Legislation Review Committee

PARLIAMENT OF
NEW SOUTH WALES

Correspondence received in response to the Legislation Review Committee Digest No. 46 – 9 August 2022

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The Hon. Natalie Ward MLC
Minister for Metropolitan Roads
Minister for Women's Safety and the Prevention of Domestic and Sexual Violence

OFFICIAL

Our ref: BN22/00708
Your ref: D22/41444

Mr Dave Layzell MP
Chair, Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Layzell

Digest No. 46/57 of the Legislation Review Committee

Thank you for your correspondence about the Road Transport (Driver Licensing) Amendment Regulation 2022 and for the work undertaken by the Committee. I note the comments that the Regulation may trespass on personal rights and liberties.

The Regulation came into effect on 17 June 2022, and amended certain provisions within the Road Transport (Driver Licensing) Regulation 2017 to allow Transport for NSW to better regulate poor driver behaviour.

The first of these amendments was to provide an additional ground for Transport for NSW to issue a notice to a licence holder from another jurisdiction, which would withdraw their privileges to drive in NSW. Prior to the regulation amendment there was no clear power for TfNSW to take action in cases where a former NSW licence holder, who had breached the conditions of their good behaviour condition, had avoided suspension by obtaining a licence in another jurisdiction and continuing to drive in NSW as a visiting driver.

The second amendment was to provide Transport for NSW with the power to suspend a NSW driver licence for the equivalent period of any administrative suspension imposed by an interstate licensing authority under a law of that jurisdiction. Without this change, a NSW driver who had their privileges to drive in another jurisdiction withdrawn would only be prohibited from driving in that other jurisdiction but would otherwise be lawfully able to continue to drive in NSW.

The amending Regulation addressed these anomalies by introducing clear regulatory provisions to ensure drivers are no longer able to circumvent the intended and appropriate sanctions for poor driving behaviour.

While I appreciate the Committee's comments regarding personal rights and liberties and in principle support those rights, in the circumstances and given recent specific cases of drivers circumventing sanctions, I am persuaded that the overriding obligation to prevent and deter poor driving behaviour should prevail. I note that the new provisions do not impact law abiding citizens.

Thank you again for your important work and for bringing the Committee's comments to my attention.

Yours sincerely

The Hon. Natalie Ward MLC 6/10/2022
Minister for Metropolitan Roads
Minister for Women's Safety and the Prevention of Domestic and Sexual Violence

CC: The Hon. Sam Farraway MLC, Minister for Regional Transport and Roads

The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government
Minister for Small Business
Minister for Fair Trading

Our reference: COR-04723-2022

Mr David Layzell MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear Mr Layzell MP

Thank you for your correspondence about the following Regulations considered by the Legislation Review Committee. I respond to the factors raised toward disallowance as follows.

Motor Accident Injuries Amendment Regulation 2022 (MAI Amendment Regulation)

Section 3.24 of the *Motor Accident Injuries Act 2017* (**MAI Act**) establishes the entitlement to treatment and care. Schedule 2 establishes the jurisdiction of the Personal Injury Commission to resolve disputes that arise due to the entitlement. The MAI Amendment Regulation was made to clarify an interpretation that was intended at the time the MAI Act was enacted and has a significant impact on the treatment accessible to injured persons.

The decision of *Obeid v AAI Ltd t/as AAMI* [2022] NSWPICMP 76 raised issues as to whether a Medical Assessor and Review Panel of the Personal Injury Commission had the power to determine a claim for medical expenses not incurred and not provided under Sch 2 cl 2(b) and section 3.24 of the MAI Act. A subsequent decision in *Insurance Australia Ltd t/as NRMA Insurance v Proietti* [2022] NSWPIC 298 also applied the Obeid reasoning (decision date of 2 June 2022).

This was a significant decision as it meant that if an injured person and insurer could not agree that a future medical expense was required, the only avenue available to an injured person would have been to fund the expense and then dispute liability for payment after the expense had been incurred and treatment had been undertaken.

Until this point, clause 2(b) of Schedule 2 and section 3.24 of the MAI Act had been operating as intended and in the same way as comparative provisions under the *Motor Accident Compensation Act 1999*. The intended operation being that where a dispute arose regarding a medical expense not incurred and not provided, the dispute could be determined by the Personal Injury Commission prior to the medical expense being incurred.

Notification of South Australian Bar Association Professional Standards Scheme

The Committee identified that a specific version of an Insurance Standard is incorporated into the notification of the South Australian Bar Association Professional Standards Scheme, where the Insurance Standard is not subject to disallowance requirements. Considering that the incorporated document appears to be specifically defined, the Committee makes no further comment. I acknowledge the conclusion of the Committee and note that the notification has not been referred to Parliament to consider disallowance.

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Residential Apartment Buildings (Compliance and Enforcement Powers) Amendment (Building Work Levy) Regulation 2022 (RAB Amendment Regulation)

I acknowledge the concerns raised by the Committee relating to the retrospective application of the RAB Amendment Regulation allowing the Secretary to impose a building work levy where an expected completion notice has been provided and for which an occupation certificate has not been provided.

The purpose of the building work levy is to have developers contribute to the costs of regulating the sector, particularly for the compliance activities their building work are subjected to raise the standard of building work in NSW. The levy can be imposed on certain building work carried out on residential apartment buildings where the work requires the developer to provide an expected completion notice.

Under section 7 of the *Residential Apartment Building (Compliance and Enforcement Powers) Act 2020* (**RAB Act**) a developer is to provide an expected completion notice between 12 and 6 months before the building work is to be completed, or if the work is to be completed within 6 months, within 30 days of the work commencing. Section 8 of the RAB Act provides for the expected completion notice date to be amended.

This means that the levy can be imposed on building work that was started before the RAB Amendment Regulation commenced, but not yet reached the period of approaching completion within 6 to 12 months. The levy can also be imposed on building work that commences on or after the RAB Amendment Regulation commences.

Where an expected completion notice has been lodged prior to the commencement of the RAB Amendment Regulation, and where there is *no need* for notification of change to the expected date, the building work levy will not be imposed by the Secretary. This is reflected in the design of the NSW Planning Portal, which issues the notice from the Secretary imposing the levy.

The Portal has been designed to only impose the levy where the expected completion notice is provided or amended after the commencement of the RAB Amendment Regulation. This means that building work that is nearing completion will not have the building levy imposed.

The power to impose the levy where an expected completion notice has already been provided was included so that the levy can be imposed where there has been an amendment of the expected completion notice as allowed for under section 8 of the RAB Act. The power also covers circumstances where the expected completion notice *ought* to have been amended but the developer has failed to do so.

The power is necessary to ensure developers who fail to carry out their obligations relating to an expected completion notice under section 8 cannot avoid the imposition of the levy. Without the power, a developer could have sought to avoid the levy by providing an expected completion notice before the commencement of the RAB Amendment Regulation for work that was not expected to be completed within 6 to 12 months.

The retrospectivity ensures parity between developers who lodge the notice in accordance with the RAB Act and those who do not, noting that without the transitional provision, the levy can be imposed on building work that commenced prior to the RAB Amendment Regulation.

The Hon. Kevin Anderson MP
Minister for Lands and Water
Minister for Hospitality and Racing

OFFICIAL

Our reference: D22/41414
Your reference: Mincor4ClientRefNo

Mr Dave Layzell MP
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

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

Dear Mr Layzell

Thank you for your letter about the Liquor Amendment (Online Age Verification Requirements) Regulation 2022 ('the Regulation').

The Regulation provided additional options for same day alcohol delivery providers to meet mandatory requirements under the *Liquor Act 2007* to verify the age of customers online.

The option to verify age by reference to a date of birth aligns with a long-standing requirement under section 114(3)(a) of the Liquor Act requiring prospective purchasers of alcohol ordered online to provide their date of birth to confirm they are over 18 years of age. The continued provision of this information for this regulatory purpose remains important, as it is a key harm minimisation measure to help prevent alcohol ordered online from being sold to a minor.

I also acknowledge that the privacy laws offer an important safeguard for individuals. I am advised that there are privacy obligations under the *Privacy Act 1988* that can be relevant for licensees, alcohol delivery providers and service providers involved in verifying age. There are also privacy and security requirements under the Trusted Digital Identity Framework (TDIF) for providers of identity verification services, which need to be met by accredited providers and those undergoing accreditation.

The specific privacy obligations and circumstances where they apply may vary depending on the nature of each business. Irrespective of this, it remains the case that there continues to be a need for those selling alcohol online to obtain a small amount of personal information (a name and date of birth) to help confirm the purchaser's age and ensure it is not sold to minors.

In relation to the TDIF, I also recognise the Committee's preference for the definition relating to credentials to be included in the legislation. However, as the Committee has acknowledged, the TDIF is a specialist framework that is already defined and referred to elsewhere in the liquor legislation.

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The related requirements in the Regulation are intended to support consistency with the overarching legislative approach.

Thank you for bringing this matter to my attention.

Yours sincerely

The Hon. Kevin Anderson MP
Minister for Lands and Water
Minister for Hospitality and Racing

Date: 19.9.2022