

Legislation Review Act 1987 No 165

[1987-165]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Regulation Review Act 1987

Authorisation

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Legislation Review Act 1987 No 165



New South Wales

An Act to provide for a Legislation Review Committee of Parliament.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Legislation Review Act 1987*.

2 Commencement

This Act shall commence on the date of assent to this Act.

3 Definitions

(1) In this Act:

Bill means a Bill for an Act of New South Wales.

Chair means the Chair of the Committee.

Committee means the Legislation Review Committee for the time being constituted under this Act.

Deputy Chair means the Deputy Chair of the Committee.

regulation means a statutory rule, proclamation or order that is subject to disallowance by either or both Houses of Parliament.

statutory rule means:

(a) a regulation, by-law, rule or ordinance:

(i) that is made by the Governor, or

(ii) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor, or

(b) a rule of court.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

Part 2 Constitution and procedure of Committee

4 Constitution of Legislation Review Committee

As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Legislation Review Committee, shall be appointed.

5 Membership

- (1) The Committee shall consist of 8 members, of whom:
 - (a) 3 shall be members of, and appointed by, the Legislative Council, and
 - (b) 5 shall be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Committee shall, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

6 Vacancies

- (1) A member of the Committee ceases to hold office:
 - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time,
 - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary,
 - (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly,
 - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council,
 - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
 - (f) if the member is discharged from office by the House of Parliament to which the member belongs.

- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

7 Chair and Deputy Chair

- (1) There shall be a Chair and a Deputy Chair of the Committee who shall be elected by and from the members of the Committee.
- (2) A member of the Committee ceases to hold office as Chair or Deputy Chair of the Committee if:
 - (a) the member ceases to be a member of the Committee,
 - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
 - (c) the member is discharged from office by the Committee.
- (3) At any time when the Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair under this Act or under the [Parliamentary Evidence Act 1901](#).

8 Procedure

- (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly shall call the first meeting of the Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Committee, 4 members constitute a quorum, but the Committee shall meet as a joint committee at all times.
- (4) The Chair or, in the absence of the Chair, the Deputy Chair or, in the absence of both the Chair and the Deputy Chair, a member of the Committee elected to chair the meeting by the members present shall preside at a meeting of the Committee.
- (5) The Deputy Chair or other member presiding at a meeting of the Committee shall, in relation to the meeting, have all the functions of the Chair.
- (6) The Chair, Deputy Chair or other member presiding at a meeting of the Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- (7) A question arising at a meeting of the Committee shall be determined by a majority of the votes of the members present and voting.

- (8) The Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (9) The Committee may sit and transact business on a sitting day of a House of Parliament during the time of the sitting.

Part 3 Functions of Committee

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.
- (1A) The Committee is not precluded from exercising its functions under subsection (1) in relation to a regulation after it has ceased to be subject to disallowance if, while it is subject to disallowance, the Committee resolves to review and report to Parliament on the regulation.
- (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.
- (3) The functions of the Committee with respect to regulations 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.

10 Reports as to Bills or regulations

- (1) If, at the time at which the Committee seeks to report to either House of Parliament in accordance with section 8A or 9, the House is not sitting, the Committee shall present

copies of its report to the Clerk of the House.

- (2) A report so presented to the Clerk of a House shall:
- (a) on presentation and for all purposes, be deemed to have been laid before the House,
 - (b) be printed by authority of the Clerk,
 - (c) for all purposes, be deemed to be a document published by order or under the authority of the House, and
 - (d) be recorded in the Minutes of the Proceedings of the Legislative Council or the Votes and Proceedings of the Legislative Assembly, as the case requires.

Part 4 Miscellaneous

11 Evidence

- (1) The Committee shall have power to send for persons, papers and records.
- (2) Subject to section 12, the Committee shall take all evidence in public.
- (3) Where the Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.
- (4) The production of documents to the Committee shall be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

12 Confidentiality

- (1) Where, in the opinion of the Committee, any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or producing the document shall:
 - (a) take the evidence in private, or
 - (b) direct that the document, or the part of the document, be treated as confidential.
- (2) Where a direction under subsection (1) applies to a document or part of a document produced in evidence to the Committee, the contents of the document or part shall, for the purposes of this section, be deemed to be evidence given by the person producing the document and taken by the Committee in private.

- (3) Where, at the request of a witness, evidence is taken by the Committee in private:
- (a) the Committee shall not, without the consent in writing of the witness, and
 - (b) a person (including a member of the Committee) shall not, without the consent in writing of the witness and the authority of the Committee under subsection (5), disclose or publish the whole or a part of that evidence.
- Penalty: 20 penalty units or imprisonment for 3 months.
- (4) Where evidence is taken by the Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) shall not, without the authority of the Committee under subsection (5), disclose or publish the whole or a part of that evidence.
- Penalty: 20 penalty units or imprisonment for 3 months.
- (5) The Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chair, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (3).
- (6) Nothing in this section prohibits:
- (a) the disclosure or publication of evidence that has already been lawfully published, or
 - (b) the disclosure or publication by a person of a matter of which the person has become aware other than by reason, directly or indirectly, of the giving of evidence before the Committee.
- (7) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (8) If evidence taken by the Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note—

The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

13 Application of certain Acts etc

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Committee shall be deemed to be a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the joint committee shall be deemed to have originated in the Legislative Assembly.

14 Validity of certain acts or proceedings

Any act or proceeding of the Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
 - (b) any defect in the appointment, or any disqualification, of a member of the Committee,
- as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

15 Proceedings for offences

Proceedings for an offence against this Act shall be dealt with summarily before the Local Court.

16 Reports as to the Committee's operations

- (1) The Committee shall furnish a report to both Houses of Parliament as soon as possible after the first 2 years after the commencement of this Act.
- (2) The report shall relate to the past and current activities of the Committee (however constituted) and the past and current arrangements concerning its operations.
- (3) The report may include such recommendations respecting the future activities of the Committee (however constituted) and arrangements as it thinks appropriate.

17 Savings and transitional provisions

- (1) In this section:

the amending Act means the *Legislation Review Amendment Act 2002*.

the reconstitution day means the day on which the amendment made to section 4 by Schedule 1 [6] to the amending Act commences.

- (2) On and from the reconstitution day:

- (a) the Regulation Review Committee constituted under section 4 immediately before

that day continues in existence and is to be known as the Legislation Review Committee, and

- (b) anything done by, or in relation to, the Regulation Review Committee is taken to have been done by, or in relation to, the Legislation Review Committee, and
- (c) a reference in any other Act, in any instrument made under an Act or in any other document to the Regulation Review Committee is to be read as a reference to the Legislation Review Committee.