



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

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

# Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
<b>PART ONE - BILLS</b>	<b>1</b>
1. CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (INFORMATION SHARING) BILL 2014	1
2. DISABILITY INCLUSION BILL 2014	8
3. EDUCATION AMENDMENT (GOVERNMENT SCHOOLS) BILL 2014	17
4. ELECTION FUNDING, EXPENDITURE AND DISCLOSURES CONSEQUENTIAL AMENDMENT BILL 2014	19
5. HEALTH SERVICES AMENDMENT (AMBULANCE FEES) BILL 2014	21
6. HEALTH SERVICES AMENDMENT (GUARANTEEING FREE PUBLIC HOSPITAL SERVICES) BILL 2014*	28
7. MUTUAL RECOGNITION (AUTOMATIC LICENSED OCCUPATIONS RECOGNITION) BILL 2014	29
8. NATIVE VEGETATION AMENDMENT BILL 2014*	33
9. ROAD TRANSPORT AMENDMENT (ALCOHOL AND DRUG TESTING) BILL 2014	37
10. RURAL FIRES AMENDMENT (VEGETATION CLEARING) BILL 2014	42
11. STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2014	44
12. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2014	49
13. TRADE AND INVESTMENT CLUSTER GOVERNANCE (AMENDMENT AND REPEAL) BILL 2014	52
14. TRANSFORMING NSW ENERGY SECTOR (TOWARDS 100 PERCENT RENEWABLES) BILL 2014 *	55
15. WATER MANAGEMENT AMENDMENT BILL 2014	59
<b>PART TWO – REGULATIONS</b>	<b>67</b>
<b>APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS</b>	<b>68</b>
<b>APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED</b>	<b>69</b>

# Membership

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# 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.

# 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*.

### Ministerial Correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

## COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

### Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

### Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

### Copies of Correspondence on Regulations

This part of the Digest contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

## APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Bill and correspondence appear.

**APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS  
REPORTED ON**

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Regulation and correspondence appear.

# Conclusions

## PART ONE - BILLS

### 1. CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (INFORMATION SHARING) BILL 2014

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

#### *Privacy I*

The Committee notes proposed section 98E of the Bill allows the Local Court to disclose personal and health information about a respondent to a non-police initiated application for an ADVO without his/her consent. The Committee notes the ADVO is a civil, not a criminal order. There is no requirement, before such disclosure is made, for the respondent to have been convicted of or charged with a domestic violence offence; nor does there appear to be a requirement for the ADVO to have been made against the respondent – only that an *application* for one has been made. This may unduly impact on the respondent's right to privacy. The Committee refers the matter to Parliament for further consideration.

#### *Privacy II*

The Committee notes that proposed sections 98D, 98F and 98G allow disclosure/collection of personal information about a person that an agency or police believe poses a domestic violence threat to another person. There is no requirement for the allegedly threatening person's consent, for that person to have been charged with a domestic violence offence, or for an application to have been made for an ADVO against the person. Nonetheless, the information is only disclosed/collected for the purposes of obtaining the threatened person's consent to the provision of support services, and to allow those support services to be provided. Similarly, agencies must be satisfied *on reasonable grounds* that a threat exists, and there may be reasons why police do not charge a person or apply for an apprehended domestic violence order even though they consider there is a genuine threat to a victim (e.g. failure of the victim to cooperate due to fear of reprisals). In the circumstances, the Committee makes no further comment.

#### *Privacy III*

Proposed section 98M of the Bill allows an agency to collect, use or disclose personal or health information about a person without his/her consent where the agency reasonably believes there is a serious domestic violence threat. The Committee notes this significantly impacts on the right to privacy, including a potential victim's right to privacy. Nonetheless, such rights must be balanced with victim safety and such information can only be collected, used or disclosed without consent under the proposed section where this is necessary to prevent or lessen a serious threat to the life, health or safety of a person. In the circumstances, the Committee makes no further comment.

#### *Privacy IV and Procedural Fairness*

The Committee notes that where an agency has collected information under proposed section 98M to prevent or lessen a serious threat, the agency is not required to make a person it

reasonably believes is the cause of the serious threat aware of the information, or to give them access to it. This impacts on the person's privacy rights and prevents him or her having any right of reply. Nonetheless, releasing these details where a *serious* threat has been judged to exist may severely jeopardise the safety of a victim. In the circumstances, the Committee makes no further comment.

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

*Matter which should be set by Parliament*

The Committee considers that the circumstances under which an agency may, despite privacy legislation, collect, use or disclose personal or health information about an alleged domestic violence victim or perpetrator should be included in primary, not subordinate legislation. This enables appropriate Parliamentary oversight. The Committee is concerned that a regulation dealing with these matters will not be invalid if the Minister fails to consult with the Privacy Commissioner before making it. The Committee refers these matters to Parliament for further consideration.

**2. DISABILITY INCLUSION BILL 2014**

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

**3. EDUCATION AMENDMENT (GOVERNMENT SCHOOLS) BILL 2014**

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

**4. ELECTION FUNDING, EXPENDITURE AND DISCLOSURES CONSEQUENTIAL AMENDMENT BILL 2014**

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

*Retrospectivity*

Despite the retrospective effect of provisions relating to the disclosure obligations of corporate donations, the Committee appreciates the public interest central to this Bill, and does not consider it unreasonable in the circumstances.

**5. HEALTH SERVICES AMENDMENT (AMBULANCE FEES) BILL 2014**

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

*Retrospectivity*

The Committee notes that the Bill permits the recovery of ambulance fees incurred before its commencement. The Committee generally comments when provisions in Bills are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people to order their affairs according to what the law is at any given point in time. However, the capacity to recover pre-existing debts under the Bill is subject to the Limitation Act 1969. Similarly, the retrospective provision only increases the likelihood that a pre-existing debt will be recovered from a debtor; it does not retrospectively change the rules concerning liability for, or quantum of a debt. In the circumstances, the Committee makes no further comment.

*Power of Entry*

The Committee notes that the Bill allows a person exercising a property seizure order under the Bill to enter any premises, at ‘any reasonable time of the day or night’, for the purpose of executing the order. ‘Any reasonable time of the day or night’ is not defined in the Bill. To avoid confusion about the extent of authorities’ powers to interfere with private property rights, the Committee would prefer such terms to be clearly defined in legislation. However, given other safeguards around entry to residential premises that are included in the Bill, the Committee makes no further comment.

*Lack of Clarity*

The Committee notes that listing ‘any other Act or law’ rather than listing the name of each of those Acts and laws, limits the clarity of proposed schedule 9, part 6, section 32 of the Bill. The Committee would prefer the name of each Act or law to be listed to avoid this lack of clarity. However, as the proposed wording ensures that the provision comprehensively covers the field it is intended to cover, the Committee makes no further comment.

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

*Commencement by Proclamation*

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.

*Matter which should be set by Parliament I*

The Committee notes that the Bill provides the regulations may prescribe circumstances under which the Health Secretary is not required to conduct a review of a decision to charge an ambulance fee. The Committee would prefer matters of this nature involving administrative review rights, to be included in primary, not subordinate legislation. However, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.

*Matter which should be set by Parliament II*

The Committee notes the Bill provides that the regulations may prescribe personal information the Health Secretary may provide to the Commissioner of Fines Administration for the purpose of enabling the recovery of ambulance fees. The Committee would prefer matters of this nature, involving privacy rights, to be included in primary, not subordinate legislation. Nonetheless, the Committee notes that such a regulation can only be made under the Bill with the concurrence of the Attorney General, and the Privacy Commissioner must also have been consulted. In addition, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to these safeguards, the Committee makes no further comment.

*Subordinate legislation not tabled in Parliament or not subject to disallowance*

The Bill provides that the Health Secretary may, by order published in the Gazette, make rules about the payment of ambulance fees, including rules about exemption from payment. The Committee considers that rules concerning exemptions should be included in the primary legislation or the regulations, not the payment rules. This is because it appears that, unlike regulations, there is no requirement for the payment rules to be tabled in Parliament and they are not subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. The Committee is concerned inclusion of exemptions in the payment rules may impact on Parliamentary oversight of such requirements. The Committee makes no further comment.

6. HEALTH SERVICES AMENDMENT (GUARANTEEING FREE PUBLIC HOSPITAL SERVICES) BILL 2014\*

The Committee makes no comment on the Bill in respect of issues set out in s8A of the *Legislation Review Act 1987*.

7. MUTUAL RECOGNITION (AUTOMATIC LICENSED OCCUPATIONS RECOGNITION) BILL 2014

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

*Lack of Clarity*

The Committee notes that listing “any Act that amends this Act” rather than listing the name of each of those amending Acts limits the clarity of schedule 1 of the Bill. The Committee would prefer the name of each Act to be listed to avoid this lack of clarity. However, as the relevant provision relates to the regulation making power for provisions of a savings or transitional nature, and recognising the proposed insertion ensures that the Schedule is comprehensive, the Committee makes no further comment on the issue.

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

*Matters which should be set by Parliament*

The Committee notes that Part 4 of the Bill provides the Governor with a wide and ill-defined regulation-making power thereby allowing the regulations to include matters that may be better included in primary, not subordinate legislation. Similarly, Part 3 of the Bill allows the regulations to prescribe disciplinary and enforcement action – matters that the Committee would prefer to be included in primary, not subordinate legislation to allow appropriate Parliamentary oversight. However, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.

8. NATIVE VEGETATION AMENDMENT BILL 2014\*

The Committee makes no comment on the Bill in respect of issues set out in s8A of the *Legislation Review Act 1987*.

9. ROAD TRANSPORT AMENDMENT (ALCOHOL AND DRUG TESTING) BILL 2014

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

*Personal Bodily Integrity*

The Committee notes that requiring an individual to provide a blood sample could be an interference with one’s personal bodily integrity. Given the possible trespasses on personal rights and liberties, the Committee refers this to Parliament for its further consideration.

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

*Commencement by Proclamation*

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.

10. RURAL FIRES AMENDMENT (VEGETATION CLEARING) BILL 2014

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

**11. STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2014**

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

**12. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2014**

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

**13. TRADE AND INVESTMENT CLUSTER GOVERNANCE (AMENDMENT AND REPEAL) BILL 2014**

The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.

**14. TRANSFORMING NSW ENERGY SECTOR (TOWARDS 100 PERCENT RENEWABLES) BILL 2014 \***

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

*Excessive Penalties*

The Committee notes that the penalties for offences concerning the disclosure of protected information, or the failure to disclose requested information, may be considered excessive, and disproportionate to the offence committed. The Committee refers this matter to Parliament for its further consideration.

**15. WATER MANAGEMENT AMENDMENT BILL 2014**

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

*Strict liability*

The Committee will always comment where there is the imposition of strict liability as it may be seen as contrary to the presumption of innocence. However, the Committee also notes that there are circumstances where the imposition of strict liability may be warranted.

The Committee considers that the above offences relate to important aspects of the regulatory regime governing water in NSW and as such the imposition of strict liability is aimed at preserving this regulatory scheme and is appropriate in the circumstances. The Committee also notes that important in its consideration on this issue was that no term of imprisonment was provided for in the maximum penalty.

The Committee will always be concerned with any retrospective effect of legislation. The Committee is of the view that in the present circumstances the amendments are designed to support the regulatory framework for the management of water in NSW and as such makes no further comment.

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

*Commencement by proclamation*

## LEGISLATION REVIEW COMMITTEE

The Committee prefers legislation of this kind, which impacts upon personal rights and liberties, to commence on a fixed date or on assent.

### **PART TWO – REGULATIONS**

The Committee does not report on any Regulations in this Digest.

## Part One - Bills

# 1. Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014

Date introduced	27 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney General and Minister for Justice

### PURPOSE AND DESCRIPTION

1. The objects of the Bill are as follows:

- (a) to permit dealings with information about a primary person (being a person who is (or is alleged to be) subject to, or threatened by, domestic violence) and any associated respondent (being a person who is (or is alleged to be) the perpetrator of the violence or the cause of the threat) without the consent of the primary person or associated respondent, but only to seek the primary person's consent:
  - i to the provision of domestic violence support services to the primary person, or
  - ii to further dealings with the information in relation to the provision of such services,
- (b) to permit dealings with information about a primary person and any associated respondent without the consent of the associated respondent for the purposes of providing domestic violence support services to the primary person,
- (c) to set out the circumstances in which an agency may deal with information about a person without the person's consent where the agency believes domestic violence poses a serious threat to the life, health or safety of any person.

### BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon Brad Hazzard MP, Attorney General and Minister for Justice, stated that in May 2013 the Parliament passed the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act. It provided for sharing of information by government agencies and non-government domestic violence support services in cases where domestic violence victims came into contact with the justice system. These provisions have not yet commenced as the Department of Attorney General and Justice, as it then was, was preparing information management protocols to supplement them.

3. The Bill amends the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013, building on its provisions to increase sharing of information between services. It thereby aims to improve victim safety, reduce the stress of having to navigate a complex service system, and dispense with the need for the victim repeat to his or her story a number of times.
4. The Bill is consistent with the Government's "It Stops Here" initiative released in February 2014 which introduced new referral pathways for domestic violence victims in an attempt to ensure that they receive services in a more coordinated and efficient way. It also follows inquiries by the Legislative Council Standing Committee on Social Issues in 2012, the Auditor-General in 2011, and the NSW and Australian Law Reform Commissions in 2010 that recommended more integrated government responses to domestic violence, ongoing and responsive collaboration, and improved information sharing to keep victims safe and make perpetrators accountable.

## OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 No 28**

7. The Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 (which is yet to commence) inserts proposed Part 13A into the Crimes (Domestic and Personal Violence) Act 2007. That Part facilitates the collection, use and disclosure of personal information and health information by agencies that provide domestic violence support services (support agencies) and other persons and bodies that provide such services (non-government support services) in cases involving domestic violence. The information relates to primary persons and associated respondents. A primary person is a person for whose protection an apprehended domestic violence order is sought or made or a person who is alleged to be the victim of a domestic violence offence. An associated respondent is the person against whom the order is sought or made or the person who has been charged with the domestic violence offence. This Bill makes a number of changes to that Part.
8. Schedule 1 [1] inserts a Division heading into proposed Part 13A.
9. Schedule 1 [2] contains a number of definitions to be used in the proposed Part.
10. Schedule 1 [3] renumbers a proposed section.
11. Schedule 1 [4] inserts 2 new Divisions into the proposed Part. Proposed Division 2 contains proposed sections 98C–98L and proposed Division 3 contains proposed sections 98M and 98N.
12. Proposed section 98C contains a definition of contact purposes (seeking the consent of the primary person to the provision of domestic violence support services to the primary person and to further dealings with the information in relation to the provision of such

services) and clarifies how the proposed Division applies to a non-government support service that has been nominated as a local co-ordination point by the Attorney General.

13. Proposed section 98D permits an agency to disclose personal information and health information about a person to the central referral point (being the Secretary of the Department of Police and Justice) or a local co-ordination point (being a support agency or non-government support service that is nominated as a local co-ordination point by the Attorney General) if the agency believes on reasonable grounds that the person is subject to a domestic violence threat (being a threat to the life, health or safety of a person that occurs because of the commission or possible commission of a domestic violence offence). The disclosure may occur only with the consent of the person.
14. Personal information and health information about a person whom the agency believes to be a cause of the threat may also be disclosed without the consent of that person. In such a case, the threatened person is taken to be a primary person and the person who is believed to be a cause of the threat is taken to be an associated respondent.
15. Proposed section 98E permits the Local Court to disclose personal information and health information about a primary person and any associated respondent to the central referral point for contact purposes unless the primary person expressly objects. The consent of the associated respondent is not required. The information must relate to an application for an apprehended domestic violence order or an interim apprehended domestic violence order made by a person for whose protection the order would be made or by the guardian of such a person.
16. Proposed section 98F permits the central referral point to collect information that is disclosed to it in accordance with proposed section 98D or 98E or by the NSW Police Force. The central referral point can disclose any such information without the consent of the primary person or any associated respondent to a local co-ordination point for contact purposes. As the central referral point is a support agency, proposed section 98H provides additional circumstances in which information may be collected, used and disclosed by the central referral point.
17. Proposed section 98G permits a local co-ordination point to collect information that is disclosed to it in accordance with proposed section 98D or 98F or by the NSW Police Force. As a local co-ordination point is a support agency, proposed section 98H provides additional circumstances in which information may be collected, used and disclosed by a local co-ordination point.
18. Proposed section 98H permits a support agency to collect information that is disclosed to it in accordance with proposed section 98D, by the NSW Police Force, by another support agency (which includes a local co-ordination point) in accordance with the proposed section, by a primary person (without the consent of the associated respondent) or by a non-government support service (with the consent of the primary person but without the consent of the associated respondent).
19. A support agency may use any information that it is authorised to collect under the proposed Division for contact purposes without the consent of the primary person or any associated respondent or it may be used, with the consent of the primary person (but without the consent of the associated respondent), to provide domestic violence support services to the primary person.

20. A support agency may disclose any information that it is authorised to collect under the proposed Division to another support agency or to a non-government support service for the purposes of that other agency or service providing domestic violence support services to the primary person. Such information may only be disclosed if the primary person consents to the disclosure and the disclosure is reasonably necessary for the provision of those services.
21. Proposed section 98I provides that an agency is not required to take any steps to make an associated respondent aware of any matter about any information that it is authorised to collect under the proposed Division and it is not required to provide the associated respondent with any access to the information.
22. Proposed section 98J requires agencies to comply with protocols made by the Attorney General if the agency deals with information under the proposed Division.
23. Proposed section 98K provides how the proposed Division relates to the privacy legislation (being the Privacy and Personal Information Protection Act 1998 or the Health Records and Information Privacy Act 2002 and any regulation or code of practice made under either of those Acts) and other Acts and laws including the Government Information (Public Access) Act 2009.
24. Proposed section 98L permits regulations under the Crimes (Domestic and Personal Violence) Act 2007 to prescribe additional circumstances in which an agency may collect, use or disclose information about primary persons and associated respondents. The Attorney General is to consult with the Privacy Commissioner before recommending the making of any such regulation.
25. Proposed section 98M sets out circumstances in which an agency may deal with (collect, use or disclose) personal information or health information about a person without the consent of the person if the agency believes there to be a serious domestic violence threat to a person. The agency must believe that the dealing is necessary to prevent or lessen the threat and that the person has refused to give consent or that it is unreasonable or impractical to obtain the person's consent.
26. Proposed section 98N provides that an agency that is authorised to collect information about a person under proposed section 98M in respect of a threat is not required to take any steps to make the person aware of any matter about that information and it is not required to provide the person with any access to the information if it believes the person to be a cause of the threat.
27. Schedule 1 [5] updates a cross-reference.
28. Schedule 1 [6] permits the Attorney General (by order published in the Gazette) to nominate particular support agencies or non-government support services to be local co-ordination points.
29. Schedule 1 [7] permits the Secretary of the Department of Police and Justice to delegate the Secretary's functions under proposed Part 13A and provides for a review of the proposed Part after 2 years.

## ISSUES CONSIDERED BY COMMITTEE

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

*Privacy I*

30. Proposed section 98E of the Bill permits the Local Court to disclose personal information and health information (to a 'central referral point') about a person who makes an application for an apprehended domestic violence order (ADVO) ('the applicant') and about the person against whom the order is sought ('the respondent') unless the applicant expressly objects. The information must relate to the application for the order.
31. The consent of the respondent is not required for the disclosure of his/her information to take place. The central referral point can then disclose this information to a 'local coordination point' – that is, a non-government organisation in the applicant's local area that provides domestic violence support – and the local coordination point can contact the applicant to obtain his or her consent to provision of support services.

**The Committee notes proposed section 98E of the Bill allows the Local Court to disclose personal and health information about a respondent to a non-police initiated application for an ADVO without his/her consent. The Committee notes the ADVO is a civil, not a criminal order. There is no requirement, before such disclosure is made, for the respondent to have been convicted of or charged with a domestic violence offence; nor does there appear to be a requirement for the ADVO to have been made against the respondent – only that an *application* for one has been made. This may unduly impact on the respondent's right to privacy. The Committee refers the matter to Parliament for further consideration.**

*Privacy II*

32. Proposed section 98D of the Bill provides that, where an agency believes on reasonable grounds a person is subject to a domestic violence threat, the agency can disclose personal and health information about the threatened person and the threatening person to a central referral point or local coordination point to allow these services to contact the threatened person to gain his/her consent to the provision of support services (i.e. for 'contact purposes'). No consent to the disclosure is required by the threatening person.
33. Similarly, proposed section 98F and 98G provide that a central referral point and a local coordination point may collect personal information disclosed to it by the NSW Police Force for 'contact purposes'. The Second Reading Speech for the Bill indicates that this includes cases where police officers consider there is a threat to an alleged victim due to domestic violence but do not seek an apprehended domestic violence order or to charge a person in relation to it.

**The Committee notes that proposed sections 98D, 98F and 98G allow disclosure/collection of personal information about a person that an agency or police believe poses a domestic violence threat to another person. There is no requirement for the allegedly threatening person's consent, for that person to have been charged with a domestic violence offence, or for an application to have been made for an ADVO against the person. Nonetheless, the information**

is only disclosed/collected for the purposes of obtaining the threatened person's consent to the provision of support services, and to allow those support services to be provided. Similarly, agencies must be satisfied *on reasonable grounds* that a threat exists, and there may be reasons why police do not charge a person or apply for an apprehended domestic violence order even though they consider there is a genuine threat to a victim (e.g. failure of the victim to cooperate due to fear of reprisals). In the circumstances, the Committee makes no further comment.

### *Privacy III*

34. Proposed section 98M of the Bill provides that, in spite of privacy legislation, an agency can collect, use or disclose personal or health information about a person without the consent of that person if the agency reasonably believes there is a serious domestic violence threat to the person or another person, the dealing is necessary to prevent or lessen the threat, and the person has refused to give consent or it is unreasonable or impractical to obtain the person's consent.
35. The Second Reading Speech for the Bill indicates proposed section 98M will allow greater sharing of information about serious threats at safety action meetings that bring together representatives from key agencies in local areas to develop and implement multi-action safety action plans for victims.

**Proposed section 98M of the Bill allows an agency to collect, use or disclose personal or health information about a person without his/her consent where the agency reasonably believes there is a serious domestic violence threat. The Committee notes this significantly impacts on the right to privacy, including a potential victim's right to privacy. Nonetheless, such rights must be balanced with victim safety and such information can only be collected, used or disclosed without consent under the proposed section where this is necessary to prevent or lessen a serious threat to the life, health or safety of a person. In the circumstances, the Committee makes no further comment.**

### *Privacy IV and Procedural Fairness*

36. Proposed section 98N provides an agency authorised to collect information under proposed section 98M to prevent or lessen a serious domestic violence threat is not required to make a person it reasonably believes is the cause of the serious threat aware of the information, or to give them access to it.

**The Committee notes that where an agency has collected information under proposed section 98M to prevent or lessen a serious threat, the agency is not required to make a person it reasonably believes is the cause of the serious threat aware of the information, or to give them access to it. This impacts on the person's privacy rights and prevents him or her having any right of reply. Nonetheless, releasing these details where a *serious* threat has been judged to exist may severely jeopardise the safety of a victim. In the circumstances, the Committee makes no further comment.**

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

### *Matter which should be set by Parliament*

37. Proposed section 98L of the Bill permits regulations to be made to prescribe additional circumstances under which an agency may, despite privacy legislation, collect, use or disclose personal or health information about an alleged domestic violence victim or perpetrator. The Minister is to consult with the Privacy Commissioner before recommending the making of such a regulation but failure to do so will not invalidate the regulation.

**The Committee considers that the circumstances under which an agency may, despite privacy legislation, collect, use or disclose personal or health information about an alleged domestic violence victim or perpetrator should be included in primary, not subordinate legislation. This enables appropriate Parliamentary oversight. The Committee is concerned that a regulation dealing with these matters will not be invalid if the Minister fails to consult with the Privacy Commissioner before making it. The Committee refers these matters to Parliament for further consideration.**

## 2. Disability Inclusion Bill 2014

Date introduced	28 May 2014
House introduced	Legislative Council
Minister responsible	The Hon. John Ajaka MLC
Portfolio	Minister for Disability Services

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are stated in proposed section 3 of the proposed Act, and include acknowledging that people with disability have the same human rights as other members of the community, promoting the independence and social and economic inclusion of people with disability, enabling people with disability to exercise choice and control in the pursuit of their goals, providing safeguards in relation to the delivery of supports and services for people with disability, supporting (to the extent practicable) the purposes and principles of the *United Nations Convention on the Rights of Persons with Disabilities* and providing for State responsibilities during and following the transition to the National Disability Insurance Scheme.
2. The objects are to be achieved under the proposed Act primarily by:
  - (a) stating the disability principles to which people exercising functions under the proposed Act, or providing supports or services to people with disability, are to have regard, and
  - (b) providing for a State Disability Inclusion Plan to be prepared by the Department of Family and Community Services setting out whole of government goals that support the inclusion in the community of people with disability, and for each **public authority** to have a disability inclusion action plan setting out measures to ensure people with disability can access general supports and services available in the community, and
  - (c) providing for the continuation of the Disability Council of New South Wales, and
  - (d) providing for the making of service standards relating to the provision of supports and services for people with disability, and
  - (e) providing for the provision of supports and services, including financial assistance for individuals and certain entities to facilitate obtaining, or the provision of, supports and services, and
  - (f) amending the *Ombudsman Act 1974* to provide for a monitoring and investigative role for the Ombudsman in relation to certain reportable incidents occurring in supported group accommodation facilities of the Department or a funded provider.

### BACKGROUND

3. In 2011, the Government commenced the 'Living life my way' consultation process which gave more than 4,000 individuals the chance to share their opinions on

introducing self-directed support and individualised budgets. In 2013, approximately 600 people with disability, their families and carers, service providers and peak representative organisations in NSW attended face-to-face consultations to discuss the review of the *Disability Services Act 1993*. Sixty four written submissions were also received. These views were taken into account in developing the Bill. In December 2013, the exposure draft of the Bill was released for public comment and the Government received more than 90 written submissions.

4. The Minister's Second Reading Speech notes that the existing *Disability Services Act 1993* no longer sits comfortably with the present-day approach to disability, with the shift towards person-centred disability services, client-directed supports and individualised budgets. The Minister notes that the rights-based inclusion framework proposed by the Bill will enable NSW to make a smooth transition to the National Disability Insurance Scheme in 2018.

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

#### *Division 1 Introduction*

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

#### *Division 2 Objects and principles*

7. Clause 3 specifies the objects of the proposed Act, which include acknowledging that people with disability have the same human rights as other members of the community, promoting the independence and social and economic inclusion of people with disability, enabling people with disability to exercise choice and control in the pursuit of their goals, providing safeguards in relation to the delivery of supports and services for people with disability, supporting (to the extent practicable) the purposes and principles of the *United Nations Convention on the Rights of Persons with Disabilities* and providing for State responsibilities during and following the transition to the National Disability Insurance Scheme.
8. Clause 4 specifies for the purposes of the proposed Act the general principles relating to people with disability.
9. Clause 5 specifies for the purposes of the proposed Act additional principles relating to certain people with disability who may have particular needs.
10. Clause 6 provides that persons exercising functions, or providing supports or services to people with disability, under the proposed Act should have regard to the disability principles in the exercise of the function or the provision of supports and services.

#### *Division 3 Interpretation*

11. Clause 7 defines certain words and expressions used in the proposed Act.

## Part 2 Disability planning

### *Division 1 Preliminary*

12. Clause 8 specifies the purpose of the proposed Part.
13. Clause 9 provides that the Secretary may issue guidelines to assist public authorities in preparing disability inclusion action plans. This clause further provides that the Secretary must publish the guidelines on the website of the Department of Family and Community Services.

### *Division 2 State Disability Inclusion Plan*

14. Clause 10 provides for a State plan (the **State Disability Inclusion Plan**) that is prepared by the Department of Family and Community Services and sets out whole of government goals that support the inclusion in the community of people with disability and improve access to mainstream services and community facilities and provides for collaboration and co-ordination among various entities in the provision of supports and services. This clause further provides that the Minister is to table a copy of the plan in each House of Parliament.
15. Clause 11 provides that the Minister is to review the State Disability Inclusion Plan at 4-year intervals and table a report on the outcome of the review in each House of Parliament.

### *Division 3 Disability inclusion action plans*

16. Clause 12 provides that each public authority must have a plan (a **disability inclusion action plan**) that sets out the measures the authority intends to put in place (in connection with the exercise of its functions) so that people with disability can access general supports and services available in the community and can participate fully in the community. This clause further provides that each public authority must consult with people with disability and may consult with other persons or entities in preparing its disability inclusion action plan. This clause also provides for particular matters to be included in a disability inclusion action plan and for each public authority to give a copy of its plan to the Disability Council NSW and to make its plan publicly available.
17. Clause 13 provides that each public authority that is a government department or a local council is to give the Minister a copy of the part of its annual report relating to the implementation of its disability inclusion action plan. This clause further provides that other public authorities are to give a report to the Minister about the authority's implementation of its disability inclusion action plan in each financial year. This clause further provides that the Minister is to table, annually in each House of Parliament, a report about the implementation of disability inclusion action plans.
18. Clause 14 provides that each public authority is to review its disability inclusion action plan at 4-year intervals. This clause further provides that, in reviewing its disability inclusion action plan, each public authority must consult with people with disability and have regard to any guidelines issued by the Secretary under clause 9.

## Part 3 Disability Council NSW

19. Clause 15 continues in existence the Disability Council of New South Wales as the Disability Council NSW (the **Disability Council**) under the proposed Act.

20. Clause 16 provides for the membership of the Disability Council and for its chairperson and deputy chairperson.
21. Clause 17 provides for the functions of the Disability Council.
22. Clause 18 provides that the Minister may give assistance, including financial assistance, to the Disability Council.
23. Clause 19 provides that the Disability Council is to give reports to the Minister about the exercise of its functions.

#### **Part 4 Service standards**

24. Clause 20 provides that the regulations may make provision for or with respect to standards relating to the provision of supports and services for people with disability. This clause further provides that the Secretary must make the standards publicly available.
25. Clause 21 provides that the regulations may make provision for or with respect to standards relating to the provision of supports, services and accommodation for people with disability in supported group accommodation. This clause further provides that the Secretary must make the standards publicly available.
26. Clause 22 defines **supported group accommodation** for the purposes of the proposed Act.

#### **Part 5 Provision of supports and services**

##### *Division 1 Preliminary*

27. Clause 23 provides that the purpose of proposed Part 5 is to facilitate the provision of supports and services to persons in the target group and the transition of funding for those persons to funding under the National Disability Insurance Scheme (NDIS). This clause further provides that the purpose is to be achieved by providing supports and services directly to persons in the target group and by providing financial assistance directly to individuals, or to eligible entities, for the purpose of providing supports and services during the transition period.
28. Clause 24 defines **person in the target group** for the purposes of the proposed Act.

##### *Division 2 Supports and services provided by Secretary*

29. Clause 25 provides that the Secretary may provide supports and services directly or indirectly to persons in the target group. This clause further provides that the supports and services are to be provided in compliance with the disability service standards and may be provided in addition to any financial assistance provided under the proposed Part.

##### *Division 3 Financial assistance for individuals*

30. Clause 26 provides that the Secretary may give financial assistance to, or on behalf of, an individual who is a person in the target group. This clause further provides that the financial assistance may be given directly to the individual, to a person nominated by the individual or another person determined by the Secretary to be an appropriate person to receive the assistance on behalf of the individual, or to another entity for the

purposes of administering the assistance (as directed by the individual) or for the purpose of providing supports and services specifically to the individual. The clause also provides that the financial assistance may be given to an individual or a non-government organisation only if the individual or organisation enters into an agreement with the Secretary in relation to the assistance. The clause further provides for matters to which the Secretary is to have regard in deciding whether to provide financial assistance and the conditions on which it is provided.

31. Clause 27 requires notice to be given to an individual about a decision not to provide financial assistance to, or on behalf of, the individual under proposed Division 3 or to provide the assistance on behalf of the individual instead of directly to the individual. This clause also requires notice of a decision to provide financial assistance to an individual (or another person nominated by the individual or determined by the Secretary to be an appropriate person to receive the assistance on behalf of the individual) on conditions to be given to the person receiving the assistance, and for the notice to specify the reason for the decision and that the person may apply for a review of the decision.
32. Clause 28 provides that the Secretary may enter into agreements in relation to the provision of financial assistance to an individual, or a person nominated by the individual, under proposed Division 3. This clause further states particular matters to be specified in the agreement.

#### *Division 4 Financial assistance for eligible entities*

33. Clause 29 provides that the Secretary may give financial assistance to an eligible entity to enable it to provide supports and services to persons in the target group. This clause further provides that financial assistance may be given to a non-government organisation only if the organisation has entered into an agreement with the Secretary in relation to the assistance. This clause also provides that the Secretary may require an eligible entity that is not a non-government organisation to enter into an agreement with the Secretary in relation to financial assistance given to it under proposed Division 4.
34. Clause 30 provides that the Secretary may enter into agreements with eligible entities in relation to the provision of financial assistance under proposed Division 3 or 4. This clause further provides that an agreement entered into with a non-government organisation is subject to conditions prescribed under the proposed Act, and states particular matters to be specified in the agreement. This clause also provides that a non-government organisation that is providing supports and services in supported group accommodation may be required to comply with the accommodation and service standards in providing the supports and services.
35. Clause 31 provides that it is a condition of the provision of financial assistance to a non-government organisation that the organisation gives the Secretary evidence to show it can provide supports and services in compliance with the disability service standards. This clause further provides that it is a condition of the provision of financial assistance to any eligible entity that it must comply with the disability service standards in providing supports and services to persons in the target group.
36. Clause 32 provides that it is a condition of the provision of financial assistance to an eligible entity that it must ensure that a person is not engaged as a worker or board

member (if the person works directly with persons in the target group in a way that involves face to face or physical contact) unless it is satisfied the person is a suitable person to be involved in the provision of supports and services to persons in the target group. This clause further provides that the entity must ensure that a criminal record check is conducted or obtained in relation to such workers or board members before they are engaged, and further criminal record checks are obtained at least every 4 years. This clause also provides that (subject to specified exceptions) it is a condition of the provision of financial assistance to the entity that it must not engage such workers or board members if the worker or board member has been convicted of a **prescribed criminal offence** or refuses to obtain or submit to a criminal record check. This clause also provides for the regulations to prescribe matters relating to conducting or obtaining criminal record checks.

#### *Division 5 Suspending and terminating financial assistance*

37. Clause 33 provides that financial assistance provided under Part 5 of the proposed Act may be suspended on specified grounds (including grounds prescribed by the regulations). This clause further provides that notice of a decision to suspend the assistance must be given to the person or entity receiving the assistance, and that the person or entity may apply for a review of the decision. This clause also provides for the Secretary to further suspend the financial assistance on the specified grounds, and to arrange for alternative supports and services for a person in the target group while the assistance is suspended.
38. Clause 34 provides that financial assistance provided under Part 5 of the proposed Act may be terminated on specified grounds (including grounds prescribed by the regulations). This clause further provides that, before termination of financial assistance, the Secretary must give notice of the proposed termination specifying the grounds for termination, when it is proposed to have effect and, if the proposed termination is for a reason other than the implementation of NDIS arrangements under the National Disability Insurance Scheme or another purpose prescribed by the regulations, inviting the person or entity receiving the assistance to give the Secretary a submission about the proposed termination. Before termination of the financial assistance, the Secretary must consider any submission received in accordance with this clause. This clause also provides that termination of financial assistance has effect despite any agreement relating to the assistance and that notice of a decision to terminate must be given to the person or entity receiving the assistance.

#### *Division 6 Review of decisions*

39. Clause 35 provides that particular decisions under Part 5 are administratively reviewable decisions for the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

#### *Division 7 Miscellaneous*

40. Clause 36 provides that the Secretary of the Department must ensure that a person is not engaged as a worker of the Department (if the person works directly with persons in the target group in a way that involves face to face or physical contact) unless the Secretary is satisfied the person is a suitable person to be involved in the provision of supports and services to persons in the target group. This clause further provides that the Secretary must ensure that a criminal record check is conducted or obtained in relation to such workers before they are engaged by the Department, and further

criminal record checks are conducted or obtained at least every 4 years. This clause also provides that the Secretary must not engage such workers if the worker has been convicted of a prescribed criminal offence or refuses to obtain or submit to a criminal record check. This clause also provides for the regulations to prescribe matters relating to conducting or obtaining criminal record checks.

41. Clause 37 provides that the Secretary may give financial assistance, on the conditions the Secretary considers appropriate, to a government department, local council or other entity for the purpose of promoting the objects of the proposed Act.
42. Clause 38 provides that the Secretary may, by notice, require a person to give the Secretary information or a document relating to the provision of financial assistance, obtaining or providing supports or services or the compliance with an agreement entered into under Part 5. This clause also specifies the matters to be included in the notice.
43. Clause 39 provides that a person who, acting in good faith, gives information or a document as required under clause 38 is not liable to any civil or criminal action for giving the information or document and cannot be held to have breached any code of professional etiquette or ethics or to have breached standards of professional conduct as a result of giving the information or document.
44. Clause 40 provides that a prohibition on employment under the proposed Act prevails to the extent of any inconsistency with any other Act or law. This clause further provides that the Industrial Relations Commission and any other court or tribunal does not have jurisdiction to order the reinstatement or re-employment of a person contrary to such a prohibition or to order the payment of damages or compensation for any removal of a person from employment prohibited under the proposed Act.
45. Clause 41 provides that the Secretary may issue guidelines to assist eligible entities in relation to compliance with the prescribed condition about conducting probity checks. This clause further provides that the Secretary must publish the guidelines on the website of the Department of Family and Community Services.

## **Part 6 Miscellaneous**

46. Clause 42 states that the proposed Act binds the Crown.
47. Clause 43 provides for the delegation of the Minister's and Secretary's functions under the proposed Act.
48. Clause 44 provides for the taking of proceedings under the proposed Act.
49. Clause 45 provides that it is an offence (with a maximum penalty of 50 penalty units) for a person to disclose information obtained in connection with the administration or execution of the proposed Act unless the disclosure is made for reasons specified in the clause.
50. Clause 46 limits liability for certain matters or things done or omitted to be done in good faith for the purpose of executing the proposed Act.

51. Clause 47 provides that the objects of the proposed Act, the disability principles and the requirement for persons exercising a function, or providing supports and services, under the proposed Act to have regard to the disability principles do not give rise to, or cannot be taken into account in, any civil cause of action. The clause does not apply to a proceeding before the Civil and Administrative Tribunal on an application for an administrative review of a decision that, under the proposed Act, can be reviewed by the Tribunal.
52. Clause 48 provides that Schedule 3 to the proposed Act contains provisions about dealing with particular accounts and funds relating to persons with disability.
53. Clause 49 provides for the making of regulations for the purposes of the proposed Act.
54. Clause 50 repeals the *Disability Services Act 1993*.
55. Clause 51 provides for a review of the proposed Act within 4 years from the date of assent to the proposed Act.

### **Schedule 1 Provisions relating to Disability Council**

56. Schedule 1 contains provisions relating to membership and procedure of the Disability Council.

### **Schedule 2 Prescribed criminal offences**

57. Schedule 2 specifies offences in relation to which a conviction will render a person unsuitable to be engaged to work directly with persons in the target group by an organisation receiving financial assistance under Part 5 of the proposed Act.

### **Schedule 3 Residents' amenities accounts**

58. Schedule 3 contains provisions dealing with accounts and funds relating to people with disability who are residents of particular government residential centres.

### **Schedule 4 Savings, transitional and other provisions**

59. Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **Schedule 5 Amendment of Acts**

60. Schedule 5 makes consequential amendments to various Acts.
61. This Schedule also amends the *Ombudsman Act 1974* to insert proposed Part 3C in that Act. Proposed Part 3C provides for various matters relating to the occurrence of reportable incidents in supported group accommodation within the meaning of the proposed Act.
62. Proposed sections 25O and 25P define certain words and expressions used in proposed Part 3C.
63. Proposed section 25Q provides that the Ombudsman is to keep under review the systems of the Department and funded providers for preventing, handling and

responding to reportable incidents. The Ombudsman may also require the Secretary or head of a funded provider to give information about the systems to the Ombudsman.

64. Proposed section 25R imposes reporting obligations on the Secretary and heads of funded providers in relation to reportable allegations or reportable convictions of which the Secretary or head becomes aware.
65. Proposed section 25S provides that the Ombudsman may exempt any class or kind of incident from being a reportable incident for the purposes of the proposed Part.
66. Proposed section 25T provides that particular persons may disclose information about reportable incidents to the Ombudsman.
67. Proposed section 25U provides that the Ombudsman may monitor the progress of investigations into reportable allegations or reportable convictions. This proposed section further provides that the Ombudsman or an officer of the Ombudsman may be present as an observer at interviews conducted in relation to an investigation and may confer about the conduct and progress of an investigation. This proposed section also provides for the Ombudsman to require the giving of information or documents to the Ombudsman.
68. Proposed section 25V provides for the Secretary or head of a funded provider to give the Ombudsman a report about the conduct of an investigation of a reportable allegation or reportable conviction, and also provides for the Ombudsman to seek further information in relation to an investigation.
69. Proposed section 25W provides that the Ombudsman may conduct an investigation into reportable allegations or reportable convictions and may also conduct an investigation concerning any inappropriate handling of, or response to, a reportable allegation or reportable conviction. This proposed section further provides that the Ombudsman may exercise relevant powers under the *Ombudsman Act 1974* in relation to such investigations. This proposed section also provides that the Ombudsman may require a deferral of an investigation being conducted by the Secretary or a funded provider. The proposed section also provides that the Ombudsman is to provide the Department or funded provider with recommendations for action in relation to particular matters relating to investigations.
70. Proposed section 25X provides that other Acts or laws do not prevent the disclosure of information to the Ombudsman, and that liability is not incurred for such disclosure.
71. Proposed section 25Y extends the application of proposed sections 25R and 25T to other public authorities within the meaning of the *Ombudsman Act 1974*, if the relevant reportable incident arises in the course of employment with the public authority.
72. Proposed section 25Z applies, subject to modifications prescribed by the regulations, the provisions of the *Ombudsman Act 1974* in relation to a matter arising under proposed Part 3C even if it does not involve the conduct of a public authority.

## ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

### 3. Education Amendment (Government Schools) Bill 2014

Date introduced	28 May 2014
House introduced	Legislative Council
Minister responsible	The Hon. John Ajaka MLC
Portfolio	Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Education Act 1990 to require the Board of Studies, Teaching and Educational Standards to advise the Minister on the compliance by government schools with similar requirements to those required for the registration of non-government schools. The Board is to be assisted by the Department of Education and Communities in providing that advice.

#### BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon John Ajaka MLC, Minister for Ageing, Minister for Disability Services and Minister for the Illawarra stated that school registration is the Government's means of assuring compliance with the Education Act 1990.
3. However, the Minister further stated that while the Act provides that government schools are to comply with similar requirements to those required for the registration of non-government schools; there is currently no independent process for verifying government schools comply with the Act, and no external process available to provide an assurance that government schools meet the minimum requirements for non-government schools to be registered under the Act (such as those relating to teaching staff experience and qualifications, satisfactory premises and buildings, and school curriculum). The Bill aims to address this.

#### OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 amends the Education Act 1990 to require the Board of Studies, Teaching and Educational Standards to advise the Minister on the compliance by government schools with similar requirements to those required for the registration of non-government schools.

## ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

## 4. Election Funding, Expenditure and Disclosures Consequential Amendment Bill 2014

Date introduced	27 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to remove the text of invalid provisions from the *Election Funding, Expenditure and Disclosures Act 1981* (and to restore provisions that were replaced by those invalid provisions).
2. The Bill also reverses a number of consequential amendments that were made to that Act by the *Election Funding, Expenditure and Disclosures Amendment Act 2012* relating to the prohibition of political donations from corporations or other entities (so as to restore the operation of provisions of that Act that regulated political donations from corporations or other entities)

### BACKGROUND

3. The High Court of Australia in the case of *Unions NSW & Ors v State of New South Wales* [2013] HCA 58 declared that certain provisions of the *Election Funding, Expenditure and Disclosures Act 1981* (being provisions that were inserted into that Act by the *Election Funding, Expenditure and Disclosures Amendment Act 2012*) are invalid.
4. One of the provisions that was declared invalid prohibited political donations from corporations and other entities.
5. A second of the provisions declared invalid required electoral communication expenditure incurred for a State election campaign by an affiliated organisation of a party to be combined with the expenditure of the party for the purposes of the applicable cap on expenditure by the party.
6. This Bill has been introduced to address a gap in election funding regulation that has arisen as a result of the High Court striking down the reforms.

### OUTLINE OF PROVISIONS

7. Clause 1 sets out the name (also called the short title) of the proposed Act.
8. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

9. Schedule 1 gives effect to the objects of this Bill as set out in the Overview above. The schedule also insets a transitional provision to ensure that the amendments made by this Bill operate, as far as possible, from 18 December 2013 (being the date of the High Court's decision).

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity*

10. Clause 14 provides that following commencement, this Bill is to operate as if the amendments under it had commenced on 18 December 2013 (being the date of the High Court's decision in *Unions NSW & Ors v State of New South Wales* [2013] HCA 58).
11. These amendments include certain disclosure obligations regarding corporate donations, in which affected parties will be required to report on donations received since 18 December 2013. Despite the retrospective effect of these provisions, and the Committee's general preference against legislation with retrospective effect, the Committee appreciates its purpose is to ensure that corporate donations received since that date are treated in the same way as all other donations. Further, that these donations do not 'slip through a regulatory loophole'.<sup>1</sup>

**Despite the retrospective effect of provisions relating to the disclosure obligations of corporate donations, the Committee appreciates the public interest central to this Bill, and does not consider it unreasonable in the circumstances.**

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<sup>1</sup> The Hon. Mike Baird MP, *Legislative Assembly Debates*, 27 May 2014 at p.37

## 5. Health Services Amendment (Ambulance Fees) Bill 2014

Date introduced	28 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Minister for Health and Minister for Medical Research

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Health Services Act 1997 (the Act) to establish a scheme for the charging and recovery of ambulance fees.
2. Under the new scheme:
  - (a) an ambulance fee can be charged to any person who is provided with ambulance services (including the parent or guardian of a child provided with ambulance services), unless the person is exempt, and
  - (b) an ambulance fee will be charged by way of a fee invoice served on the person liable to pay the fee, and
  - (c) if the fee is not paid, a debt notice (which functions similarly to a reminder notice) will be served on the person liable for payment of the fee, and
  - (d) if the fee is still not paid, the Secretary of the Ministry of Health (the Health Secretary) can then refer the matter to the Commissioner of Fines Administration (the Commissioner) for fee recovery action, and
  - (e) the Commissioner will be able to take fee recovery action similar to the civil enforcement action available to the Commissioner for fines under the Fines Act 1996.
3. At present, the Health Services Act 1997 permits the Health Secretary to charge fees for the provision of ambulance services but does not provide any scheme for how those fees are charged or recovered in the event of non-payment.

### BACKGROUND

4. In her Second Reading Speech on the Bill, the Hon Jillian Skinner MP, Minister for Health and Medical Research, told Parliament that in 2011-12, the unpaid debt for NSW Ambulance services was approximately \$26 million; an increase from \$21 million in 2008-09 and \$22 million in 2009-10. Mrs Skinner further told Parliament that these unpaid amounts 'impact on the ability of NSW Ambulance to continue to provide a world-class ambulance service to the people of NSW'.

## OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### Schedule 1 Amendment of Health Services Act 1997 No 154

7. Schedule 1 [4] inserts proposed Parts 3–7 into Chapter 5A of the Act. These Parts set out the new scheme for the charging of ambulance fees.
8. **Proposed Part 3 of Chapter 5A** empowers the Health Secretary to charge fees (ambulance fees) for the provision of ambulance services by or on behalf of the Health Secretary.
9. The Health Secretary may charge an ambulance fee to any person who has been provided with ambulance services, other than a child. If ambulance services are provided to a child, the Health Secretary may charge an ambulance fee for those services to any parent or guardian of the child.
10. Fees are to be charged in accordance with a scale of fees approved by the Minister. This is also the case at present.
11. An exemption from ambulance fees applies to health benefits fund contributors and concession card holders. Further exemptions may be provided for by the regulations and by payment rules issued by the Health Secretary. The payment rules may also make provision for waiver and reduction of fees, extension of time to pay and payment by instalment.
12. **Proposed Part 4 of Chapter 5A** provides for the method by which ambulance fees are to be charged.
13. The Health Secretary charges an ambulance fee by issuing an invoice (a fee invoice) for the ambulance fee and serving the fee invoice on the person liable for payment of the fee.
14. If the fee is not paid within 7 days of the due date specified in the fee invoice, the Health Secretary may issue a notice (a debt notice) for the outstanding amount. The debt notice is required to inform the recipient that, if the fee is not paid, fee recovery action may be taken by the Commissioner and that, if fee recovery action is taken, the person liable for the fee may also be liable for fee recovery costs.
15. Both the fee invoice and the debt notice are required to include information about fee reviews (this is dealt with by proposed Part 6).
16. The due date for payment specified in a fee invoice or debt notice must be at least 21 days after it is served on the person.
17. **Proposed Part 5 of Chapter 5A** provides that an ambulance fee specified in a debt notice served on a person is recoverable by the Health Secretary as a debt in a court of competent jurisdiction.

18. The provisions permit the Health Secretary, instead of taking court proceedings to recover an ambulance fee, to refer the ambulance fee to the Commissioner for fee recovery action. The referral may be made only if the ambulance fee is not paid within 7 days of the due date for payment specified in the debt notice. The Health Secretary may, at any time, revoke the referral of an ambulance fee to the Commissioner or request the Commissioner to suspend fee recovery action.
19. The provisions permit the Health Secretary to disclose certain information to the Commissioner in connection with that fee recovery action.
20. Fee recovery action is dealt with by proposed Schedule 9.
21. **Proposed Part 6 of Chapter 5A** allows any person who is charged an ambulance fee to apply to the Health Secretary for a review of the decision to charge the fee. The Health Secretary is required to conduct a review if the application is duly made. While an on-time application for review is before the Health Secretary, fee recovery action is to be suspended. After conducting a review, the Health Secretary may revoke the decision to charge an ambulance fee, waive payment of the ambulance fee or confirm the decision to charge an ambulance fee with or without changing the payment arrangements for the fee.
22. **Proposed Part 7 of Chapter 5A** provides for the writing off of unpaid fees and the service and form of notices under the new scheme.
23. **Schedule 1 [6]** inserts proposed Schedule 9 into the Act. This Schedule sets out the new scheme for the recovery of ambulance fees. The scheme is modelled on parts of the Fines Act 1996, in particular, the civil enforcement mechanisms for fines under that Act.
24. **Proposed Schedule 9** permits the Commissioner to make a fee recovery order in respect of any ambulance fee referred to the Commissioner by the Health Secretary. Notice of a fee recovery order must be served on the person liable for payment of the ambulance fee (the debtor). If the ambulance fee is not paid in accordance with the fee recovery order, the Commissioner may take fee recovery action.
25. The following fee recovery action may be taken by the Commissioner:
  - (a) the Commissioner may make a property seizure order in relation to any property of the debtor,
  - (b) the Commissioner may make a garnishee order in relation to wages, salary or other amounts payable to the debtor,
  - (c) the Commissioner may have the ambulance fee registered as a charge on land owned by the debtor.
26. Certain ancillary powers may be exercised in connection with those fee recovery actions, including powers to examine the debtor and to enter land.
27. If fee recovery action is taken, the Commissioner may charge, and recover from the debtor, fee recovery costs in addition to the ambulance fee payable by the debtor.

28. The proposed Schedule also gives the Commissioner discretion to suspend or cancel fee recovery action, to withdraw a fee recovery order and reverse fee recovery action and to grant further time to pay. Specific provision is made for hardship. The Hardship Review Board will have similar functions with respect to ambulance fees as it has with respect to fines under the Fines Act 1996.
29. The Commissioner may enter into arrangements with the Health Secretary for the payment of ambulance fees recovered under the new scheme, and may retain a fee for services provided under the scheme.
30. The new provisions ensure that personal information obtained by the Commissioner or staff under the scheme is disclosed and used only in connection with the fee recovery scheme. It is not permitted to use the information for fines enforcement or taxation purposes.
31. Other administrative arrangements under the scheme are similar to the administrative arrangements in relation to fines under the Fines Act 1996, and certain provisions of that Act apply (with modifications) to the scheme.
32. **Schedule 1 [3]** is a consequential amendment.
33. **Schedule 1 [1]** defines expressions used in the new provisions and re-enacts existing definitions.
34. **Schedule 1 [2]** repeals a provision that is re-enacted in the new scheme.
35. **Schedule 1 [5]** provides for transitional matters. Among other things, the provisions enable the Health Secretary to issue a debt notice for a fee that was charged before the commencement of the scheme. Accordingly, if the ambulance fee is not paid in accordance with the debt notice, the fee can be referred to the Commissioner and fee recovery action can be taken under the new scheme.

## Schedule 2 Amendment of other Acts

36. Schedule 2.1 amends the Fines Act 1996 to permit the name "State Debt Recovery" to be used in connection with fee recovery action under the new scheme.
37. Schedule 2.2 amends the Law Enforcement (Powers and Responsibilities) Act 2002 to permit search warrants to be issued in connection with fee recovery action under the new scheme.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity*

38. Schedule 1[5] of the Bill provides that the Health Secretary can issue a debt notice for an ambulance fee that was charged before the commencement of the scheme set up by the Bill to improve recovery rates for such fees. Accordingly, if the ambulance fee is not paid in accordance with the debt notice, the fee can be referred to the Commissioner of Fines Administration, and fee recovery action can be taken under the new scheme. However, the capacity to recover pre-existing debts under the Bill is subject to the

Limitation Act 1969, which provides that recovery action must be brought within 6 years of the debt accruing.

**The Committee notes that the Bill permits the recovery of ambulance fees incurred before its commencement. The Committee generally comments when provisions in Bills are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people to order their affairs according to what the law is at any given point in time. However, the capacity to recover pre-existing debts under the Bill is subject to the Limitation Act 1969. Similarly, the retrospective provision only increases the likelihood that a pre-existing debt will be recovered from a debtor; it does not retrospectively change the rules concerning liability for, or quantum of a debt. In the circumstances, the Committee makes no further comment.**

#### *Power of Entry*

39. Proposed Schedule 9, Part 3, section 19 of the Bill provides that a person executing a property seizure order under the Bill may, at any reasonable time of the day or night, enter any premises for the purposes of executing the order. 'Reasonable time of the day or night' is not defined in the Bill. However, proposed section 19 further provides that a person executing a property seizure order cannot enter any part of premises used for residential purposes without the permission of the occupier, or under the authority of a search warrant.

**The Committee notes that the Bill allows a person exercising a property seizure order under the Bill to enter any premises, at 'any reasonable time of the day or night', for the purpose of executing the order. 'Any reasonable time of the day or night' is not defined in the Bill. To avoid confusion about the extent of authorities' powers to interfere with private property rights, the Committee would prefer such terms to be clearly defined in legislation. However, given other safeguards around entry to residential premises that are included in the Bill, the Committee makes no further comment.**

#### *Lack of Clarity*

40. Proposed Schedule 9, Part 6, section 32 of the Bill outlines the circumstances under which the Commissioner of Fines Administration may disclose personal information obtained in relation to a person in administration or execution of the Bill, including where such action is 'authorised or required under the [Bill] or any other Act or law'.

**The Committee notes that listing 'any other Act or law' rather than listing the name of each of those Acts and laws, limits the clarity of proposed schedule 9, part 6, section 32 of the Bill. The Committee would prefer the name of each Act or law to be listed to avoid this lack of clarity. However, as the proposed wording ensures that the provision comprehensively covers the field it is intended to cover, the Committee makes no further comment.**

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

##### *Commencement by Proclamation*

41. Clause 2 of the Bill provides the proposed Act is to commence on a day or days to be appointed by proclamation.

**The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.**

*Matter which should be set by Parliament I*

42. Proposed Part 6 of Chapter 5A of the Bill, section 67Z, provides that, where a person charged with an ambulance fee has applied to the Health Secretary for a review of a decision to charge an ambulance fee, the Health Secretary is not required to conduct a review in certain circumstances, including in circumstances prescribed by the regulations.

**The Committee notes that the Bill provides the regulations may prescribe circumstances under which the Health Secretary is not required to conduct a review of a decision to charge an ambulance fee. The Committee would prefer matters of this nature involving administrative review rights, to be included in primary, not subordinate legislation. However, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.**

*Matter which should be set by Parliament II*

43. Proposed Part 5 of Chapter 5A of the Bill, section 67W, provides that the Health Secretary may, for the purpose of enabling the recovery of ambulance fees, provide certain personal information about the debtor to the Commissioner of Fines Administration, including information of a kind prescribed by the regulations. Section 67W further provides that a regulation made under this section is only to be made with the concurrence of the Attorney General, and the Privacy Commissioner must also have been consulted.

**The Committee notes the Bill provides that the regulations may prescribe personal information the Health Secretary may provide to the Commissioner of Fines Administration for the purpose of enabling the recovery of ambulance fees. The Committee would prefer matters of this nature, involving privacy rights, to be included in primary, not subordinate legislation. Nonetheless, the Committee notes that such a regulation can only be made under the Bill with the concurrence of the Attorney General, and the Privacy Commissioner must also have been consulted. In addition, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to these safeguards, the Committee makes no further comment.**

**Insufficiently subjects the exercise of legislative power to Parliamentary Scrutiny: s8A(1)(b)(v) of the LRA**

*Subordinate legislation not tabled in Parliament or not subject to disallowance*

44. Proposed Part 3 of Chapter 5A of the Bill, section 67O, provides that the Health Secretary may, by order published in the Gazette, make rules about the payment of ambulance fees, including rules about the categories of person who are exempt from paying such fees.

**The Bill provides that the Health Secretary may, by order published in the Gazette, make rules about the payment of ambulance fees, including rules about exemption from payment. The Committee considers that rules**

concerning exemptions should be included in the primary legislation or the regulations, not the payment rules. This is because it appears that, unlike regulations, there is no requirement for the payment rules to be tabled in Parliament and they are not subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. The Committee is concerned inclusion of exemptions in the payment rules may impact on Parliamentary oversight of such requirements. The Committee makes no further comment.

## 6. Health Services Amendment (Guaranteeing Free Public Hospital Services) Bill 2014\*

Date introduced	29 May 2014
House introduced	Legislative Assembly
Member responsible	Mr John Robertson MP
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to ensure that public patients continue to receive health services from public hospitals free of charge.

### BACKGROUND

2. This Bill seeks to amend the *Health Services Act 1997* to prevent a patient being charged for any health service which was free as at 29 May 2014. The Bill follows a budget measure introduced by the Federal Government that introduces co-payments for health services currently covered by bulkbilling.

### OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 amends the *Health Services Act 1997* to provide that no public patient is to be charged a fee for any health service provided by a public hospital if that service was, as at 29 May 2014, required to be provided free of charge, regardless of any law or agreement to the contrary.

### ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the *Legislation Review Act 1987*.**

## 7. Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014

Date introduced	28 May 2014
House introduced	Legislative Council
Minister responsible	The Hon. Matthew Mason-Cox MLC
Portfolio	Minister for Fair Trading

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to provide for the automatic mutual recognition of certain occupational licences issued in other jurisdictions (recognised licences) so that an individual who holds a recognised licence will be deemed to hold the equivalent New South Wales licence (with the licences to which automatic mutual recognition will apply to be prescribed by the regulations),
  - (b) to require a NSW licensing authority to notify the relevant interstate licensing authority of any disciplinary or enforcement action taken by the NSW licensing authority in respect of a deemed local licence,
  - (c) to provide for particulars about disciplinary and enforcement action taken in another jurisdiction against a NSW licence holder to be recorded in a relevant register kept by a NSW licensing authority,
  - (d) to remove the requirement that persons who carry out refrigeration work or air-conditioning work must hold a specific refrigeration or air-conditioning authority for specialist work under the Home Building Act 1989 and instead create a new category of specialist electrical wiring work that applies only to the disconnection and reconnection of refrigeration or air-conditioning equipment that is fixed electrical equipment,
  - (e) to remove mandatory continuing professional development obligations for the holders of contractor licences, supervisor certificates and tradesperson certificates issued under the Home Building Act 1989.

### BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon Matthew Mason-Cox MLC, Minister for Fair Trading, indicated that in December 2013, the Council of Australian Governments (COAG) decided not to continue with the National Occupational Licensing System policy.

3. Mr Mason-Cox further stated that the mutual recognition model set out in this Bill “makes good on the COAG announcement that States would work to develop alternative options to national licensing” and that it “will facilitate labour mobility”.

## OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 defines certain words and expressions used in the proposed Act. Recognised licence is defined to mean a licence issued under a law of another State or Territory, or another jurisdiction prescribed by the regulations, that is prescribed by the regulations as a recognised licence. The scheme of mutual recognition will only apply to those prescribed licences.

### Part 2 Mutual recognition of licences

7. Clause 4 provides that an individual who holds a recognised licence under the law of another jurisdiction is deemed to hold the local licence that is prescribed as equivalent to that recognised licence, but only if the person’s principal place of residence is in that other jurisdiction.
8. Clause 5 provides for the application of the laws of New South Wales to a person who is deemed to hold a local licence. A person who holds a deemed local licence is taken to hold the local licence for the purposes of the laws of New South Wales (unless the regulations otherwise provide).
9. Clause 6 provides that a person does not hold a deemed local licence in New South Wales if the person is disqualified in New South Wales from holding or applying for the local licence concerned.
10. Clause 7 provides that if a licence held under the law of another jurisdiction is suspended in that jurisdiction, the deemed local licence is also taken to be suspended.
11. Clause 8 provides that, if a recognised licence in another jurisdiction is subject to a condition or limitation, the local licence that the person is deemed to hold is taken to be subject to the same condition or limitation.
12. Clause 9 provides that a local licensing authority may enter into an arrangement with interstate licensing authorities for the purposes of establishing a shared register of recognised licence holders and for other purposes related to the recognition of recognised licences issued in another jurisdiction.

### Part 3 Disciplinary and enforcement action

13. Clause 10 defines the terms disciplinary action and enforcement action, which are used in the proposed Part.
14. Clause 11 requires a local licensing authority to notify the relevant interstate licensing authority of any disciplinary or enforcement action taken by the local licensing authority in respect of a deemed local licence.

15. Clause 12 provides for particulars about disciplinary and enforcement action taken in another jurisdiction against a NSW licence holder to be recorded in a relevant register kept by the local licensing authority.

#### **Part 4 Miscellaneous**

16. Clause 13 enables the Governor to make regulations for the purposes of the proposed Act.
17. Clause 14 provides for the review of the proposed Act in 5 years.

#### **Schedule 1 Savings, transitional and other provisions**

18. Schedule 1 provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act or any Act that amends it.

#### **Schedule 2 Amendment of Home Building legislation**

##### *Home Building Act 1989 No 147*

19. Schedule 2.1 [1] omits refrigeration work and air-conditioning work from the definition of specialist work in the Home Building Act 1989. This will mean that provisions of that Act that regulate specialist work will no longer apply to refrigeration work or air-conditioning work (including provisions that require a person to hold a specific authority under that Act for specialist work).
20. Schedule 2.1 [3] omits a requirement that an individual who does refrigeration work or air-conditioning work must hold an endorsed contractor licence, supervisor certificate or tradesperson certificate authorising the person to do that work or to be under the immediate supervision of the holder of an endorsed contractor licence or supervisor certificate that authorises its holder to do refrigeration work or air-conditioning work.
21. Schedule 2.1 [4] removes mandatory continuing professional development obligations for the holders of contractor licences, supervisor certificates and tradesperson certificates issued under the Home Building Act 1989. The amendment also removes the power that allows refusal of the renewal or restoration of an authority on the grounds that the applicant or its directors, partners or employees have not completed approved further education courses or other training.
22. Schedule 2.1 [2] and [5] make consequential amendments.

##### *Home Building Regulation 2004*

23. Schedule 2.2 [1] omits the definitions of air-conditioning work and refrigeration work from the Home Building Regulation 2004, as a consequence of the repeal of the provisions of the Act that regulate that work as specialist work.
24. Schedule 2.2 [2] removes air-conditioning work and refrigeration work from the existing prescribed categories of specialist work, as a consequence of the repeal of the provisions of the Act that regulate that work as specialist work.
25. Schedule 2.2 [3] declares the disconnection and reconnection of refrigeration and air-conditioning equipment that is fixed electrical equipment to be a category of specialist work under the Home

26. Building Act 1989, so that it will be a category of specialist work that a contractor licence or supervisor certificate can be issued for.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Lack of Clarity*

27. Schedule 1 of the Bill provides that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act “or any Act that amends this Act”.

**The Committee notes that listing “any Act that amends this Act” rather than listing the name of each of those amending Acts limits the clarity of schedule 1 of the Bill. The Committee would prefer the name of each Act to be listed to avoid this lack of clarity. However, as the relevant provision relates to the regulation making power for provisions of a savings or transitional nature, and recognising the proposed insertion ensures that the Schedule is comprehensive, the Committee makes no further comment on the issue.**

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

#### *Matters which should be set by Parliament*

28. Part 4 of the Bill provides that the Governor may make regulations, not inconsistent with the proposed Act, for or with respect to any matter that by the proposed Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the proposed Act. Part 3 of the Bill provides that the regulations may prescribe “disciplinary action” and “enforcement action” in respect of an occupational licence for the purposes of the Part.

**The Committee notes that Part 4 of the Bill provides the Governor with a wide and ill-defined regulation-making power thereby allowing the regulations to include matters that may be better included in primary, not subordinate legislation. Similarly, Part 3 of the Bill allows the regulations to prescribe disciplinary and enforcement action – matters that the Committee would prefer to be included in primary, not subordinate legislation to allow appropriate Parliamentary oversight. However, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.**

## 8. Native Vegetation Amendment Bill 2014\*

Date introduced	29 May 2014
House introduced	Legislative Council
Member responsible	The Hon. Robert Brown MLC
	Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Native Vegetation Act 2003* as follows:
  - (a) to modify the current controls on clearing native vegetation so that they apply only to clearing of indigenous trees,
  - (b) to provide that broadscale clearing of native vegetation may be carried out only if the clearing is in the social, economic and environmental interests of the region in which it is carried out rather than, as is presently the case, if it improves or maintains environmental outcomes,
  - (c) to ensure that the objects of the Act are pursued in order to promote the social, economic and environmental interests of the State,
  - (d) to reduce the penalties for unauthorised clearing of native vegetation and for certain other offences under the Act,
  - (e) to make other amendments relating to the clearing of native vegetation.

### BACKGROUND

2. This Bill has been introduced by the Shooters and Fishers Party following concerns about the potentially restrictive nature of native vegetation laws, in particular, with respect to the clearing of native vegetation.

### OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Schedule 1 [1]–[3] modify the objects of the Act which will include the prevention of broadscale clearing unless it is in the social, economic and environmental interests of the region in which it is carried out. At present, the relevant object is to prevent broadscale clearing unless it improves or maintains environmental outcomes. The objects will also include involving landholders in improving the condition of existing native vegetation of high conservation value. The amendments also provide that the

objects of the Act are to be pursued in order to promote the social, economic and environmental interests of the State.

6. Schedule 1 [6] defines *native vegetation* as any indigenous tree (that is, a tree of a species that existed in the State before European settlement). As a result of this amendment, the controls on clearing native vegetation under the Act will no longer apply to indigenous understorey plants or groundcover.
7. Schedule 1 [5] defines *tree* as a large perennial woody plant that usually has one main trunk, a number of branches and a crown of foliage.
8. Schedule 1 [4] and [16] omit a definition of *groundcover* and a provision that permits the clearing of certain groundcover in certain circumstances. The definition and provision will be redundant as a result of groundcover no longer being within the scope of the Act.
9. Changes to the control of broadscale clearing: At present, *broadscale clearing* means the clearing of any native vegetation or protected regrowth. Schedule 1 [7] provides instead that broadscale clearing will mean the non-selective clearing of large areas of remnant native vegetation. The clearing of single trees on a selective basis is not broadscale clearing. Schedule 1 [4] and [9] omit the definition of *protected regrowth* which will be redundant as a result of the new definition of broadscale clearing. Schedule 1 [15] is a consequential amendment. The term *remnant native vegetation* does not at present include native vegetation that has regrown (*regrowth*) since certain specified dates. Schedule 1 [8] sets a date (1 January 1983) for the whole of the State for the purposes of the definition of *regrowth*.
10. Schedule 1 [13] changes the test for granting development consent for broadscale clearing. As a result of the amendment, development consent for broadscale clearing is not to be granted by the Minister unless the clearing is in the social, economic and environmental interests of the region in which it is carried out. At present, development consent is not to be granted unless the clearing concerned will improve or maintain environmental outcomes.
11. Schedule 1 [14] omits a regulation-making power concerning the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes. The provision will be redundant as a result of the changed test.
12. Schedule 1 [19] provides that the Minister is not to approve a property vegetation plan that proposes broadscale clearing of native vegetation unless the clearing concerned is in the social, economic and environmental interests of the region in which it is carried out. At present the test is that the clearing concerned must improve or maintain environmental outcomes.
13. Schedule 1 [20] omits a regulation-making power concerning the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of a property vegetation plan.
14. Schedule 1 [10] provides that the term *routine agricultural management activities* includes any activity reasonably considered necessary to remove or reduce the risk of serious personal injury or damage to property. At present the risk must be imminent for the activity to constitute a routine agricultural management activity and therefore be exempt from the prohibition on clearing native vegetation.

15. Schedule 1 [11] includes within that definition the undertaking of such drought preparation or recovery measures as are reasonably necessary and any activity necessary to control non-indigenous species of vegetation. These activities will be excluded from the prohibition on clearing native vegetation.
16. Schedule 1 [17] provides that any clearing that is reasonably necessary to be carried out for the purposes of complying with the requirements of the *Work Health and Safety Act 2011* will be excluded from the prohibition on clearing native vegetation.
17. Schedule 1 [12] reduces the maximum penalty for carrying out or authorising the clearing of native vegetation otherwise than in accordance with a development consent or a property vegetation plan to 1,000 penalty units (\$110,000). At present a person guilty of the offence is liable to the maximum penalty provided under section 126 of the *Environmental Planning and Assessment Act 1979* which is 10,000 penalty units (\$1,100,000), with a further daily penalty not exceeding 1,000 penalty units (\$110,000).
18. Schedule 1 [21] reduces the maximum penalty for the offences of obstructing an authorised officer in the exercise of the officer's investigative functions, failing or refusing to comply with a requirement made by an authorised officer in the exercise of the officer's functions, failing to comply with a notice requiring the person to provide information or produce a document and giving false or misleading information. The maximum penalty is reduced from 100 penalty units (currently \$11,000) to 10 penalty units (\$1,100).
19. Schedule 1 [22] omits a provision that prevents a person from exercising the right not to provide information in the event that it may tend to incriminate the person.
20. Schedule 1 [23] and [24] reduce the maximum penalty for failing to comply with a "stop work" order or a direction to carry out remedial work from (in the case of a corporation) 2,000 penalty units and 200 penalty units for each day the offence continues to 200 penalty units and 20 penalty units for each day the offence continues. The maximum penalty for an individual is reduced from 1,000 penalty units and 100 penalty units for each day the offence continues to 100 penalty units and 10 penalty units, respectively.
21. Schedule 1 [25] omits provisions that enable proceedings for an offence under the Act or the regulations to be commenced within 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer. Proceedings for an offence can only be commenced within, but not later than, 2 years after the date on which the offence is alleged to have been committed.
22. Schedule 1 [18] provides that a property vegetation plan may include proposals relating to the thinning of native vegetation in the central area of the State that has regrown at any time since 1 January 1983. At present any such proposal may relate only to the thinning of native vegetation that has regrown between 1 January 1983 and 1 January 1990.
23. Schedule 1 [26] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

## 9. Road Transport Amendment (Alcohol and Drug Testing) Bill 2014

Date introduced	28 May 2014
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads and Freight

### PURPOSE AND DESCRIPTION

1. The objects of this bill are to amend the *Road Transport Act 2013* as follows:
  - (i) to enable a police officer to require a person who has been physically unable to submit to a breath analysis to provide a blood sample instead for alcohol analysis,
  - (ii) to prevent a person who provides a blood sample in the above circumstances from being liable to be convicted for refusing or failing to submit to a breath analysis,
  - (iii) to enable a police officer to require a person who has submitted to oral fluid testing to remain at the place of testing so that testing may be completed,
  - (iv) to make certain procedures relating to the taking of urine samples under the Act consistent with those relating to the taking of blood and oral fluid samples,
  - (v) to extend the bases on which a police officer may form a reasonable belief that a person may be under the influence of a drug (as a prerequisite to requiring the person to submit to a sobriety test) to include the person's behaviour, condition or appearance,
  - (vi) to enable sample takers and analysts to perform their duties under the Act through persons acting at their direction,
  - (vii) to reframe the matters in relation to which certificate evidence may be given by analysts to accommodate performance of their duties by persons acting under their authority,
  - (viii) to clarify who may give certificate evidence concerning sample taking or analysis performed in another jurisdiction,
  - (ix) to provide that certain breath analyses carried out by police officers who had undertaken relevant training are taken to have been carried out by police officers duly authorised to do so,
  - (x) to make consequential, minor or ancillary amendments, and
2. to amend the *Marine Safety Act 1998*:

- (i) to make amendments corresponding with those referred to in paragraph (a) (i) – (iii) and (v) – (viii), and
- (ii) to make consequential, minor or ancillary amendments.

## BACKGROUND

- 3. Random Breath Testing has existed in New South Wales for over 30 years. In 2013, police conducted over five million breath tests, resulting in more than 20,000 drivers being charged with drink-driving offences.
- 4. Over time, the regime has required to be continually developed and improved to ensure that remains robust and effective. This Bill seeks to further strengthen and update the current arrangements.

## OUTLINE OF PROVISIONS

- 5. Clause 1 sets out the name (also called the short title) of the proposed Act.
- 6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
- 7. Schedule 1 [8] enables a police officer to require a person who has been physically unable to submit to a breath analysis as directed, to provide instead a sample of the person's blood, in accordance with the directions of an authorised sample taker, for analysis to determine the concentration of alcohol in the blood. Schedule 1 [7] enables a person to be arrested, taken to a hospital or prescribed place and detained there for the purpose of providing such a blood sample.
- 8. Schedule 1 [5] provides for the period after the expiration of which a police officer cannot require a person to provide such a blood sample.
- 9. Schedule 1 [14] creates an offence of refusing or failing to submit to the taking of a blood sample if required to do so in the above circumstances. The maximum penalty for the offence is 30 penalty units (currently \$3,300) or imprisonment for 18 months, or both, in the case of a first offence, or 50 penalty units (currently \$5,500) or imprisonment for 2 years, or both, in the case of a second or subsequent offence. It is a defence to a prosecution for the offence that the defendant was unable to provide a blood sample on medical grounds.

The proposed offence has the same maximum penalty, and is treated in the same way for the purposes of the Act, as the offence of failing or refusing to submit to a breath analysis when required to do so by a police officer, including by being made a major offence (enabling immediate licence suspension and automatic licence disqualification) and an alcohol-related major offence (enabling participation in an interlock program as an alternative to disqualification).

- 10. Schedule 1 [1]–[4] make related amendments.
- 11. Schedule 1 [31] makes a consequential amendment to prevent a person who submits to the taking of a blood sample when required to do so in the proposed circumstances from being charged with driving under the influence of alcohol in relation to the same driving event (as is the case with a person who submits to a breath analysis).

12. Schedule 1 [33] prevents a person who submits to the taking of a blood sample when required to do so in the proposed circumstances (or who is prosecuted for failing or refusing to submit to the taking of a blood sample but satisfies the court that he or she was unable, on medical grounds, to so submit) from being liable to be convicted, in relation to the person's inability to submit to the breath analysis, of the offence of failing or refusing to submit to a breath analysis.
13. Schedule 1 [33] also prevents a person who fails or refuses to provide a blood sample in those circumstances from being convicted of both the offence of failing or refusing to submit to a breath analysis and the proposed offence of failing or refusing to submit to the taking of a blood sample.
14. Schedule 1 [15] makes a consequential amendment to make it an offence for a person to wilfully alter the concentration of alcohol in the person's blood between the time of the driving event that preceded the requirement for a breath test and the time the person provides a sample of blood when required to do so in the proposed circumstances. The offence attracts the same maximum penalty (being the same as that referred to in relation to the offence created by Schedule 1 [14]), and is treated in the same way for the purposes of the Act, as the equivalent offence in relation to breath analysis.
15. Schedule 1 [34] extends provision for protection from personal liability for authorised sample takers to cover the proposed sample taking. As a consequence of the amendment proposed to be made by Schedule 1 [8], Schedule 1 [10] amends a provision that enables a police officer to require a person to provide a blood sample if the person has been unable to comply with a direction to provide an oral fluid sample, to make it clear that the inability to comply must be physical in nature.
16. Schedule 1 [9] enables a police officer to direct a person who has submitted to an oral fluid test to remain at or near the place of testing for such period as is reasonable to enable the test to be completed. A person who does not comply with such a direction is liable to a maximum penalty of 10 penalty units (currently \$1,100).
17. Schedule 1 [19]–[21] make the procedure for taking urine samples consistent with those for taking blood and oral fluid samples by requiring the sample taker to give the person from whom the sample was taken a certificate identifying the urine sample as the person's sample (rather than a portion of the urine sample itself) for the purposes of obtaining an independent analysis. The person may, within 12 months, apply to an authorised laboratory for a portion of the sample to be sent for analysis (at the person's own expense) to a medical practitioner or laboratory nominated by the person. Requirement to submit to sobriety assessment on basis of behaviour, condition or appearance
18. Schedule 1 [12] enables a police officer to require a person who was driving or attempting to drive a vehicle and whose breath test results do not permit the person to be required to submit to a breath analysis, to submit to a sobriety assessment if the police officer reasonably believes the person may be under the influence of a drug by the behaviour, condition or appearance of the person. Currently, a police officer may form this belief only on the basis of the way in which the person was driving or attempting to drive the vehicle.

19. Schedule 1 [13] notes provision in the Act for the period after the expiration of which a police officer cannot require a person who has been required to submit to a sobriety assessment, to provide a blood or urine sample as a consequence of the assessment or a refusal to submit to it.
20. Schedule 1 [6], [11], [16] and [17] reframe certain temporal reference points as a consequence of the amendment proposed to be made by Schedule 1 [12].
21. Schedule 1 [23] enables the duties of an authorised sample taker or analyst under the Act to be performed by other persons at the direction of (rather than only under the supervision of) the authorised sample taker or analyst and provides that a duty performed by any such person is taken to have been performed by the authorised sample taker or analyst.
22. Schedule 1 [26]–[29] reframe provisions specifying matters concerning samples submitted for analysis that may be the subject of certificate evidence from analysts in proceedings for certain offences under the Act, to accommodate the performance of analysts' duties by persons acting under their supervision or at their direction, rather than by analysts personally.
23. Schedule 1 [30] expands the definitions of interstate analyst and interstate sample taker to make it clear that certificate evidence concerning sample taking or analysis that is performed in another jurisdiction may be given not only by persons who personally perform the analysis or sample taking but also by persons who supervise or direct those procedures.
24. Schedule 1 [22] requires a police officer to notify the prescribed laboratory to which a blood or urine sample is submitted following a fatal accident, rather than an analyst at the laboratory, of certain matters before the sample may be analysed.
25. Schedule 1 [18] and [32] make amendments by way of statute law revision.
26. Schedule 1 [24] and [25] standardise references to an authority required from the Commissioner of Police under the Act to carry out a breath analysis.
27. Schedule 1 [35] makes provision of a savings and transitional nature consequent on certain of the proposed amendments.
28. Schedule 1 [35] also provides that breath analyses carried out between 1 December 1999 and 21 February 2014 by police officers who had undertaken a NSW Police Force training course in breath analysis are taken to have been carried out by police officers duly authorised to do so, and the police officers to have been duly authorised to carry them out.
29. Schedule 2 amends the Marine Safety Act 1998 to the same effect as Schedule 1 amends the Road Transport Act 2013, and makes certain consequential and related amendments, as follows (a) Schedule 2 [1]–[5], [9], [26] and [32]–[36]—Requirement to provide blood sample for alcohol analysis if physically unable to submit to breath analysis, (b) Schedule 2 [12], [13] and [16]—Revision of procedures for urine sampling consistent with blood and oral fluid sampling, (c) Schedule 2 [17]–[19] and [23]–[25]—Requirement to submit to sobriety assessment on basis of behaviour, condition or appearance, (d) Schedule 2 [8]—Discharge of duties of sample takers and analysts, (e)

Schedule 2 [11], [14], [15] and [27]–[31]—Evidence certificates of sample takers and analysts.

30. Schedule 2 also makes amendments to the Marine Safety Act 1998 dealing with savings, transitional and other matters, as follows: (a) Schedule 2 [6] and [7] replace certain references to “medical practitioner” with references to “authorised sample taker”, consistent with the Road Transport Act 2013, (b) Schedule 2 [10] and [20]–[22] make amendments by way of statute law revision, (c) Schedule 2 [37] inserts savings and transitional provisions consequent on the proposed amendments to which the provisions refer.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Personal Bodily Integrity*

31. The Bill introduces a number of provisions concerning the ability for police officers to require individuals to provide a blood sample. This is in circumstances where the person concerned has been physically unable to submit to a breath analysis. Schedule 1[7] amends the *Road Transport Act 2013* to provide this power for police with respect to road transport drivers, while schedule 2[3] amends the *Marine Safety Act 1998* to provide an analogous power to police for marine transport operatives.
32. The equivalent provisions under each clause enable the police to take ‘such force as may be necessary’ for the purposes of providing a blood sample.
33. While these provisions have ostensibly been drafted to cover drivers unable to submit to a breath analysis due to intoxication – such as passing out – it will also apply to inability due to a medical condition. This may include a driver’s panic attack following a car accident, or a medical emergency affecting the driver.

**The Committee notes that requiring an individual to provide a blood sample could be an interference with one’s personal bodily integrity. Given the possible trespasses on personal rights and liberties, the Committee refers this to Parliament for its further consideration.**

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

#### *Commencement by Proclamation*

34. Clause 2 of the Bill provides the proposed Act is to commence on a day or days to be appointed by proclamation.

**The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.**

## 10. Rural Fires Amendment (Vegetation Clearing) Bill 2014

Date introduced	29 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Stuart Ayres MP
Portfolio	Minister for Police and Emergency Services

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to amend the *Rural Fires Act 1997* to make provision for vegetation clearing work to be carried out in certain areas near residential accommodation or high-risk facilities to reduce bush fire risk,
  - (b) to make other miscellaneous and consequential amendments to the *Rural Fires Act 1997* and the *National Parks and Wildlife Act 1974*.

### BACKGROUND

2. Between 1 July 2013 and 31 December 2013, there were 5,700 bush and grass fires across NSW. The Minister's Second Reading Speech notes that in November 2013, the NSW Government announced various measures to streamline hazard reduction processes strengthen offence provisions and protect emergency service workers. In response to more recent fire events, the Bill proposes that the *Rural Fires Act 1997* be amended to provide for vegetation clearing work on certain land.

### OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### Schedule 1 Amendment of Rural Fires Act 1997 No 65

5. Schedule 1 [1]–[3] make amendments consequent on the enactment of the *Government Sector Employment Act 2013*.
6. Schedule 1 [4] updates the membership of the Bush Fire Co-ordinating Committee.
7. Schedule 1 [5] makes a consequential amendment to the note to Part 4.
8. Schedule 1 [6] and [7] provide that all bush fire hazard reduction certificates must specify the period for which the certificate operates.

9. Schedule 1 [8] provides that a bush fire hazard reduction certificate becomes effective on the date endorsed on it and operates for the period specified in it. Currently, a certificate operates only for a period of 12 months or, in some cases, 3 years.
10. Schedule 1 [9] inserts Division 9 into Part 4 to authorise vegetation clearing work to be carried out in certain areas near residential accommodation or high-risk facilities to reduce bush fire risk. The proposed Division provides that the owner of land situated within a 10/50 vegetation clearing entitlement area may carry out certain vegetation clearing work on that land despite any requirement for an approval, consent or other authorisation for the work made by other legislation.
11. The Commissioner of the NSW Rural Fire Service is to determine what land is a **10/50 vegetation clearing entitlement area** and identify this land on a map published on the NSW Rural Fire Service website.
12. The vegetation clearing work that can be carried out is the removal, destruction (by means other than by fire) or pruning of:
  - (c) any vegetation (including trees or parts of trees) within 10 metres of an external wall of a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility, and
  - (d) any vegetation, except for trees or parts of trees, within 50 metres of an external wall of a building containing habitable rooms that comprises or is part of residential accommodation or a high-risk facility.
13. The vegetation clearing work must be carried out in accordance with the **10/50 Vegetation Clearing Code of Practice**, which is to be prepared by the Commissioner and is to deal, at a minimum, with the matters listed in proposed section 100Q (1). In addition, the Code is to be published in the Gazette and made publicly available.
14. For the purposes of calculating the relevant 10 or 50 metres within which vegetation can be cleared, it does not matter whether the residential accommodation or high-risk facility is located on the owner's land or on adjoining land.
15. The Minister is to review the proposed Division after it has been in operation for 2 years and report to the Premier on the outcome of the review.

## Schedule 2 Amendment of National Parks and Wildlife Act 1974 No 80

16. Schedule 2 [1] and [2] expand the exemptions from the offences of harming or picking, or damaging the habitat of, threatened species, endangered populations or endangered ecological communities to exempt anything done in the course of carrying out vegetation clearing work under proposed section 100R of the *Rural Fires Act 1997*. However, any such exemption is subject to compliance with the **10/50 Vegetation Clearing Code of Practice** (which will place limitations on the clearing of any such species, populations or communities).

## ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

# 11. State Revenue Legislation Further Amendment Bill 2014

Date introduced	29 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Minister for Finance and Services

## PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

- i to prevent avoidance practices by imposing duty on certain transactions involving options to purchase land in New South Wales, and
- ii to prevent avoidance practices by imposing duty on the novation of an agreement for the lease of land in New South Wales as if it were a transfer of dutiable property, and
- iii to make further provision for the duty payable on transactions involving self managed superannuation funds, and
- iv to exempt a same owner transfer of registration of a heavy vehicle trailer from registration duty,

(b) to amend the *Land Tax Management Act 1956* to change the rules for the grouping of companies under that Act,

(c) to amend the *Payroll Tax Act 2007* to clarify and restrict certain exceptions from the contractor provisions under that Act,

(d) to amend the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011* to permit a rebate to be claimed for an internally transferred employee who is employed in a new job.

## BACKGROUND

2. The Bill makes amendments relating to duties, land tax and payroll tax. Some of the provisions in the Bill had been removed from the earlier *State Revenue Legislation Amendment Bill 2014* to allow for further consultation with industry and professional bodies. Some of these provisions are now being reintroduced in the current Bill after consultation with the Law Society of NSW, the Property Council of Australia, Taxation Institute of Australia and professional accounting bodies.

## OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act.

### Schedule 1 Amendment of Duties Act 1997 No 123

#### *Options to purchase land*

5. Schedule 1 [4] (proposed section 9B) ensures that certain transactions involving options to purchase land are dutiable in the same way as a transfer of an option to purchase land. The amendments provide that a transfer of an option to purchase land in New South Wales is taken to occur if, for valuable consideration:
  - (a) another person is nominated to exercise the option, or
  - (b) another person is nominated as purchaser or transferee of the land the subject of the option on or before the exercise of the option, or
  - (c) the option holder agrees to a novation of the option, or otherwise relinquishes rights under the option, so that another person obtains a right to exercise the option or to purchase the land.
6. Schedule 1 [5] provides that the consideration for a transfer of land that occurs as a consequence of the exercise of an option to purchase land is taken to include the amount or value of the consideration provided by or on behalf of the transferee for the option. (The dutiable value of a transfer of land is calculated by reference to the consideration for the transfer.)
7. Schedule 1 [8] ensures that the duty chargeable in respect of a transfer of land that occurs as a consequence of the exercise of an option to purchase land is reduced by the amount of duty (if any) paid by the transferee on the transfer of the option to the transferee.

#### **Novation of agreement for lease of land**

8. Schedule 1 [4] (proposed section 9C) imposes duty on the novation of an agreement for the lease of land in New South Wales as if it were a transfer of dutiable property. The lessee's interest in the agreement for lease is taken to be dutiable property and the novation of the agreement is taken to be a transfer of that dutiable property. The amendment ensures that a novation of an agreement for the lease of land is not used as a way of avoiding duty on a transaction that has a similar effect to transferring a lease of land (a transfer of a lease of land in New South Wales is a dutiable transaction under the *Duties Act 1997*). Under the amendment, the new lessee will be liable for duty on the novation of the agreement for lease.

#### **Self managed superannuation funds**

9. Schedule 1 [6] changes a concession that applies when a member of a self managed superannuation fund transfers property to the trustee or a custodian of the trustee of the fund. At present, duty is chargeable on such a transfer at a flat rate (rather than an ad valorem rate) if the transfer meets certain criteria (for example, the property

transferred must be used solely for the purpose of providing a retirement benefit to the member who transfers the property).

10. The amendment makes it clear that:
  - (a) the concession can apply if the transfer is made by more than one member of a self managed superannuation fund, and
  - (b) if more than one member is transferring the property, the property must be used for the benefit of the members in the same proportions as it was held by them before the transfer, and
  - (c) the concession does not apply if the property transferred is held by the member of the self managed superannuation fund in a trustee capacity.
11. The amendment also increases the concessional rate of duty on such a transfer from \$50 to \$500.
12. Schedule 1 [7] provides for charging of duty at a flat rate of \$500 on a declaration of trust made by a custodian of the trustee of a self managed superannuation fund that dutiable property is or is to be held in trust for the trustee of a named self managed superannuation fund. This nominal rate of duty will apply if ad valorem duty was paid on the acquisition of the property by the custodian or the trustee, or the acquisition was chargeable with nominal duty only under section 62A of the *Duties Act 1997*, and consideration for the acquisition was provided by the trustee.

#### ***Duty on registration of heavy vehicle trailers***

13. Schedule 1 [9] exempts from motor vehicle registration duty an application to register a heavy vehicle trailer that is a same owner transfer of registration. That is, an application for registration will be exempt if the trailer is or has been registered in the name of the person under legislation of the Commonwealth or of another State or a Territory.
14. Schedule 1 [9] also clarifies an existing exemption for heavy vehicle trailers that have never been registered so that it does not apply if the heavy vehicle trailer has previously been registered under the *Interstate Road Transport Act 1985* of the Commonwealth. (However, the new exemption for same owner transfers will apply to heavy vehicle trailers registered under that Act.)

#### ***Other amendments***

15. Schedule 1 [10] provides for transitional matters relating to the proposed amendments.
16. Schedule 1 [3] clarifies a provision of the *Duties Act 1997* that makes a change in partnership arrangements subject to duty as a transfer of a partnership interest, to make it clear that such a transfer is treated as a dutiable transaction.
17. Schedule 1 [2] inserts a note in the *Duties Act 1997*, next to a key provision in that Act that outlines the types of transactions that are subject to duty under Chapter 2 of that Act, to alert the reader to other provisions that are relevant to determining whether a transaction is a dutiable transaction. It also removes a provision that is made redundant by the amendment in Schedule 1 [3]. Schedule 1 [1] is a consequential amendment.

## **Schedule 2 Amendment of Land Tax Management Act 1956 No 26**

18. The *Land Tax Management Act 1956* permits related companies to be grouped for land tax purposes. This ensures that the land tax free threshold is applied only once to the land holdings of related companies.
19. Schedule 2 [6] ensures that 2 companies are not grouped for land tax purposes merely because the same person (or company) acting in a trustee or nominee capacity has a controlling interest in both companies. The 2 companies will be treated as related in such a case only if the trusts concerned are both fixed trusts with the same beneficiaries.
20. Schedule 2 [1]–[5] and [7] are statute law revision amendments. The purpose of the proposed amendments is to simplify the way in which the grouping rules are expressed. They do not make any change in substance.
21. Schedule 2 [8] applies the proposed amendments from the 2015 land tax year.

## **Schedule 3 Amendment of Payroll Tax Act 2007 No 21**

22. As a general rule, contractual arrangements for the supply of services are subject to payroll tax as if the person engaged to perform the work under the contract was an employee and amounts paid under the contract were wages. This rule is subject to certain exceptions. The effect of those exceptions is to exempt certain contractual arrangements from payroll tax. Schedule 3 restricts and clarifies those exemptions.
23. Schedule 3 [3] makes it clear that a contract under which a person is supplied with services ancillary to the conveyance of goods by vehicle is also exempt from payroll tax if the services are provided solely for the conveyance of goods by vehicle.
24. Schedule 3 [4] repeals exemptions for:
  - (a) contracts under which services are provided solely for or in relation to the procurement of persons desiring to be insured, and
  - (b) contracts under which services are provided for or in relation to the door-to-door sale of goods solely for domestic purposes.
25. Schedule 3 [6] (proposed section 32 (2A)) makes it a general rule that an exemption does not apply if the Chief Commissioner of State Revenue determines that the contract or arrangement under which the services were supplied was entered into with an intention either directly or indirectly of avoiding or evading payment of tax. This rule already applies to some, but not all, of the exemptions. Schedule 3 [1], [2] and [5] are consequential amendments.
26. Schedule 3 [6] (proposed section 32 (2B)) makes it clear that an exemption for a contract under which a particular kind of services are supplied, or a particular kind of work is performed, does not apply if additional services or work are supplied or performed under the contract.
27. Schedule 3 [7] is a transitional provision.

### Schedule 4 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

28. Schedule 4 [1] permits the Jobs Action Plan rebate to be claimed in respect of the employment of an internally transferred employee in a new job. A person is an ***internally transferred employee*** if the person's employment is transferred from one employer (the ***former employer***) to another employer (the ***new employer***) and either of the following applies:
- (a) the former and new employers are members of the same group for payroll tax purposes,
  - (b) the transfer occurs because the business or undertaking of the former employer is merged with, or taken over or otherwise acquired by, the new employer.
29. At present, internally transferred employees are excluded from the rebate scheme.
30. A rebate is not payable unless the Chief Commissioner is satisfied that the former employer would have been eligible for a rebate in respect of the employment of the employee if the employment with the former employer had continued.
31. Schedule 4 [2] applies the proposed amendment to transfers in employment occurring on or after 1 July 2011.

### ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

# 12. Statute Law (Miscellaneous Provisions) Bill 2014

Date introduced	27 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney General; Minister for Justice

## PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
  - (a) to make minor amendments to various Acts and regulations (Schedule 1), and
  - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and
  - (c) to make minor amendments to various Acts consequent on and related to the enactment of the *Government Sector Employment Act 2013* (Schedule 3), and
  - (d) to repeal various Acts and provisions of Acts (Schedule 4), and
  - (e) to make other provisions of a consequential or ancillary nature (Schedule 5).

## BACKGROUND

2. The Bill continues the longstanding statute law revision program by amending 22 Acts and two Regulations. The amendments make minor policy changes of a non-controversial nature, repeal redundant legislation, and generally maintain the quality of NSW legislation.

## OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act.
5. Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

### Schedule 1 Minor amendments

6. Schedule 1 makes amendments to the following Acts and regulations:

*Aboriginal Land Rights Act 1983 No 42*

*Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991 No 73*

*Associations Incorporation Act 2009 No 7*

*Cemeteries and Crematoria Act 2013 No 105*

*Contracts Review Act 1980 No 16*

*Crimes (Forensic Procedures) Act 2000 No 59*

*Fisheries Management Act 1994 No 38*

*Growth Centres (Development Corporations) Act 1974 No 49*

*National Parks and Wildlife Act 1974 No 80*

*Ombudsman Act 1974 No 68*

*Ombudsman Regulation 2011*

*Pawnbrokers and Second-hand Dealers Act 1996 No 13*

*Pesticides Act 1999 No 80*

*Property, Stock and Business Agents Act 2002 No 66*

*Property, Stock and Business Agents Regulation 2003*

*Public Finance and Audit Act 1983 No 152*

*Radiation Control Act 1990 No 13*

*Residential Tenancies Act 2010 No 42*

*Retirement Villages Act 1999 No 81*

*Stock Medicines Act 1989 No 182*

*Subordinate Legislation Act 1989 No 146*

*Valuation of Land Act 1916 No 2*

*Water Management Act 2000 No 92*

*Western Lands Act 1901 No 70*

7. The amendments to each Act and regulation are explained in detail in the explanatory note relating to the Act or regulation concerned set out in Schedule 1.

## **Schedule 2 Amendments by way of statute law revision**

8. Schedule 2 amends certain Acts and instruments for the purpose of effecting statute law revision.
9. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

### **Schedule 3 Consequential and other amendments relating to enactment of Government Sector Employment Act 2013 No 40**

10. Schedule 3 makes minor amendments to various Acts consequent on and related to the enactment of the *Government Sector Employment Act 2013*.
11. The nature of the amendments contained in Schedule 3 is explained in detail in the explanatory note at the beginning of the Schedule.

### **Schedule 4 Repeals**

12. Schedule 4 repeals 5 Acts and provisions of 2 other Acts.
13. Clause 1 of the Schedule repeals 5 redundant Acts.
14. Clause 2 of the Schedule repeals a provision consisting only of commenced amendments to another Act.
15. Clause 3 of the Schedule repeals an uncommenced provision that cannot be commenced because it amends a provision that has since been repealed.

### **Schedule 5 General savings, transitional and other provisions**

16. Schedule 5 contains savings, transitional and other provisions of general effect.
17. The purpose of each provision is explained in detail in the explanatory note relating to the provision concerned set out in the Schedule.

### **ISSUES CONSIDERED BY COMMITTEE**

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

# 13. Trade and Investment Cluster Governance (Amendment and Repeal) Bill 2014

Date introduced	27 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Stoner MP
Portfolio	Minister for Trade and Investment

## PURPOSE AND DESCRIPTION

1. The objects of this Bill are to dissolve the following statutory bodies and transfer their assets, rights and liabilities to the Crown and (in some cases) to transfer their functions to other bodies:
  - (a) the Chipping Norton Lake Authority,
  - (b) the New South Wales Dairy Industry Conference,
  - (c) the Lake Illawarra Authority,
  - (d) the Ministerial Corporation for Industry,
  - (e) the Poultry Meat Industry Committee and Poultry Meat Industry Advisory Group,
  - (f) the Film and Television Office (also known as Screen NSW) and its Board,
  - (g) the Homebush Motor Racing Authority, its Advisory Board and the Event Implementation Committee.

## BACKGROUND

2. The Minister's Second Reading Speech notes that the Bill is a package of changes to entities within the trade and investment cluster to decrease the number of separate statutory bodies and create savings from reduced operation, financial reporting and audit costs.
3. In 2012, the NSW Commission of Audit delivered an interim report on public sector management. Recommendation two of that report required each cluster to review the number of entities within it. In 2013, Trade and Investment reviewed existing governance structure arrangements and a number of entities were identified that could be abolished or absorbed into larger bodies. The Bill is a step towards implementing more streamlined cluster arrangements.

## OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.

5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 defines *assets*, *rights* and *liabilities*.

## Part 2 Dissolution of Chipping Norton Lake Authority

7. Part 2 dissolves the Chipping Norton Lake Authority and transfers its assets, rights and liabilities to the Crown and abolishes the Chipping Norton Lake Authority Working Account and transfers the balance in that account to the Public Reserves Management Fund. The Part also repeals the *Chipping Norton Lake Authority Act 1977*, which constituted the Authority.

## Part 3 Dissolution of New South Wales Dairy Industry Conference

8. Part 3 dissolves the New South Wales Dairy Industry Conference and transfers its assets, rights and liabilities to the NSW Food Authority and abolishes the fund established under the *Dairy Industry Act 2000* and transfers the balance in that fund to the Food Authority Fund. The Part also repeals the *Dairy Industry Act 2000*, which constituted the Dairy Industry Conference.

## Part 4 Dissolution of Lake Illawarra Authority

9. Part 4 dissolves the Lake Illawarra Authority, transfers its assets, rights and liabilities to the Crown and repeals the *Lake Illawarra Authority Act 1987*, under which the Lake Illawarra Authority was constituted.

## Part 5 Dissolution of Ministerial Corporation for Industry

10. Part 5 dissolves the Ministerial Corporation for Industry and transfers the land held by it to Government Property NSW and its other assets, rights and liabilities to the Crown. In addition, the Part abolishes the Industries Assistance Fund and transfers the balance in that fund to the Consolidated Fund. Part 5 also repeals the *State Development and Industries Assistance Act 1966*, which constituted the Minister administering the Act as a corporation sole.

## Part 6 Dissolution of Poultry Meat Industry Committee and Poultry Meat Industry Advisory Group

11. Part 6 dissolves the Poultry Meat Industry Committee and the Poultry Meat Industry Advisory Group and transfers the assets, rights and liabilities of the Committee to the Crown. Part 6 also repeals the *Poultry Meat Industry Act 1986*, under which the Committee was constituted.

## Part 7 Miscellaneous

12. Clause 27 contains provisions governing transfers of assets, rights and liabilities pursuant to Parts 2–6 of the proposed Act.
13. Clause 28 provides that no compensation is payable by or on behalf of the State because of the enactment or operation of the proposed Act or for any consequences of that enactment or operation.

14. Clause 29 provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

### **Schedule 1 Amendment of Film and Television Office Act 1988 No 18**

15. Schedule 1 amends the *Film and Television Office Act 1988* to dissolve the New South Wales Film and Television Office (also known as Screen NSW) and its Board, transfer the assets, rights and liabilities of the Film and Television Office to the Crown and transfers the balance in the New South Wales Film and Television Office Account to the Consolidated Fund. The Schedule also amends the Act to provide for the functions previously exercised by the Film and Television Office to be exercised by the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services and to establish a Film and Television Industry Advisory Committee to advise the Minister on the operation of the film and television industry, among other things.

### **Schedule 2 Amendment of Homebush Motor Racing (Sydney 400) Act 2008 No 106**

16. Schedule 2 amends the *Homebush Motor Racing (Sydney 400) Act 2008* to dissolve the Homebush Motor Racing Authority, its Advisory Board and the Event Implementation Committee and to transfer the assets, rights and liabilities of the Authority to Destination NSW. The Schedule also amends the Act to provide for the functions previously exercised by the Authority to be exercised by Destination NSW.

### **Schedule 3 Consequential amendment and repeal of other legislation**

17. Schedule 3 amends a number of Acts and regulations and repeals the *Homebush Motor Racing (Sydney 400) Regulation 2012* as a consequence of the dissolution of statutory bodies and repeal of a number of Acts by the proposed Act. The amendments generally omit or replace references to the dissolved statutory bodies and former Acts.

## **ISSUES CONSIDERED BY COMMITTEE**

**The Committee makes no comment on the Bill in respect of issues set out in s8A of the Legislation Review Act 1987.**

# 14. Transforming NSW Energy Sector (Towards 100 percent Renewables) Bill 2014 \*

Date introduced	29 May 2014
House introduced	Legislative Council
Member Responsible	Dr John Kaye MLC
	Private Member's Bill

## PURPOSE AND DESCRIPTION

1. The object of this Bill is to reduce the reliance of the State's energy sector on fossil fuel by facilitating movement towards an energy sector completely based on renewable energy sources.
2. This includes requiring the Government of New South Wales to take steps to develop renewable energy and energy efficiency measures that are sufficient to reduce the State's reliance on coal-fired and fossil gas-fired power stations, taking advice from an expert panel.
3. It also includes requiring the Government to stop providing fossil fuel subsidies to the fossil fuel industry and to redirect those funds to renewable energy and energy efficiency measures, acting on the advice of the Independent Pricing and Regulatory Tribunal (IPART).
4. The Bill also proposes to phase out coal-fired and fossil gas-fired power stations by 2030, but guaranteeing ongoing employment of all works at closed power stations.
5. Lastly, the Bill prevents the expansion of the rest of the fossil fuel power industry.

## BACKGROUND

6. Promoted by ongoing concern about the State's reliance on fossil fuels for its energy needs, this Greens' Bill lays out a policy and governance road map to achieve 100 per cent renewables by 2030.
7. The Member with carriage of this Bill, Dr John. Kaye, told Parliament:

Our approach uses regulation to drive public and private sector investment in the renewable energy industry based on a clear timetable to exit from fossil fuels. Our approach is based on the objective of building a robust and resilient economy for New South Wales in new, clean technologies.<sup>2</sup>

## OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.

<sup>2</sup> Dr John Kaye MLC, *Legislative Council Debates*, 29 May 2014 at p29376

9. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
10. Clause 3 defines certain words and expressions used in the proposed Act and contains certain interpretation provisions.
11. Clause 4 specifies the object of the proposed Act (as described in the Overview), which the Government is required to take into account in exercising planning and other functions under the proposed Act.
12. Clause 5 requires the Government to begin planning energy technologies involving renewable sources and energy efficiency measures within 1 month after the commencement of the proposed Act.
13. Clause 6 requires the Government to implement that plan. The technologies and measures involved must be such as to make it possible that at least one coal-fired generator with a capacity of at least 500 megawatts will no longer be required by 2017.
14. Clause 7 requires the Government to consider the object of the proposed Act, and the advice of the Expert Panel established under Part 3 of the proposed Act, when exercising planning and other functions under the proposed Act.
15. Clause 8 requires the Minister to establish the Transforming NSW Energy Sector Expert Panel.
16. Clause 9 specifies the functions of the Expert Panel, which are to examine the full range of energy options permitted by law in New South Wales, provide advice to the Minister on that examination, provide advice on any other matter that the Minister requires and make periodic reports to the Minister.
17. Clause 10 lists the factors to be taken into account by the Expert Panel in exercising its recommendations.
18. Clause 11 requires the Expert Panel to periodically produce reports on increasing the electricity generation capacity of renewable energy technologies and on maximising energy efficiencies.
19. Clause 12 requires members of the Expert Panel to disclose pecuniary interests.
20. Clause 13 requires the Minister to prepare, before the first sitting week of 2015, a timetable for the closure of all existing coal-fired and fossil gas-fired power stations in New South Wales before 2030 and to table that timetable in Parliament. The Minister is also required to give Parliament undertakings guaranteeing the employment security of employees of coal-fired and fossil gas-fired power stations closed under the proposed Act.
21. Clause 14 requires the Government of New South Wales to make every effort reasonably possible to ensure that the timetable tabled under proposed section 13 is met, in particular, to ensure that all existing coal-fired and fossil gas-fired power stations in NSW are closed and decommissioned by 1 January 2030. The operator or former operator of a power station is not entitled to any compensation for any loss or damage suffered as a result of the operation of the proposed section.

22. Clause 15 prohibits the operation of any coal-fired and fossil gas-fired power station after 1 January 2030. The operator or former operator of a power station is not entitled to any compensation for any loss or damage suffered as a result of the operation of the proposed section.
23. Clause 16 prohibits the establishment or expansion of coal-fired power stations. The operator or former operator of a power station is not entitled to any compensation for any loss or damage suffered as a result of the operation of the proposed section.
24. Clause 17 prohibits the establishment of a fossil gas-fired power station with a capacity of 15 megawatts or greater, or the expansion of the capacity of existing fossil gas-fired power stations to 15 megawatts or greater. Any new fossil gas-fired power station must have a plan to transition to 100% renewable gas within 10 years.
25. Clause 18 requires the Treasurer to refer to IPART certain matters relating to fossil fuel subsidies (that is, direct and indirect subsidies to the fossil fuel industry, including mining and combustion that support electricity generation in New South Wales and that arise from the actions and policies of the Government of New South Wales).
26. Clause 19 requires the Treasurer to act on IPART's report.
27. Clause 20 requires the value of the fossil fuel subsidies saved by actions under the proposed Part to be re-directed for the purpose of facilitating development and expansion of the renewable energy and energy efficiency measures recommended by the Expert Panel under the proposed Act.
28. Clause 21 requires new guidelines to be prepared for the assessment and determination of planning proposals involving the establishment or expansion of wind farms.
29. Clause 22 prohibits the disclosure of information acquired by reason of or in the course of the exercise of functions under the proposed Act.
30. Clause 23 protects members of the Expert Panel from personal liability.
31. Clause 24 provides that the proposed Act binds the Crown.
32. Clause 25 provides that proceedings for an offence under the proposed Act may be dealt with summarily before the Local Court or the Supreme Court.
33. Clause 26 enables the Governor to make regulations for the purposes of the proposed Act.
34. Schedule 1 makes provision for the constitution and procedure of the Expert Panel established under the proposed Act.
35. Schedule 2 makes provision for the investigation by IPART of a matter referred to it under Part 6 of the proposed Act.
36. Schedule 3 provides for a feed-in tariff for all distributed renewable energy at a price set by IPART which approximates the relevant retail purchase price, allowing retailers to recover the unused Distribution Use of System charges from the distribution network service providers.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Excessive Penalties*

37. Section 22(2) of the Bill provides that the Minister responsible, a relevant employee, or a person who is or was a member of the Expert Panel, must not directly or indirectly make a record of any information acquired in the course of the exercise of that person's functions of the Bill, or divulge or communicate to any person such information. The maximum penalty for a breach is six months imprisonment.
38. Similarly, Schedule 2 (6)(3) provides that for the purposes of an investigation and report, the Chairperson of IPART may require an officer of a standard retail supplier to send to IPART a statement setting out such information or documents as specified, or attend a meeting or hearing of IPART to give evidence. Schedule 2, (7)(5) provides that IPART may compel certain information to be rendered confidential, the disclosure of which is also an offence subject to a maximum penalty of six months imprisonment.

**The Committee notes that the penalties for offences concerning the disclosure of protected information, or the failure to disclose requested information, may be considered excessive, and disproportionate to the offence committed. The Committee refers this matter to Parliament for its further consideration.**

# 15. Water Management Amendment Bill 2014

Date introduced	29 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon Kevin Humphries MP
Portfolio	Natural Resources, Land and Water

## PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

(a) to amend the *Water Management Act 2000* (the principal Act):

- i to define the term overland flow water and confirm that overland flow water is included in the State's water rights under the principal Act, and
- ii to clarify the meanings of certain terms used in the principal Act and update certain terminology, and
- iii to make further provision with respect to harvestable rights and the matters dealt with by harvestable rights orders, and
- iv to enable a new general dealing with an access licence (called a term water allocation transfer) to be created, and
- v to make further provision with respect to the proper operation of metering equipment and the keeping of metering records, and
- vi to make it an offence for the holder of a bore driller's licence not to ensure that the terms and conditions of the licence are not contravened or for a trainee driller under the holder's supervision to contravene the terms and conditions of the licence, and
- vii to make further provision with respect to the calculation of the balances in water allocation accounts for access licences, and
- viii to re-enact, with certain modifications, uncommenced amendments in the *Water Management Amendment Act 2008* concerning nominated water supply works and water tagging zones, and
- ix to provide for the controlled allocation of access licences for a part of an area or water source and for the setting of the minimum price and participation fees for the acquisition of the right to apply for licences that are subject to controlled allocation, and
- x to enable the consolidation of management plans and approvals, and

- xi to enable the regulations to make provision for the conversion of actual or proposed flood water usage into floodplain access licences, and
  - xii to make other amendments to streamline processes concerning licensing, approvals and the trading of water entitlements, and
  - xiii to make provision for matters of a savings or transitional nature, and
- (b) to amend certain water sharing plans to standardise the use of the expression “worst period of low inflows” into a water source in those plans and clarify its meaning, and
- (c) to make consequential amendments to certain other legislation.

## BACKGROUND

2. This Bill is a package of amendments to the *Water Management Act 2000* that seek to improve the legislative framework for water in New South Wales.

## OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Water Management Act 2000 No 92

### *1.1 Amendments concerning overland flow water and terminology*

5. Schedule 1.1 amends the principal Act:
- (a) to define the term overland flow water and confirm that such water is included in the State’s water rights under the principal Act, and
  - (b) to make it clear that water sources under the principal Act include places with groundwater and alluvial water and places where overland flow water is flowing over or lying for the time being, and
  - (c) to make it clear that a water supply work under the Act includes a work (such as a tank or dam) that is constructed or used for the purpose of capturing or storing overland flow water, and
  - (d) to update terminology by replacing certain references to rainwater run-off with references to overland flow water.

### *1.2 Amendments concerning supplementary water access licences*

6. Schedule 1.2 amends the principal Act:
- (a) to remove the requirement for the Minister to cancel a supplementary water access licence for a regulated river if the management plan for the river ceases to make provision for the extraction of water under the licence, and
  - (b) to enable the holders of supplementary water access licences for regulated rivers to obtain compensation for certain water allocation reductions, and

- (c) to preclude the Minister from cancelling a supplementary water access licence so as to enable the use of water to which the licence relates as planned environmental water, and
- (d) to enable a management plan to make provision for or with respect to the circumstances in which the taking of water pursuant to supplementary water access licences is authorised.

### *1.3 Amendments concerning harvestable rights*

7. Schedule 1.3 amends the principal Act:

- (a) to enable water supply works in addition to dams to be constructed and used to capture and store water in respect of which a harvestable right is exercisable and provide for the kinds of water that may be stored by means of such works, and
- (b) to make it clear that a harvestable right includes a right to take water from a water supply work that has been constructed for the purpose of capturing and storing water within the harvestable rights area concerned, and
- (c) to clarify the kinds of matters with respect to which a harvestable rights order may make provision (including the methodology for the calculation of the maximum capacity of water supply works that may be constructed by landholders to capture water to be used in exercise of harvestable rights), and
- (d) to enable arrangements to be made for the shared use of a water supply work where the work straddles landholdings, and
- (e) to clarify the meaning of a reference to a landholding for the purposes of calculations made under a harvestable rights order, and
- (f) to enable maps referred to in harvestable rights orders to be made available on the internet.

### *1.4 Amendments concerning the controlled allocation of access licences*

8. Schedule 1.4 amends the principal Act to provide that a controlled allocation order with respect to the acquisition of access licences may set minimum prices and participation fees for their acquisition and be limited to part of a water source or water management area.

### *1.5 Amendments concerning term water allocation transfers*

- 9. Schedule 1.5 amends the principal Act to create a new kind of general dealing with an access licence to be called a term water allocation transfer.
- 10. A term water allocation transfer will enable the holder of a certain kind of access licence to transfer, for a specified period, all or part of the entitlement for a water allocation to be credited to the water allocation account for the licence to another person holding such an access licence.
- 11. A term water allocation transfer does not operate to transfer the share component of an access licence to the transferee, but only operates to transfer all or part (as the case requires) of the entitlement to be credited with a water allocation.

***1.6 Amendments concerning metering***

12. Schedule 1.6 amends the principal Act to make amendments to the metering offences in sections 91H and 91J of the Act that are consistent with amendments made to other metering offences in section 91I by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2012*.

***1.7 Amendment concerning bore drilling***

13. Schedule 1.7 amends the principal Act to make it an offence for:
- (a) the holder of a bore driller's licence to fail to ensure that the terms and conditions of the licence are not contravened, or
  - (b) a trainee driller under the holder's supervision to contravene the terms and conditions of the licence.

***1.8 Amendments concerning water allocation accounts and the taking of water***

14. Schedule 1.8 amends the principal Act:
- (a) to create offences by the holders of 2 or more access licences with respect to the taking of water in excess of the combined water allocations under the licences, and
  - (b) to enable management plans to make provision for or with respect to the circumstances in which the holders of regulated river (high security) access licences or regulated river (general security) access licences for an uncontrolled flow may take water from a water source that has not been credited to the water allocation accounts of those licences, and
  - (c) to make amendments in the nature of statute law revision.

***1.9 Amendments concerning nominated water supply works and water tagging zones***

15. Schedule 1.9 re-enacts, with certain modifications, uncommenced amendments in the Water Management Amendment Act 2008 concerning nominated water supply works and water tagging zones. In particular, the modified amendments now create an offence for a failure by a relevant notifier to notify the Minister about the nomination (or withdrawal of a nomination) of a water supply work as a work from which water credited to the interstate equivalent of an access licence may be taken.

***1.10 Amendments concerning the streamlining of licensing and trading processes***

16. Schedule 1.10 amends the principal Act:
- (a) to enable the Minister to refuse to accept the surrender of an access licence or approval in certain circumstances and to enable the Minister to cancel or transfer a surrendered access licence or approval, and
  - (b) to enable an applicant for an access licence or approval to amend or withdraw the application for the licence or approval at any time before it is determined, and
  - (c) to make it clear that an access licence or approval may be granted subject to conditions that are required or permitted to be imposed by the Act, and

- (d) to provide for conditions imposed when an access licence or approval is granted to take effect on the day the licence or approval takes effect, and
- (e) to clarify the circumstances in which conditions of an access licence or approval may be imposed or varied after the licence or approval is granted, and
- (f) to enable the Minister to amend an approval on his or her own initiative in certain circumstances (including when a part of an approval is cancelled or suspended), and
- (g) to enable an application to the Minister for an approval for a dealing with respect to an access licence to include an application for the dealing to be recorded in the Access Register if the Minister consents to the dealing, and
- (h) to provide for an approval to take effect on the day on which notice of the decision to grant the approval has been given to the applicant rather than once appeal rights have been exhausted (as is currently the case), and
- (i) to enable appeals to be made to the Land and Environment Court against decisions of the Minister to amend approvals on his or her own initiative and to recognise that an appeal may be made against a decision to suspend or cancel part of an approval, and
- (j) to provide for the effect of a stay granted by the Land and Environment Court in an appeal against a decision under the principal Act, and
- (k) to clarify when the Minister is to register certain Ministerial action in the Access Register where that action is appealable, and
- (l) to make it clear that the Minister may include discretionary conditions on an access licence or approval that replaces an entitlement under former water legislation and to enable those conditions to be notified after notice of the replacement licence or approval is given to its holder.

### *1.11 Amendments concerning management plans*

17. Schedule 1.11 amends the principal Act:
- (a) to enable the Minister to extend a management plan that is due to expire until the second anniversary of its expiry date (instead of the first anniversary, as is currently the case) unless a replacement plan is made earlier if the Minister decides not to extend the plan for a further 10 year period under section 43A of the principal Act, and
  - (b) to enable the Minister to consolidate 2 or more management plans into a single plan, and
  - (c) to clarify the operation of compensation provisions in the event of the replacement or consolidation of management plans.

### *1.12 Amendments concerning combined approvals*

18. Schedule 1.12 amends the principal Act to enable the Minister to grant 2 or more approvals under the principal Act by means of a single approval document on application or on the Minister's own motion.

*1.13 Amendments concerning floodplain harvesting access licences*

19. Schedule 1.13 amends the principal Act:
- (a) to provide for 2 kinds of access licences for floodplain harvesting, namely, floodplain harvesting (regulated river) access licences and floodplain harvesting (unregulated river) access licences, and
  - (b) to enable the regulations to make provision for or with respect to the conversion of actual or proposed floodplain water usage by landholders into such access licences.

*1.14 Amendments concerning the conversion of former entitlements into access licences*

20. Schedule 1.14 amends the principal Act:
- (a) to make it clear that Schedule 10 to the principal Act operates (and has always operated) to convert a former entitlement to take or use water for domestic or stock purposes into an access licence if that entitlement arises under Part 2 of the *Water Act 1912*, and
  - (b) to make further provision for the calculation of the balance of a water allocation for an access licence that arises from the conversion of a former entitlement under Schedule 10 to the principal Act (including the validation of certain previous calculation of balances).

*1.15 Amendments concerning savings and transitional matters*

21. Schedule 1.15 amends the principal Act:
- (a) to provide that floodplain management plans under the *Water Act 1912* that are converted into Minister's plans under the principal Act on a transitional basis continue in force for 10 years following their conversion, and
  - (b) to include savings and transitional provisions consequent on the enactment of the proposed Act, and
  - (c) to enable the Governor to make regulations of a savings and transitional nature consequent on the enactment of any amending Act (including the proposed Act).

**Schedule 2 Amendment of water sharing plans**

22. Schedule 2 amends certain water sharing plans to standardise the use of the expression "worst period of low inflows" into a water source in those plans and clarify its meaning.

**Schedule 3 Consequential amendment of other legislation**

23. Schedule 3.1 makes amendments to the *Water Management Amendment Act 2008* that are consequential on amendments made by Schedule 1.9 (Amendments concerning nominated water supply works and water tagging zones).
24. Schedule 3.2 makes amendments to the *Water Management (General) Regulation 2011* that are consequential on the amendments made by Schedule 1.13 (Amendments concerning floodplain harvesting access licences).

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Strict liability*

25. Schedule 1.6 amends the metering offences in sections 91H and 91J. The amendments are consistent with amendments made to other metering offences however these offences remain strict liability. The Committee has commented on the strict liability offences contained with the *Water Management Act 2000* on a previous occasion.
26. Section 91M provides a general defence to the Tier 1 offences under the Act, however this defence does not extend to Tier 2 offences. Section 91H and 91J are Tier 2 offences attracting a maximum penalty of:
- i in the case of a corporation, 10,000 penalty units (\$1,100 000) and, in the case of a continuing offence, a further penalty of 1,200 penalty units (\$132 000) for each day the offence continues, or
  - ii in any other case, 2,250 penalty units (\$247 500) and, in the case of a continuing offence, a further penalty of 600 penalty units (\$66 000) for each day the offence continues.

**The Committee will always comment where there is the imposition of strict liability as it may be seen as contrary to the presumption of innocence. However, the Committee also notes that there are circumstances where the imposition of strict liability may be warranted.**

**The Committee considers that the above offences relate to important aspects of the regulatory regime governing water in NSW and as such the imposition of strict liability is aimed at preserving this regulatory scheme and is appropriate in the circumstances. The Committee also notes that important in its consideration on this issue was that no term of imprisonment was provided for in the maximum penalty.**

#### *Retrospectivity*

27. Schedule 1.15 of the Bill includes savings and transitional provisions consequent on the enactment of the proposed Act. A number of provisions extend the amendments contained in the Bill to provisions before the commencement of the amendments.

**The Committee will always be concerned with any retrospective effect of legislation. The Committee is of the view that in the present circumstances the amendments are designed to support the regulatory framework for the management of water in NSW and as such makes no further comment.**

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

#### *Commencement by proclamation*

28. The Bill provides that the Act<sup>3</sup> is to commence on a day or days to be appointed by proclamation.

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<sup>3</sup> Except schedules 1.14 [1], 1.15 and 2 which commence on assent.

**The Committee prefers legislation of this kind, which impacts upon personal rights and liberties, to commence on a fixed date or on assent.**

## Part Two – Regulations

**The Committee does not report on any Regulations in this Digest.**

# Appendix One – Index of Ministerial Correspondence on Bills

**The Committee does not report on any Ministerial Correspondence on Bills in this Digest.**

## Appendix Two – Index of Correspondence on Regulations on which the Committee has reported

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In Digest 12/55, the Committee reported on the Water Management (General) Amendment (Water Sharing Plans) Regulation (No 2) 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
3. In Digest 16/55, the Committee reported on the Home Building Amendment (Threshold for Home Warrant Insurance) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
4. In Digest 12/55, the Committee reported on the Local Government (General) Amendment (Election Procedures) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 21 June 2012 which addresses to the Committee's satisfaction the issues raised.
5. In Digest 15/55, the Committee reported on the Police Amendment (Death and Disability) Regulation 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 9 July 2012 which addresses to the Committee's satisfaction the issues raised.
6. On 8 May 2012 the Committee wrote to the Attorney General in relation to James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012. The Committee was in receipt of a response from the Attorney General dated 10 August 2012 which addressed to the Committee's satisfaction the issues raised. Further information in relation to this can be found in Digest 23/55.