made under section 7 of the *Public Health Act 2010*, and pursuant to section 7(5), must expire after 90 days.

8

ISSUES CONSIDERED BY COMMITTEE

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

Penalty notice offences – right to a fair trial

4. The *Public Health (COVID-19 Spitting and Coughing) Order (No 4) 2020*, which commenced on 15 December 2020, directs that a person must not intentionally spit at or cough on public officials or other workers in a way that is likely to cause fear about the spread of COVID-19.

5. Under subsections 7(1) and (2) of the *Public Health Act 2010*, if the Minister for Health and Medical Research considers on reasonable grounds that there is, or is likely to be, a risk to public health, the Minister may by order give such directions as the Minister considers necessary to deal with the risk and its possible consequences.

6. Under subsection 7(5) of the Act, such an order expires 90 days after it is made unless earlier revoked, unless an earlier day is specified in the order.

7. Further, under section 10 of the Act, a person who is subject to a direction under section 7, and who has notice of the direction must not, without reasonable excuse, fail to comply with the direction. The maximum penalty for doing so is –

   (a) for an individual—100 penalty units ($11,000), or imprisonment for 6 months, or both, and, in the case of a continuing offence, a further 50 penalty units ($5,500) for each day the offence continues, or

   (b) for a corporation—500 penalty units ($55,000) and, in the case of a continuing offence, a further 250 penalty units ($27,500) for each day the offence continues.

8. The Regulation, like its predecessors, provides that a breach of the Order, resulting in an offence under section 10 of the Act, is an offence for which a penalty notice of $5,000 may be served. This is consistent with the penalties which applied to previous versions of the Order, which have since expired.

   The *Public Health Amendment (COVID-19 Spitting and Coughing) Regulation (No 4) 2020* allows a penalty notice of $5,000 to be issued to an individual who contravenes the *Public Health (Spitting and Coughing) Order (No 4) 2020* by intentionally spitting or coughing on a public office or on another worker while the worker is at the worker's place of working or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

   In its previous Digests 13/57, 17/57 and 25/57, the Committee commented on earlier versions of this Regulation, which similarly provided that a penalty notice of $5,000 could be issued to a person who contravened earlier versions of the Order. Consistent with its previous comments, the Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. The Committee also notes that $5,000 is a

significant monetary amount to be imposed on an individual by way of penalty notice.

Individuals retain the right to elect to have their matter heard and decided by a Court. However, individuals may be incentivised not to do so, as the maximum penalty is significantly higher, and includes imprisonment.

The Committee acknowledges there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. This is particularly the case given the extraordinary conditions created by COVID-19, where public institutions, including courts, need to facilitate social distancing. Given these factors, the Committee makes no further comment.

The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Matters that should be included in primary legislation

9. As noted above, the Regulation allows for a $5,000 penalty notice to be issued for a contravention of the Ministerial direction in clause 5 of the Order, that is, when an individual intentionally spits or coughs on a public official or on another worker while the worker is at the worker's place of work or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

As noted above, the Regulation allows a penalty notice of $5,000 to be issued to an individual who contravenes the *Public Health (COVID-19 Spitting and Coughing) Order (No 4) 2020* by intentionally spitting or coughing on a public official or on another worker while the worker is at the worker's place of work or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

Consistent with its comments in Digests 13/57, 17/57 and 25/57, the Committee generally prefers significant matters to be dealt with in primary rather than subordinate legislation. This includes provisions that set down large on-the-spot penalties for offending. This would foster a greater level of parliamentary oversight concerning the provisions.

Given the severe circumstances surrounding the COVID-19 pandemic, the Committee acknowledges the importance of relevant authorities having sufficient flexibility to respond quickly to emerging public health issues. Being able to include significant matters in subordinate legislation may further this objective, meaning that responses are not delayed by the need for an amending Bill. Given the extraordinary circumstances, the Committee makes no further comment.

Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

1 The functions of the Committee with respect to Bills are:

(a) to consider any Bill introduced into Parliament, and

(b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:

i trespasses unduly on personal rights and liberties, or

ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or

iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or

iv inappropriately delegates legislative powers, or

v insufficiently subjects the exercise of legislative power to parliamentary scrutiny

2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations

1 The functions of the Committee with respect to regulations are:

(a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,

(b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:

i that the regulation trespasses unduly on personal rights and liberties,

ii that the regulation may have an adverse impact on the business community,

iii that the regulation may not have been within the general objects of the legislation under which it was made,

iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

v that the objective of the regulation could have been achieved by alternative and more effective means,

vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,

vii that the form or intention of the regulation calls for elucidation, or

viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and

(c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

2 Further functions of the Committee are:

(a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and

(b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.