



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 47/55 – 29 October 2013



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2013, 91p 30 cm

Chair: Mr Stephen Bromhead MP

29 October 2013

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 47 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 47 of 55

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

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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:

to consider any Bill introduced into Parliament, and

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,

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

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. BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2013

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

Right against self-incrimination

The Committee notes that requiring a person to provide information that may incriminate them could impact on a person's right against self-incrimination. Proposed section 36(4) of the Bill is also silent about the extent to which self-incriminating information can be used against a person, in particular, whether or not the information can be used in criminal or civil proceedings against the person. The Committee refers this issue to Parliament for 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 assent.

2. CEMETERIES AND CREMATORIA BILL 2013

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

Self-Incrimination

The Committee generally considers that provisions in which self-incrimination is not an excuse to providing documents or answering questions may be a trespass on individual right and liberties. However, given the safeguards provided for in this Bill, including the warnings to be given and objections that are allowed to be made, the Committee makes no further comment.

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

Matters set by Regulations

The Committee considers that enabling the regulations to prescribe certain offences and set the applicable penalties may be considered an inappropriate delegation of legislative power. The Committee makes no further comment.

Commencement by Proclamation

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

3. COMBAT SPORTS BILL 2013

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

Increased penalties

The penalties for offences associated with a combatant not having a current serological clearance will increase significantly under the Bill. However, the Committee notes that breaching such provisions could potentially have serious health consequences for other combatants and, for this reason, makes no further comment.

Right against self-incrimination

The Committee notes that requiring persons to provide information even though it may incriminate them or expose them to a penalty could impact on a person's right against self-incrimination. However, clause 87 states that such information will not be admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the information or document. For this reason, 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 and which replaces existing legislation, commences on a fixed date or assent.

4. CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT BILL 2013

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

Liberty and Privacy

Schedule 1, items 19, 20 and 21 of the Bill expand the powers of a police officer. The Committee notes that although breach of an apprehended domestic violence order may be a criminal offence, the order itself is a civil order and issue of the order is a civil matter. The Committee is concerned about the effect of these amendments on vulnerable defendants. However, given the Bill's objects, the Committee makes no further comment.

New offence

The Bill contains significant penalties for making a false statement in applying for an apprehended personal violence order. However, the Committee notes the false statement must be intentional thereby safeguarding against a mentally ill person being penalised for making a false statement. In addition, the new offence will protect innocent people from false or vexatious apprehended personal violence orders. For these reasons, 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.

5. GOVERNMENT SECTOR EMPLOYMENT LEGISLATION AMENDMENT BILL 2013

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

6. MOTOR DEALERS AND REPAIRERS BILL 2013

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

By providing that a person may be excluded from being able to obtain a licence under the Bill if there is reason to believe the person regularly associates with members of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012*, and regardless of whether the person has him or herself committed any offence, clause 27 of the Bill may unduly impact on the right to freedom of association. The Committee notes the objectives of the Bill and makes no further comment.

Natural Justice

By providing the Secretary is not required to give a person an opportunity to be heard before temporarily suspending his or her licence, clause 42 of the Bill may unduly impact on that person's right to be afforded natural justice. Nonetheless, as the suspension must not be for more than 60 days, the Committee makes no further comment.

Increased Penalty

The Committee notes clause 52 of the Bill significantly increases the maximum penalty for tampering with an odometer. However, given the consumer protection objects of the Bill, the Committee makes no further comment.

Entry, Search and Seizure Without Warrant

The Committee notes clause 151 of the Bill allows authorised officers entry, search and seizure powers without the requirement to obtain a warrant. Clause 153 of the Bill allows police similar powers. These powers may be used without the need for authorised officers and police officers to have a reasonable suspicion that a contravention of the Bill or another law has been committed by a person connected with the premises so entered. Therefore, clauses 151 and 153 may expose people to arbitrary search, seizure and entry. The Committee refers this matter to Parliament for further consideration.

Right Against Self-Incrimination

The Committee notes that in requiring a person to answer the questions of an authorised officer, and to otherwise furnish information, without providing an exception for information that may incriminate the person, clause 151 of the Bill may unduly impact on the person's right against self-incrimination. The Committee refers the matter to Parliament for further consideration.

Strict Liability

By providing for director's liability for certain offences committed by a corporation where the director ought reasonably to have known that the offence was being committed, clause 159 of the Bill imposes strict liability. While the maximum penalty for one of the relevant offences under the Bill (carrying on a motor vehicle repairs business unlicensed) is significant – a \$110,000 fine or imprisonment for 12 months or both - the imprisonment can only be imposed for second or subsequent offences. Given this and the consumer protection objects of the Bill, the Committee makes no further comment.

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

Ill-Defined and Wide Power

In the Committee's view, by providing that the Secretary must not grant a licence if satisfied that the applicant is "not likely to carry on the business for which the licence is sought honestly and fairly" without providing further guidance as to how the Secretary would reach this decision, clause 25(4) of the Bill provides the Secretary with an ill-defined and wide power.

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

No Requirement to Give Reasons

The Committee notes the Secretary is not required to give reasons for refusing a licence application or taking disciplinary action against a person to the extent that giving the reasons would disclose a criminal intelligence. However, as this exemption is limited to cases where reasons would disclose a criminal intelligence, the Committee makes no further comment.

Excludes Judicial Review

The Committee notes the Bill does not provide for independent oversight of the Secretary's claim determinations relating to the Motor Dealers and Repairer's Compensation Fund.

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.

7. NATIONAL DISABILITY INSURANCE SCHEME (NSW ENABLING) BILL 2013

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

Official Powers

The Committee notes that State employees may have a preference to work for the agency to which they applied to work, or a general preference to work in the public sector. However, given the objects of this Bill, and the fact that Part 3 of the Bill provides for the continuity of employment entitlements of employees transferred, the Committee makes no further comment.

Denial of Certain Civil Law Remedies

The Committee is concerned that by removing certain civil law remedies the Bill may impact on the rights and liberties of individuals. However, given the Bill's objects the Committee makes no further comment.

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 by listing "any Act that amends this Act" rather than listing the names of each of those amending Acts, schedule 3 of the Bill is of limited clarity. The Committee prefers the name of each Act to be listed to avoid this lack of clarity. However, as schedule 3 relates to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertions ensure these schedules are comprehensive, the Committee makes no further comment.

8. PLANNING BILL 2013; PLANNING ADMINISTRATION BILL 2013

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

Retrospectivity, Denial of Compensation

The Committee notes that the development consents can be revoked without compensation payable, and with retrospective effect. However, given these provisions are reserved for instances where development consents have been tainted by corruption, the Committee does not consider these provisions to be unreasonable in the circumstances.

Ancillary Offences

The Committee notes that the Bill provides that an individual is liable to the same penalty for ancillary offences as to the principal offence. In some cases, the gravity of the ancillary offence is inferior to the principal offence. As such, the Committee considers the penalty provisions may be disproportionate to the offence committed.

Search and Seizure

The Committee notes that the search and seizure powers authorise investigating officers to search property in a manner that may cause damage. However, their ability to do this is tempered by requirements that care is given during their search, and that affected parties be compensated for any damage caused. Given these safeguards, the Committee makes no further comment.

Self-Incrimination

The Committee generally considers that provisions in which self-incrimination is not an excuse to providing documents or answering questions to be a trespass on individual right and liberties. However, given the safeguards provided for in this Bill, including the warnings to be given and objections that are allowed to be made, the Committee makes no further comment.

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

Matters Set by Regulation

The Committee considers that enabling the regulations to prescribe certain offences and set the applicable penalties may be considered an inappropriate delegation of legislative power.

Matters Set by Regulation

The Committee considers that regulations that may create offences punishable by a penalty of up to \$110,000 may be an inappropriate delegation of legislative power to the executive.

Commencement by Proclamation

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

PART TWO – REGULATIONS

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

Part One - Bills

1. Building and Construction Industry Security of Payment Amendment Bill 2013

Date introduced	24 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Finance and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Building and Construction Industry Security of Payment Act 1999* (the **Principal Act**) with respect to payments to be made under construction contracts (including the timing of, and other requirements for, those payments).

BACKGROUND

2. The purpose of the Bill is to introduce reforms to enhance protection for subcontractors and to promote cash flow and transparency in the contracting chain. The Minister's second reading speech notes that over the three financial years to 2011-12, insolvencies in the NSW construction industry have accounted for at least 50 per cent of insolvencies across all States and Territories and that over the last two financial years, more than 1,000 construction companies have entered external administration in NSW.
3. In August 2012, the NSW Government established the Independent Inquiry into Construction Industry Insolvency, which was chaired by Bruce Collins QC. The Inquiry found, among other things, that subcontractor payment cycles are unacceptably long and that late, delayed or reduced payments are common, which contributes to financial stress for contractors and increases the risk of insolvency. The Bill represents the first phase of the reforms in response to the Inquiry.

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.

Schedule 1 Amendment of Building and Construction Industry Security of Payment Act 1999 No 46

Due date for making progress payments

6. Section 11 of the Principal Act is amended so that a progress payment to a head contractor by the principal becomes due and payable no later than 15 business days after the payment claim is made, and a progress payment to a subcontractor becomes due and payable no later than 30 business days after the payment claim is made. See Schedule 1 [3].
7. Section 11 of the Principal Act is also amended so that a construction contract has no effect to the extent it allows payment of a progress payment at a later date. See Schedule 1 [4].
8. The exemption from the Act that currently applies to a residential construction contract between a head contractor and a consumer (the **main contract**) is extended for the purposes of the amendments to section 11 so that those amendments will not apply to a residential construction contract that is connected with the main contract.

Removal of requirement for statement that a payment claim is made under the Principal Act

9. Section 13 of the Principal Act is amended to remove the requirement that a payment claim must state that it is made under the Principal Act. The requirement will continue to apply for residential construction contracts that are connected with a residential construction contract between a head contractor and a consumer. See Schedule 1 [5].

Requirement for a payment claim to be accompanied by a supporting statement

10. Section 13 of the Principal Act is amended to make it an offence:
 - (a) for a head contractor to serve a payment claim on the principal unless the claim is accompanied by a supporting statement, or
 - (b) for a head contractor to serve a payment claim on the principal accompanied by a supporting statement knowing that the supporting statement is false or misleading in a material particular.
11. A supporting statement is a statement that is in the form prescribed by the regulations and that includes a declaration to the effect that all subcontractors have been paid all amounts that have become due and payable. See Schedule 1 [6]. The new supporting statement requirements do not apply to the head contractor under a residential construction contract with a consumer because those contracts are already exempt from the Principal Act.

Investigation of compliance with provisions regarding supporting statements

12. Proposed new section 36 of the Principal Act provides for the appointment of authorised officers who may require a head contractor or associated persons to provide information or documents relating to compliance with the new provisions of section 13 about supporting statements. Proposed new section 36A states how documents produced are to be dealt with. Proposed new section 36B provides for secrecy concerning information and documents that are produced. See Schedule 1 [8].

Savings and transitional provisions

13. Schedule 2 to the Principal Act is amended to authorise regulations to be made prescribing matters of a savings or transitional nature consequent on the amendment of the Principal Act, and to provide that an amendment made by the proposed Act does not apply in relation to a construction contract entered into before the commencement of the amendment. See Schedule 1 [9] and [10].

Other amendments

14. The Bill contains other amendments to the Principal Act of a minor, consequential or ancillary nature. See Schedule 1 [1], [2] and [7].

ISSUES CONSIDERED BY COMMITTEE

Trespasses on personal rights and liberties: s 8A(1)(b)(i) of the LRA*Right against self-incrimination*

15. Proposed section 36 provides that an authorised officer can require a person (including a person whom the officer reasonably believes is or was a head contractor) to provide the officer with information and all documents relating to compliance with proposed section 13(7) and (8). Proposed section 13(7) makes it an offence for a head contractor to serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to the payment claim. Proposed section 13(8) makes it an offence for a head contractor to serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular.
16. Proposed section 36(4) provides that a person is not excused from providing information or a document in response to a notice from an authorised officer on the ground that the information or document may tend to incriminate the head contractor.

The Committee notes that requiring a person to provide information that may incriminate them could impact on a person's right against self-incrimination. Proposed section 36(4) of the Bill is also silent about the extent to which self-incriminating information can be used against a person, in particular, whether or not the information can be used in criminal or civil proceedings against the person. The Committee refers this issue to Parliament for further consideration.

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

17. Clause 2 provides that the Act commences 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 assent.

2. Cemeteries and Crematoria Bill 2013

Date introduced	24 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Minister for Primary Industries

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria, through the creation of new statutory agency, Cemeteries and Crematoria NSW.
2. The Bill also seeks to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency, and integrity.
3. The Bill seeks to recognise the right of all individuals to a burial, internment or cremation, ensures the treatment of their remains with dignity, and that the practices and beliefs of all religious and cultural groups are respected.

BACKGROUND

4. This Bill has been prompted by concerns that burial sites in the Sydney metropolitan area will reach capacity within 30 to 40 years, together with the absence of ongoing regulation. The Bill is the first, comprehensive piece of legislation on the matter and provides for the establishment of a new agency to provide for the oversight and regulation of cemeteries and crematoria in 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.
7. Clause 3 states the objects of the proposed Act.
8. Clause 4 provides that certain words or expressions are defined in the Dictionary to the proposed Act or have the same meaning as in the Crown Lands Act 1989. It also states that references in the proposed Act to a cemetery in general extend to include references to a crematorium and to part of a cemetery or crematorium and references to a cemetery operator include references to a crematorium operator or an operator of part of a cemetery or crematorium.
9. Clause 5 describes the relationship between the proposed Act and certain other legislation.
10. Clauses 6–11 constitute Cemeteries and Crematoria NSW (the Cemeteries Agency) as a body corporate and deal with its management, control and staff. All decisions relating to

the functions of the Cemeteries Agency are to be made by or under the authority of the Board of the Cemeteries Agency (the Board). The Chief Executive Officer of the Cemeteries Agency is responsible for the day-to-day management of the affairs of the Cemeteries Agency subject to the policies and directions of the Board.

11. Clauses 12 and 13 set out the principal functions of the Cemeteries Agency and make it clear that the Cemeteries Agency may do all acts necessary or expedient for the exercise of its functions.
12. Clauses 14 and 15 set out some ancillary functions of the Cemeteries Agency. These include a reserve power to acquire land and transfer it to the operator of a Crown cemetery trust or other cemetery operator in specified circumstances if the Cemeteries Agency considers it is necessary to do so to ensure equitable access to interment services by all religious and cultural groups (clause 14).
13. Clause 16 provides for the constitution of the Board and the voting rights of its members.
14. Clauses 17–21 contain provisions requiring the honest and diligent conduct of, and the disclosure of personal interests by, voting members of the Board. A person who contravenes such a provision is liable to a civil penalty.
15. Clauses 22–25 contain provisions relating to financial matters, including the establishment of a Cemeteries Agency Fund, the amounts to be paid into and out of that Fund and investment powers in relation to the Fund. Clause 24 enables the Cemeteries Agency to impose general and special levies on operators of cemeteries, or classes of cemetery, prescribed by the regulations. General levies are contributions towards the cost of the administration of the proposed Act to the extent that it relates to cemeteries. Special levies may be imposed as a contribution towards the cost of acquiring land under clause 14. Contributions by way of a special levy will not be able to exceed an amount in total to be prescribed by the regulations.
16. Clause 26 defines interment industry to include the operators of cemeteries, funeral directors, funeral contribution funds and other persons, or persons of a class, prescribed by the regulations.
17. Clause 27 requires the Cemeteries Agency to keep a register of cemeteries and crematoria. An operator of a cemetery must not fail to provide the Cemeteries Agency with certain information prescribed as information that must be included in the register or fail to notify material changes in that information. An operator who contravenes this provision is liable to a civil penalty.
18. Clauses 28–30 provide for the development and approval of codes of practice to provide guidelines regarding activities of participants in the interment industry or sectors of the industry. The Cemeteries Agency may develop a code of practice on its own initiative or in collaboration with interment industry participants. Compliance with a code of practice will not be mandatory unless made so by a regulation establishing an interment industry scheme under proposed
19. Clauses 31 and 32 provide for the establishment by the regulations of an interment industry scheme following consultation with participants in the interment industry that will be affected. A scheme may, for example, require compliance with the whole or part

of a code of practice, require the operators of cemeteries to ensure adequate provision is made for perpetual care of interment sites or require the licensing of activities, persons or businesses providing interment services. A person who fails to comply with a requirement of a scheme that applies to the person is liable to a civil penalty.

20. Clauses 33–35 enable the Cemeteries Agency to issue an improvement notice requiring the operator of a cemetery to end a contravention of a provision of an interment industry scheme or take action to remedy the consequences of the contravention within a stated time. An operator who contravenes an improvement notice by failing to end a contravention of a provision of an interment industry scheme is liable to a civil penalty. If the operator fails to remedy the consequences, the Cemeteries Agency may take action to do so and the cost of that action will be payable by the operator.
21. Clauses 36–38 enable the Cemeteries Agency to order operators of cemeteries to take specified action or refrain from taking specified action if it considers the making of the order to be reasonably necessary in the public interest to prevent or lessen a serious threat or risk to the achievement of an object of the proposed Act pending the making of a regulation under proposed section 31 establishing an interment industry scheme that makes provision for a mandatory code of practice requirement. An operator who contravenes a short term order is liable to a civil penalty.
22. Clauses 39 and 40 enable the Cemeteries Agency to accept undertakings to take action or refrain from taking action from a person who the Cemeteries Agency considers has contravened the proposed Act, the regulations or a provision of an interment industry scheme. An undertaking will be able to be enforced (including by the making of orders relating to compensation) by the Local Court or any other court or tribunal prescribed by the regulations.
23. Clauses 41–43 enable the Cemeteries Agency to require cemetery operators to report to the Cemeteries Agency about the operators' performance in managing cemeteries and to keep certain records. An operator who fails to comply with the reporting and record requirements is liable to a civil penalty. At present, provisions of the Crown Lands (General Reserves) By-law 2006 (the CL By-law) provide for a burial licence scheme for Crown cemeteries for which a reserve trust has been established under the Crown Lands Act 1989. A burial licence entitles its holder to a right of burial with respect to a particular place and, under the common law, a right to remain interred until dissolution arises on burial. The proposed Part incorporates the current provisions with necessary adaptations to provide for one form of authority (an interment right) giving both a right to burial in a particular place and a further right to remain interred undisturbed for all cemeteries. The duration of that right will depend on whether the interment right is a perpetual interment right or a renewable interment right within the meaning of clause 47.
24. Clause 45 provides for the application of the proposed Division. It makes it clear that burial licences granted under the Crown Lands Act 1989 and other rights, licences or entitlements that are similar in nature to interment rights given before the commencement of the proposed section under the proposed Division are preserved unless otherwise provided.
25. Clause 46 states the nature of an interment right given under the proposed Division. An interment right requires the cemetery operator:

- (a) to permit the interment of the remains of the person to whom it relates at the site in a cemetery identified in, or in accordance with, the interment right, and
- (b) to permit any such interment in accordance with the cultural or religious practice applicable to the part of the cemetery in which the interment site is located at the time the interment right is granted, and
- (c) to permit a memorial to the deceased person to be erected at the site with the approval of the cemetery operator, and
- (d) to leave the remains undisturbed in perpetuity (or, in the case of a renewable interment right, until such time as the remains may be disturbed or removed in accordance with the proposed Act) unless disturbance or removal at an earlier time is requested or authorised by the holder of the interment right, and
- (e) to leave any memorial to the deceased person lawfully erected at that site, with the permission of the cemetery operator, undisturbed (provided the interment right remains in force and the memorial is kept in good repair) until such time as the memorial may be disturbed in accordance with the proposed Act unless disturbance at an earlier time is requested or authorised by the holder of the interment right.

A cemetery operator who disturbs remains or a memorial in contravention of the provisions described in paragraph (d) and (e) is liable to a civil penalty.

Subject to the regulations, a cemetery operator must also ensure that any remains that are disturbed or removed are dealt with in accordance with any cultural or religious practices applicable to the remains.

- 26. Clauses 47 and 48 describe the types and duration of interment rights. An interment right may be granted in perpetuity (a perpetual interment right) or for the period an interment right granted under proposed section 54 remains in force (a renewable interment right).
- 27. Clauses 49–51 provide for the bequeathal of interment rights, the effect of intestacy of the holder of such a right and for the devolution of the right on the death of a joint holder. They essentially mirror clauses 31–33 of the CL By-law with necessary modifications for the wider application of the provisions explained above.
- 28. Clause 49 requires the executor of the estate of the holder of an interment right who has bequeathed the right to notify the cemetery operator of the death of the holder. This is to enable the operator to more easily comply with the requirements of the proposed Act concerning the keeping of a cemetery operator’s register (clause 63).
- 29. Clauses 52 and 53 provide for the revocation of unexercised perpetual interment rights and payment of compensation on revocation. They are similar to clauses 34 and 35 of the CL By-law. Subdivision 3 Renewable interment rights
- 30. Clause 54 provides for the grant and renewal of renewable interment rights. A renewable interment right is granted for an initial term of up to 99 years for cremated remains and 25 years for human remains other than cremated remains. The right may (and in specified cases must) be renewed by the operator on application by the holder

for further terms of at least 5 years so long as the aggregate of the initial and any further terms does not exceed 99 years.

31. Clause 55 provides for the re-use of an interment site 2 years after the expiration of a renewable interment right. An interment site can only be re-used after the notice requirements set out in the clause have been complied with and the necessary authorisations obtained. Before an interment site is re-used, the cemetery operator must ensure that any cremated remains are returned to the holder of the right or scattered in the cemetery and that any bodily remains of a deceased person found at the site are placed in an ossuary box and re-interred at a greater depth or placed in an ossuary house or similar place. An interment site cannot be re-used if this requirement cannot be complied with because of the insufficiently decomposed state of such bodily remains or if certain specified memorials are erected on the site. In any case, an interment site cannot be reused until human remains of a deceased person (other than cremated remains) that are interred in the site have been interred for at least 10 years (or such other period as may be prescribed by the regulations). A cemetery operator who contravenes certain of these requirements is liable to a civil penalty.
32. Subdivision 4 Grant and transfer of interment rights generally
33. Clauses 56–62 contain provisions relating to the grant and transfer of interment rights. The provisions relating to transfer largely mirror (with necessary modifications) clauses 28–30 of the CL By-law.
34. Clause 63 requires the operator of a cemetery to maintain a register containing particulars relating to the grant of interment rights and other specified events. Operators will also be required to include particulars relating to burials and cremations. This requirement will replace the requirement to keep registers of these matters under the Public Health Regulation 2012. An operator who contravenes these requirements is liable to a civil penalty.
35. Clauses 64–68 contain provisions concerning the keeping of registers and documents and the exhumation and interment of bodies. An operator who contravenes certain such provisions under proposed section 64 is liable to a civil penalty.
36. Clause 69 requires a cemetery operator to establish a heritage advisory committee if renewable interment rights are offered.
37. Clauses 70–75 largely mirror the provisions of clauses 34A–34F of the CL By-law with necessary modifications to enable such a scheme to be implemented by the operator of any cemetery (not only for a reserve dedicated or reserved for cemetery purposes under the Crown Lands Act 1989) with the approval of the Cemeteries Agency. Approval of a renewal scheme for a cemetery enables the re-development of existing parts of the cemetery to accommodate new burial sites and locations for memorials.
38. Clause 76 creates an offence concerning conduct in cemeteries.
39. Clause 77 defines certain terms and expressions used in the proposed Part.
40. Clause 78 enables the Cemeteries Agency to exempt a Crown cemetery operator, class of Crown cemetery operators, trust member or class of trust members from the operation of provisions of the proposed Part.

41. Clauses 79–86 mirror (with necessary modifications) section 92 (6)–(6B) and related provisions of the Crown Lands Act 1989 so that the affairs of reserve trusts for cemetery and crematorium, and related, purposes established after the commencement of proposed section 79 will be managed by trust members appointed under the proposed Act instead of that Act.
42. Clauses 87–91, 93 and 94 contain provisions requiring the honest and diligent conduct of, and the disclosure of personal interests by, trust members. A person who contravenes such a provision is liable to a civil penalty. Clause 92 requires a Crown cemetery operator to prepare a code of conduct to be complied with by trust members. This requirement and the provisions of such a code will apply to both trust members appointed under the proposed Act and those appointed under the Crown Lands Act 1989 before the commencement of the new provisions.
43. Clause 95 protects certain persons from personal liability for acts or omissions done in good faith in the course of managing the affairs of a Crown cemetery trust.
44. Clauses 96–98 require a Crown cemetery operator to prepare a strategic plan identifying the main priorities for the future of a Crown cemetery in the period to which the plan relates in accordance with guidelines made by the Cemeteries Agency. This requirement will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the Crown Lands Act 1989 before the commencement of the new provisions.
45. Clauses 99–104 require a Crown cemetery operator to prepare a draft plan of management in accordance with guidelines made by the Cemeteries Agency and to submit it to the Cemeteries Agency for adoption. If a plan of management is adopted, the operator must carry out and give effect to it and no operations may be undertaken in relation to the cemetery except in accordance with the plan. This requirement will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the Crown Lands Act 1989 before the commencement of the new provisions.
46. Clauses 105–108 contain provisions relating to financial and audit matters such as annual reports. The requirements will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the Crown Lands Act 1989 before the commencement of the new provisions. The provision relating to annual reports will only apply in respect of a financial year commencing on or after 1 July 2014 (see clause 8 of Schedule 3). A Crown cemetery operator who fails to comply with a direction given by the Cemetery Agency under proposed section 107 (1) concerning provision of information relating to a financial report or operations is liable to a civil penalty.
47. Clauses 109–111 require a trust board to establish a finance committee, an audit and risk committee and a community advisory committee in accordance with guidelines made by the Cemeteries Agency and contain provisions with respect to the membership and procedure of such committees.
48. Clauses 112 and 113 contain provisions with respect to the powers exercisable by Crown cemetery operators, including the powers to fix fees and charges.

49. Clauses 114–117 are provisions with respect to proceedings for offences and the issue of penalty notices.
50. Clauses 118–128 are provisions with respect to proceedings in respect of civil penalty provisions.
51. Clauses 129 and 130 are provisions with respect to proceedings for the issue of civil infringement notices in respect of civil penalty provisions.
52. Clauses 131–133 provide for the appointment, scope of authority and identification of authorised officers.
53. Clauses 134–142 deal with the powers of authorised officers.
54. Clauses 143 and 144 make it an offence to obstruct an authorised officer in the exercise of his or her functions under the proposed Act or to impersonate an authorised officer.
55. Clause 145 provides for the service of documents under the proposed Act.
56. Clause 146 provides for the exchange of information between the Cemeteries Agency and specified government agencies.
57. Clause 147 protects certain persons from personal liability for acts or omissions done in good faith.
58. Clause 148 enables the Governor to make regulations for the purposes of the proposed Act.
59. Clause 149 provides for the review of the proposed Act in 5 years.
60. Schedule 2 contains provisions dealing with the constitution and procedure of trust boards. These substantially mirror Schedules 3 and 5 of the Crown Lands Act 1989.
61. Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.
62. Schedule 4 transfers the provisions of the Conversion of Cemeteries Act 1974 to the proposed Act so as to enable its repeal and the consolidation of the provisions in the proposed Act.
63. Schedule 5 transfers the provisions of a number of Acts and subordinate instruments relating to certain cemeteries and crematoria so as to enable their repeal and the consolidation of the provisions in one Act. It also enables regulations to be made modifying the application of those provisions for the purposes of the proposed Act.
64. Schedule 6 makes consequential amendments to the Acts and subordinate instruments specified in the Schedule. It also includes amendments to section 8 of the Summary Offences Act 1988 to extend the application of that section to conduct related to an interment site in a cemetery.
65. The Dictionary to the proposed Act defines certain terms and expressions used in the proposed Act

ISSUES CONSIDERED BY COMMITTEE

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

Self-Incrimination

66. Section 142(2) provides that a person is not excused from answering any question or providing any document for investigation of an offence under the Bill that might incriminate that person or make them liable for a penalty. The Committee generally considers such provisions may breach the right against self-incrimination.
67. However, the Committee notes that section 142(3) provides that any answer given or document provided is inadmissible in evidence against that person if the person concerned had objected to complying on the grounds that it might incriminate them, or if the person was not warned that complying might incriminate them.

The Committee generally considers that provisions in which self-incrimination is not an excuse to providing documents or answering questions may be a trespass on individual right and liberties. However, given the safeguards provided for in this Bill, including the warnings to be given and objections that are allowed to be made, the Committee makes no further comment.

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

Matters set by Regulations

68. Section 117(7) provides that the regulations may prescribe certain offences, together with the amount of penalty payable for the offences. The maximum penalty to be set by the regulation is only limited through section 117(8) which provides that the amount of a penalty prescribed is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
69. The Committee notes that offences and penalties are ordinarily matters that should be set by Parliament to enable sufficient scrutiny and oversight of the proposed offences and their attendant penalties. The Committee also notes that the parameters set by the Bill for the making of offences and penalties by regulation, are limited.

The Committee considers that enabling the regulations to prescribe certain offences and set the applicable penalties may be considered an inappropriate delegation of legislative power. The Committee makes no further comment.

Commencement by Proclamation

70. Section 2 will provide that the Act commences 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 assent.

3. Combat Sports Bill 2013

Date introduced	23 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Gabrielle Upton MP
Portfolio	Sport and Recreation

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to regulate the combat sport industry by requiring the registration of combatants, industry participants and promoters,
 - (b) to require permits for combat sport contests and to approve amateur bodies responsible for amateur combat sport contests,
 - (c) to regulate the conduct of combat sport contests, including providing for health and safety requirements,
 - (d) to provide for sanctions and the enforcement of the proposed Act, including orders excluding persons from the combat sport industry,
 - (e) to provide for the continuation and regulatory functions of the Combat Sports Authority of New South Wales (the Authority),
 - (f) to confer a right to appeal against certain decisions under the proposed Act to the Administrative Decisions Tribunal (the Tribunal),
 - (g) to repeal the Combat Sports Act 2008 and to make other consequential amendments as a result of the enactment of the proposed Act,
 - (h) to enact savings and transitional provisions as a result of the enactment of the proposed Act.

BACKGROUND

2. The reforms proposed by the Bill were developed in response to a recent review of the current *Combat Sports Act 2008*. The review included consultation with venue operators, health and safety bodies, government agencies and NSW Police. The review also involved a discussion paper, a web-based survey, and workshops with promoters, managers and amateur sanctioning bodies.
3. The review found that new combat sports should be regulated until it is demonstrated that they are sufficiently safe so as not to justify regulation; that current health and safety arrangements for combatants are inadequate; that an enhanced fit and proper person assessment process is required; and that promoters should be accountable for the contests that they organise and hold.

4. The changes proposed by the Bill are intended to strengthen the regulation of combat sports to better promote the health and safety of those participating in these sports and the integrity of combat sports contests.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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. Clause 3 sets out the objects of the proposed Act.
8. Clause 4 defines words and expressions used in the proposed Act.
9. Clause 5 defines **professional combat sport contest**.
10. Clause 6 defines the persons who are **industry participants** for the purposes of the proposed Act.
11. Clause 7 defines **serological clearance** and **current serological clearance**.
12. Clause 8 enables the Minister, on the recommendation of the Authority, to approve a body as an **approved amateur body** for a specified style, or styles, of combat sport for the purposes of the proposed Act.

Part 2 Registration of combatants and industry participants

Division 1 Registration of combatants

13. Clause 9 makes it an offence to engage in a combat sport contest as a combatant without being registered in the applicable registration class for the contest.
14. Clause 10 provides that the Authority is to determine the registration classes for combatants and that separate classes are to be determined for individual styles of combat sport and for professional and amateur combat sport contests for the same style of combat sport.
15. Clause 11 sets out the requirements for applications to the Authority for registration, including requirements that a certificate of fitness and current serological clearance be provided by an applicant.
16. Clause 12 prohibits a person under the age of 18 years from being registered for a registration class applicable to any professional combat sport contest.
17. Clause 13 empowers the Authority to register combatants if they are fit and proper persons, meet any age or other pre-conditions for registration and are not controlled members of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012*. The Authority may refuse to register a combatant if of the opinion that it is not in the interests of the health or safety of the person. Registration for the first time in a registration class for a professional combat sport contest must be delayed by the Authority for at least 21 days after the application is made.

18. Clause 14 enables the Authority to impose conditions on the registration of a combatant and to revoke or vary any such conditions. The regulations may also prescribe conditions of registration.
19. Clause 15 sets the term of registration as 3 years, subject to any extension or reduction under the proposed Act. The Authority may extend the term of registration for the purpose of having all classes of registration of a combatant expire at the same time.
20. Clause 16 provides that a person who is, or has been, registered as a combatant for a class of professional combat sport contest cannot be subsequently registered as an amateur combatant for that style of combat sport unless the person has never competed for a monetary prize or other valuable reward. The registration of a person for amateur combat sport contests for a style of combat sport is cancelled if the person is subsequently registered for professional combat sport contests of the same style of combat sport.
21. Clause 17 requires the Authority to keep a register of combatants.

Division 2 Medical record books

22. Clause 18 requires the Authority to issue each registered combatant with a medical record book. In the case of a combatant with an equivalent record issued by another jurisdiction, the Authority need not issue a medical record book and the equivalent record will be taken to be a medical record book.
23. Clause 19 enables regulations to be made for or with respect to medical record books.

Division 3 Registration of industry participants and promoters

24. Clause 20 makes it an offence for an individual to carry out an activity as an industry participant or to arrange a combat sport contest without being registered in the applicable registration class as an industry participant or a promoter. It also makes it an offence for a corporation to carry out activities as an industry participant or to arrange a combat sport contest, except where an activity or contest is carried out or arranged by an officer or employee who is registered.
25. Clause 21 makes it an offence for a person to hold himself or herself out as being an industry participant or a promoter for the purposes of a combat sport contest unless the person is registered for the relevant class of combat sport contest.
26. Clause 22 provides that the Authority is to determine the registration classes for industry participants and promoters and that separate classes are to be determined for individual styles of combat sport and for professional and amateur combat sport contests.
27. Clause 23 sets out the requirements for applications to the Authority for registration as an industry participant or promoter.
28. Clause 24 prohibits a person under the age of 18 years from being registered for a registration class applicable to a manager, match-maker or promoter.
29. Clause 25 empowers the Authority to register industry participants and promoters if they are fit and proper persons, meet any age or other pre-conditions for registration

and are not controlled members of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012* and are not the subject of a determination by the Commissioner of Police that they are not fit and proper persons or that registration is contrary to the public interest (an ***adverse security determination***).

30. Clause 26 requires applications for registration for a registration class applicable to a manager, match-maker or promoter to be referred to the Commissioner of Police for investigation and determination of whether the applicants are fit and proper persons or it is contrary to the public interest for the applicants to be registered.
31. Clause 27 enables the Authority to impose conditions on the registration of an industry participant or promoter and to revoke or vary any such condition. The regulations may also prescribe conditions of registration.
32. Clause 28 sets the term of registration as 3 years, subject to any extension or reduction under the proposed Act. The Authority may extend the term of registration for the purpose of having all classes of registration of an industry participant or promoter expire at the same time.
33. Clause 29 requires the Authority to keep a register of industry participants and promoters.

Division 4 Disciplinary and other provisions

34. Clause 30 sets out the grounds on which disciplinary action may be taken by the Authority against a registered combatant, industry participant or promoter. The grounds include contravening the proposed Act or regulations or rules under the proposed Act, contravening a law of another jurisdiction that would constitute such a contravention in this State, contravening a condition of registration or a permit or not being a fit or proper person to be registered.
35. Clause 31 requires the Authority to give a show cause notice to a person before taking disciplinary action against the person and to consider any response by the person to the notice. The notice is to specify the grounds for proposed disciplinary action, the proposed disciplinary action and the time within which the person given the notice is to respond to the notice.
36. Clause 32 enables the Authority to suspend a registration when a show cause notice is given, pending a decision about whether to take disciplinary action.
37. Clause 33 provides that the Authority may take disciplinary action against a registered combatant, industry participant or promoter if the Authority is of the opinion that there are grounds on which the action may be taken and that the person has not shown sufficient reasons why action should not be taken. The disciplinary actions that may be taken are cancelling registration, suspending registration, reducing the period of registration, imposing or varying a condition on registration or giving a written caution.
38. Clause 34 requires the registration of a match-maker, manager or promoter to be cancelled by the Authority if the Authority is advised that the person is the subject of an adverse security determination or becomes aware that the person is a controlled member of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012*. The Commissioner of Police may investigate and determine whether to make

an adverse security determination at the Commissioner's discretion or at the request of the Authority.

39. Clause 35 enables the Authority to suspend a registration for a specified time or indefinitely and to impose conditions on a suspension. The Authority may also specify a pre-condition for future registration of a person whose registration is cancelled.
40. Clause 36 creates offences prohibiting registered combatants, industry participants or promoters from doing things permitted by their registration during any period while that registration is suspended.
41. Clause 37 provides for the surrender, and subsequent cancellation, of registration.

Part 3 Regulation of combat sport contests

Division 1 Permits to hold combat sport contests

42. Clause 38 makes it clear that the proposed Division applies to both single combat sport contests and 2 or more combat sport contests held on one occasion at the same venue.
43. Clause 39 makes it an offence for an individual to hold a combat sport contest without having a permit to promote the contest. It also makes it an offence for a corporation to hold a combat sport contest, except where a contest is held by an officer or employee who holds a permit.
44. Clause 40 sets out the requirements for applications to the Authority for permits to hold combat sport contests.
45. Clause 41 empowers the Authority to grant a permit to hold a combat sport contest to a person if the person is registered as a promoter of the applicable class and, if the contest is an amateur contest, the contest has been approved by an applicable approved amateur body. A permit must be refused if the Commissioner of Police advises that there is a risk to public health or safety or of substantial damage to property if it is granted.
46. Clause 42 enables the Authority to impose conditions on a permit to hold a combat sport contest and to revoke or vary any such condition. The regulations may also prescribe conditions of permits.
47. Clause 43 requires the Authority, as soon as practicable after granting a permit, to notify the Commissioner of Police in writing of the details of the combat sport contest for which the permit is granted.
48. Clause 44 enables the Authority to revoke a permit at any time before the combat sport contest is held but allows a permit to be revoked within 24 hours before the contest only if the Authority is satisfied that special circumstances exist warranting that action.
49. Clause 45 empowers a police officer of the rank of Assistant Commissioner or above to revoke a permit to hold a combat sport contest if satisfied that there is a risk to public health or safety or of substantial damage to property.

Division 2 General conduct of combat sport contests

50. Clause 46 authorises regulations to be made for or with respect to the conduct of combat sport contests, including the health and safety of combatants, the attendance of combat sport inspectors and matters relating to weigh-ins for contests.
51. Clause 47 prohibits a combat sport contest from being held at a place prescribed by the regulations for the purposes of the proposed section.
52. Clause 48 requires the promoter of a combat sport contest to ensure that each combatant and industry participant involved holds the applicable registration and also requires each match-maker for a combat sport contest to ensure that each combatant involved holds the applicable registration.
53. Clause 49 prohibits a promoter from permitting a combatant to engage in a combat sport contest unless the combatant has a current serological clearance. A combatant will also be prohibited from engaging in a contest without a current serological clearance.
54. Clause 50 prohibits a combatant from engaging in a combat sport contest or sparring if the combatant is the subject of a medical certificate certifying that the combatant is unfit to engage in a particular contest or should not engage in a contest before a specified date. Such a certificate may be disregarded if the Authority so directs after considering a medical practitioner's report.
55. Clause 51 makes it an offence for a promoter to permit a combatant to engage in a combat sport contest if the combatant is the subject of a medical certificate certifying that the combatant is unfit to engage in a particular contest. Such a certificate may be disregarded if the Authority so directs after considering a medical practitioner's report.
56. Clause 52 requires the promoter of a combat sport contest to ensure that each combatant complies with requirements for the wearing or use of protective clothing or equipment.
57. Clause 53 requires the promoter of a combat sport contest to ensure that an attending medical practitioner is present at or before the contest.
58. Clause 54 requires the promoter of a combat sport contest who becomes aware that a combatant has died or been admitted to hospital within 48 hours of the contest to notify the Authority in writing of the death or admission.
59. Clause 55 prohibits a person from entering or remaining on the contest area of a combat sport contest unless the person is a combatant, is involved in the control or management of the contest, is a combat sport inspector or is another authorised person.
60. Clause 56 imposes a duty on the combat sport inspector present at a combat sport contest to record the result and provide the record to the Authority as soon as practicable.

Division 3 Medical examinations of combatants

61. Clause 57 defines the **pre-contest medical examination functions** and the **post-contest medical examination functions** of a medical practitioner in relation to a combatant in a

combat sport contest. Both kinds of functions involve a medical examination and a certification as to fitness or unfitness. If a medical examination is a pre-contest examination, a combatant who does not have a current serological clearance must be certified as being unfit to engage in a combat sport contest.

62. Clause 58 makes it an offence for a combatant to engage in a combat sport contest without being examined on the day by a medical practitioner exercising the pre-contest medical examination functions. It will also be an offence for the promoter to permit a combatant to engage in a combat sport contest if the combatant has not been so medically examined and unless the promoter is also satisfied that the medical practitioner has sighted the combatant's medical record book.
63. Clause 59 requires a combatant to submit to being examined by a medical practitioner exercising the post-contest medical examination functions.
64. Clause 60 requires the promoter of a combat sport contest to arrange for the post-contest medical examination functions to be exercised in relation to a combatant who is unable to be examined at the end of a contest.
65. Clause 61 confers on the Authority power to direct combatants to submit to medical and other examinations by qualified persons relating to the health or safety of combatants. It will be an offence if the combatant fails to comply with a direction.

Division 4 Directions not to hold contests and ending of contests

66. Clause 62 confers power on the Authority, at or after the weigh-in for a combat sport contest, to direct the contest not to be held if of the opinion that there is likely to be a contravention of the proposed Act or regulations or rules under the proposed Act. A police officer attending a combat sport contest may also direct the contest not to be held if satisfied there is a risk to public health or safety or substantial damage to property.
67. Clause 63 requires the attending medical practitioner to direct the referee to stop a combat sport contest if the medical practitioner is of the opinion that a combatant is so exhausted or injured as to be unable to defend himself or herself or to continue the contest.
68. Clause 64 requires a combat sport inspector present at a combat sport contest to direct the referee to stop the combat sport contest if the inspector is of the opinion that a combatant is so exhausted or injured as to be unable to defend himself or herself or to continue the contest and in other specified circumstances.
69. Clause 65 enables a police officer present at a combat sport contest to direct the referee to stop the contest if the police officer is of the opinion that there is a risk to public health or safety or of substantial damage to property.
70. Clause 66 requires the referee to stop a combat sport contest if of the opinion that a combatant is so exhausted or injured as to be unable to defend himself or herself or to continue the contest and in other specified circumstances. It will be an offence if a referee fails to stop a combat sport contest immediately after being directed to do so by an attending medical practitioner, a combat sport inspector or a police officer.

Part 4 Prohibition orders

Division 1 Procedure before orders are made

71. Clause 67 requires the Authority to give a person a show cause notice, and to consider any response by the person to that notice, before making a prohibition order against the person. The notice is to specify the grounds for the proposed prohibition order, the type of proposed prohibition order and the time within which the person given the notice is to respond to the notice.
72. Clause 68 requires the Authority to consult with the Director-General of the Department of Trade and Investment before issuing a show cause notice in respect of licensed premises.
73. Clause 69 makes it an offence for a person subject to a show cause notice for a proposed health and safety prohibition order to engage in a contest or sparring before a determination is made as to whether to issue the order.

Division 2 Health and safety prohibition orders

74. Clause 70 defines a **health and safety prohibition order** as an order made by the Authority that prohibits a person from participating as a combatant in all combat sport contests and all sparring.
75. Clause 71 authorises the Authority to make a health and safety prohibition order against a person if of the opinion that it is in the interests of the health or safety of the person to do so and that the person has not shown sufficient reasons why the order should not be made. An order may be for a specified term and may be made whether or not other action is taken. It will be an offence to contravene a health and safety prohibition order.
76. Clause 72 provides for the cancellation or suspension of registration as a combatant in the event of a health and safety prohibition order being made against the combatant, depending on the term of the order.
77. Clause 73 enables the review of a health and safety prohibition order by the Authority at the request of the person subject to the order.

Division 3 General prohibition orders

78. Clause 74 defines a **general prohibition order** as an order made by the Authority that prohibits a person from one or more of engaging in combat sport contests or sparring, promoting combat sport contests, engaging in a profession, occupation or business related to combat sport, permitting a combat sport contest on specified premises or attending premises where training or a combat sport contest or weigh-in is held.
79. Clause 75 authorises the Authority to make a general prohibition order against a person if of the opinion that there are grounds for taking disciplinary action against the person, or there would be if the person were registered, and that the person has not shown sufficient reasons why the order should not be made. An order may be for a specified term and may be made whether or not other action is taken. It will be an offence to contravene a general prohibition order.

80. Clause 76 provides for the cancellation or suspension of registration of a person in the event of a general prohibition order being made that prohibits the person from carrying out an activity authorised by the registration, depending on the term of the order.

Part 5 Review by Administrative Decisions Tribunal

81. Clause 77 sets out decisions under the proposed Act for which a review by the Tribunal may be sought.
82. Clause 78 contains restrictions on the disclosure of the existence or content of criminal intelligence report or other criminal information by the Tribunal or in hearings of the Tribunal and provides that the Commissioner of Police is to be a party to proceedings before the Tribunal involving an adverse security determination or other advice given by the Commissioner to the Authority.

Part 6 Combat Sports Authority

83. Clause 79 constitutes the Combat Sports Authority of New South Wales.
84. Clause 80 provides for the Authority to consist of a nominee of the Commissioner of Police and between 4 and 6 other persons appointed by the Minister of whom one is to be a medical practitioner and one is to be a Judge or former Judge or a person who has been an Australian lawyer for at least 7 years.
85. Clause 81 sets out the functions of the Authority, including to supervise and regulate professional and amateur combat sport in New South Wales and to promote awareness of issues relating to combat sports.
86. Clause 82 enables the Authority to appoint advisory committees.
87. Clause 83 provides that a member who is a Judge or former Judge or who has been an Australian lawyer for at least 7 years must be present at meetings of the Authority where matters relating to disciplinary action, prohibition orders or proceedings for offences are decided.

Part 7 Enforcement powers

88. Clause 84 enables the Authority to appoint Public Service employees as combat sport inspectors. Classes of persons nominated by an approved amateur body for a combat sport may also be appointed as combat sport inspectors for the purposes of amateur combat sport contests. Regulations under the proposed Act may also provide for police officers to exercise functions of combat sport inspectors.
89. Clause 85 confers functions on combat sport inspectors, including monitoring compliance with the proposed Act and attending combat sport contests and weigh-ins for contests. A combat sport inspector may enter and inspect premises and exercise other powers for the purposes of exercising the inspector's functions.
90. Clause 86 enables the Authority to require any person (by written notice) to provide information or records, or authorise another person to do so, that is relevant to specified matters, including whether a person is a fit and proper person to be registered, whether a prohibition order should be made and investigations of possible contraventions of the proposed Act, regulations or rules.

91. Clause 87 prevents a person relying on the excuse of self-incrimination for not complying with a requirement to provide information or a document under proposed section 86, if the information or document is required for the purposes of investigation of contraventions of the proposed Act, regulations or rules, and also prohibits any such information or document from being used as evidence against the person in civil or criminal proceedings (other than proceedings arising out of false or misleading information or of obstruction under the proposed Act).
92. Clause 88 enables the Commissioner of Police to require a person (by written notice) to provide information for the purposes of determining whether to make an adverse security determination about the person.
93. Clause 89 makes it an offence, without reasonable cause, to fail to comply with a notice under the proposed Part.
94. Clause 90 makes it an offence for a person, without reasonable excuse, to hinder or obstruct a combat sport inspector, police officer, referee or medical practitioner in the exercise of a function under the proposed Act or regulations made under the proposed Act.
95. Clause 91 makes it clear that complying with a requirement made by a combat sport inspector or a notice under the proposed Part will not create any liability to another person.

Part 8 Miscellaneous

96. Clause 92 makes it an offence for a person to provide any information or produce any document in connection with specified requirements of, or made under, the proposed Act that the person knows is false or misleading in a material particular.
97. Clause 93 enables the Minister and the Authority to delegate functions.
98. Clause 94 authorises the Commissioner of Police to disclose criminal intelligence report or other criminal information to the Authority about an applicant for registration as a combatant, an industry participant or a promoter or about a registered industry participant or promoter. The proposed section also enables the Authority to consider any such information when determining any such application or disciplinary proceedings or whether to make a prohibition order.
99. Clause 95 provides that the Commissioner of Police, any other police officer and the Authority are not required to give reasons for determining a matter or taking an action under the proposed Act if to do so would disclose a criminal intelligence report or other criminal information.
100. Clause 96 provides for the means of service of documents under the proposed Act.
101. Clause 97 enables the Authority to recover any fee or other money due to it as a debt in a court of competent jurisdiction.
102. Clause 98 provides for the issuing and effect of evidentiary certificates by the Authority as to matters relating to registration, combat sport contests and other things under the proposed Act for use in proceedings.

103. Clause 99 provides that proof is not required in legal proceedings of certain matters relating to the Authority, including the constitution of the Authority and the appointment of, or the holding of office by, any member of the Authority.
104. Clause 100 protects the Authority, members of the Authority, approved amateur bodies, combat sport inspectors, medical practitioners and referees exercising functions under the proposed Act from personal liability for acts or omissions done or omitted to be done in good faith for the purposes of executing the proposed Act.
105. Clause 101 enables the Authority to enter into arrangements with sporting bodies, law enforcement agencies and other agencies in Australia and elsewhere for the provision of information by and to the Authority relating to specified matters relevant to the proposed Act.
106. Clause 102 enables the Authority to exempt a person or a specified class of persons from the proposed Act or specified provisions of the proposed Act. An exemption may be conditional or unconditional and may be revoked or varied.
107. Clause 103 makes a director of a corporation, or a person concerned in the management of a corporation, liable for an offence under the proposed Act or regulations under the proposed Act that is committed by the corporation if the director or person knowingly authorised or permitted the contravention.
108. Clause 104 provides for proceedings for offences under the proposed Act or regulations under the proposed Act to be dealt with summarily before the Local Court or the Supreme Court in its summary jurisdiction.
109. Clause 105 enables penalty notices to be issued for offences under the proposed Act or regulations under the proposed Act, being offences prescribed by the regulations.
110. Clause 106 contains the general regulation-making power for the proposed Act and specifies other matters about which regulations may be made, including exemption from the proposed Act.
111. Clause 107 enables the Authority to make rules for or with respect to any aspect of engagement in combat sports in New South Wales and specifies particular matters about which rules may be made. Any such rule must be approved by the Minister and cannot be inconsistent with the proposed Act or any regulation under the proposed Act.
112. Clause 108 requires the Authority to give notice in writing to the affected persons of decisions relating to applications, registration, permits or registration pre-conditions. It also requires the Minister to give notice in writing to amateur combat sport bodies of decisions relating to the approval of the body as an approved amateur body.
113. Clause 109 repeals the *Combat Sports Act 2008*.
114. Clause 110 provides for the review of the proposed Act by the Minister after the period of 5 years from the date of assent to the proposed Act.

Schedule 1 Constitution and procedure of the Authority

115. Schedule 1 contains provisions relating to the constitution and members of the Authority and procedures for meetings of the Authority.

Schedule 2 Savings and transitional provisions

116. Schedule 2 contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Consequential amendment of other Acts

117. Schedule 3 contains amendments to other Acts consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Increased penalties

118. Clause 49 of the Bill makes it an offence for a promoter of a combat sport contest to permit a combatant to engage in the contest unless the combatant has a current serological clearance. The maximum penalty is 500 penalty units or 12 months imprisonment, or both. Clause 49 also makes it an offence for a combatant to engage in a combat sport contest without a current serological clearance. The maximum penalty is 80 penalty units or six months imprisonment, or both. At present, clause 42 of the *Combat Sports Regulation 2009* contains similar offences, however, the maximum penalty is only up to 50 penalty units.
119. Clause 7 of the Bill provides that a serological clearance consists of an opinion given by a registered medical practitioner or a person who provides pathology services that the combatant is not suffering from any medical conditions or diseases specified in the regulations. Clause three of the current *Combat Sports Regulation 2009* provides that serological tests are blood tests disclosing whether or not a person is suffering from HIV, Hepatitis B or Hepatitis C. The Minister's second reading speech indicates that these diseases will be retained under the regulations made under the new Bill (if it is enacted).

The penalties for offences associated with a combatant not having a current serological clearance will increase significantly under the Bill. However, the Committee notes that breaching such provisions could potentially have serious health consequences for other combatants and, for this reason, makes no further comment.

Right against self-incrimination

120. Clause 86 of the Bill allows the Combat Sports Authority NSW to give a person notice requiring them to, among other things, provide information relating to various matters such as whether a person should be, or continue to be, registered under the Act and whether a prohibition order should be made, revoked or varied.
121. Clause 87 of the Bill provides that a person is not excused from providing information or a document under clause 86 on the ground that the information or document may tend to incriminate the person or expose the person to a penalty.

The Committee notes that requiring persons to provide information even though it may incriminate them or expose them to a penalty could impact on a person's right against self-incrimination. However, clause 87 states that such information will not be admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the information or document. For this reason, the Committee makes no further comment.

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

Commencement by proclamation

122. Clause 2 of the Bill provides that the Act commences on a day or days to be appointed by proclamation.

The Committee prefers legislation of this kind, which impacts on rights and liberties and which replaces existing legislation, commences on a fixed date or assent.

4. Crimes (Domestic and Personal Violence) Amendment Bill 2013

Date introduced	23 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Crimes (Domestic and Personal Violence) Act 2007 (the principal Act):
 - (a) to enable police officers of or above the rank of sergeant to issue provisional apprehended domestic violence orders, and
 - (b) to expand the powers of police officers to give directions to persons in connection with the application for, and service on them of, provisional apprehended domestic violence orders, and
 - (c) to enable police officers to detain persons while transporting them to a police station for the purpose of applying for, and serving on them, provisional apprehended domestic violence orders, and
 - (d) to impose requirements in relation to the treatment of persons so detained and the keeping of records by officers of any such detention, and
 - (e) to provide that it is an offence to make a false or misleading statement for the purpose of making an application for an apprehended personal violence order, and
 - (f) to provide that an application for review of a Registrar's decision to refuse to accept an application notice for filing may be determined by a Magistrate, rather than the court, and
 - (g) to provide for the referral to mediation of parties to interim apprehended personal violence orders, and
 - (h) to require a court to refer parties to an apprehended personal violence order (or an interim apprehended personal violence order) to mediation unless it is satisfied that there is good reason not to do so.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Greg Smith MP, Attorney General and Minister for Justice, indicated that in August 2012 the NSW Legislative Council Standing Committee on Social Issues published its report on domestic violence trends and issues in NSW. The Committee recommended that the Government amend the

principal Act to allow police officers above the rank of sergeant to issue interim apprehended domestic violence orders and to provide police with a limited power to detain an individual to serve an interim apprehended domestic violence order, amendments that are contained in schedule 1 of the Bill.

3. Mr Smith further advised the House that in November 2012 he launched the NSW Domestic Violence Justice Strategy, aimed at ensuring that after any incident of domestic violence the victim's safety is immediately improved, abusive behaviour is stopped and the perpetrator is held to account. Mr Smith indicated the amendments in schedule 1 of the Bill are also a step in implementation of the Strategy.
4. Finally, Mr Smith indicated that the community, the media and Parliament have voiced concerns about the apprehended personal violence order scheme in NSW being abused. Mr Smith advised the House that the amendments in schedule 2 of the Bill (which relate to personal violence orders rather than domestic violence orders), aim to deter frivolous and vexatious applications for apprehended personal violence orders, and to encourage speedy resolution of appropriately initiated matters.

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 Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to provisional orders

Issue of interim apprehended domestic violence orders by senior police officers

7. Schedule 1 [5] substitutes section 25 of the principal Act to enable a senior police officer to issue a provisional order which is an interim apprehended domestic violence order. Currently, those orders may only be issued by an authorised officer (being a Magistrate, Children's Magistrate, registrar of the Local Court or an authorised employee of the Department of Attorney General and Justice). Provisional orders are made in situations where there has been an incident and a police officer has good reason to believe that an order should be made immediately to ensure the safety of a person or to protect property.
8. Schedule 1 [1]–[3] amend the definitions in the principal Act consequentially and insert a definition of senior police officer which means a police officer of or above the rank of sergeant.
9. Schedule 1 [7] contains provisions relating to the making of interim apprehended domestic violence orders by senior police officers and provides that a senior police officer may not make such an order if the police officer is also the applicant for the order.
10. Schedule 1 [13] provides that a provisional order that is made by a senior police officer may be varied or revoked by any court that deals or is to deal with an application for an apprehended violence order against the defendant.
11. Schedule 1 [4], [6], [9]–[12] and [15]–[18] make consequential amendments.

Powers of police in relation to provisional orders

12. Schedule 1 [19] and [21] expand the power of a police officer to direct a person to remain at the scene where a relevant incident occurred so as to enable a provisional order to be served on the person. Under proposed section 89A of the principal Act, a police officer will be able to make various directions to a person against whom a provisional order that is an interim apprehended domestic violence order is sought, including to go to and remain at a particular place or a specified police station or to accompany a police officer to a police station. If the person fails or refuses to comply with a direction, the person may be detained (and taken to a police station). A person who is directed to accompany a police officer to a police station may be detained for the purpose of transporting the person to the police station.
13. Proposed section 90A of the principal Act provides that a person may be directed to remain at a place for as long as is reasonably necessary for the provisional order, or copy of the apprehended violence order or variation, to be served on the person. A person may be detained for the time that it takes to serve the provisional order, or copy of the apprehended violence order or variation, on the person but, in any case, no longer than 2 hours.
14. Proposed section 90B of the principal Act specifies the rights of a person so detained such as being given an opportunity to contact a responsible person, being given food, drink and bedding and being kept (if practicable) separately from persons who have committed offences and not in a cell.
15. Proposed section 90C of the principal Act enables a police officer to search a person so detained.
16. Proposed section 90D provides that records must be made in accordance with the regulations in relation to persons so detained.
17. Schedule 1 [20] provides that a person who fails or refuses to comply with a direction of a police officer to remain at a place for the purpose of the service of an apprehended violence order or a variation of the order may be detained at that place or detained and taken to a police station.

Miscellaneous amendments

18. Schedule 1 [8] changes the current requirement to specify in a provisional order the date on which the person against whom the order is made must appear in court, being a date that is not more than 28 days after the order is made. Proposed section 29 (3) provides that the date specified must, in addition, be the next date on which the matter can be listed on a domestic violence list at an appropriate court.
19. Schedule 1 [14] provides that if a senior police officer incorrectly makes a provisional order as an interim apprehended personal violence order, a person is not liable for anything done or omitted to be done in good faith in reliance on the provisional order or any ancillary property recovery order.

Schedule 2 Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to apprehended personal violence orders

20. Schedule 2 [1] requires a court, when considering whether to make an apprehended personal violence order, to refer the parties to the order for mediation under the Community Justice Centres Act 1983 unless it is satisfied that there is good reason not to do so.
21. Schedule 2 [2] provides for the factors that the court is to consider in determining whether there is good reason not to refer a matter to mediation (such as any history of physical violence to the protected person by the defendant and any previous unsuccessful mediation). Currently, the court is not permitted to refer a matter to mediation in such circumstances. Schedule 2 [3] provides that the existence of one or more of these factors does not prevent the court from referring a matter to mediation.
22. Schedule 2 [4] provides that the provisions of the principal Act relating to the referral of parties to mediation apply in relation to an interim apprehended personal violence order in the same way as they apply in relation to an apprehended personal violence order.
23. Schedule 2 [5] provides that a person is guilty of an offence if the person makes a statement (for the purpose of making an application for an apprehended personal violence order) that the person knows to be false or misleading. The maximum penalty is imprisonment for 12 months or 10 penalty units, or both.
24. Schedule 2 [6] provides that a review of a Registrar's decision to refuse to accept an application notice for filing may be determined by a Magistrate, rather than the court.

ISSUES CONSIDERED BY COMMITTEE

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

Liberty and Privacy

Schedule 1, items 19, 20 and 21 of the Bill expand the powers of a police officer. The Committee notes that although breach of an apprehended domestic violence order may be a criminal offence, the order itself is a civil order and issue of the order is a civil matter. The Committee is concerned about the effect of these amendments on vulnerable defendants. However, given the Bill's objects, the Committee makes no further comment.

New offence

25. Schedule 2, item 5 of the Bill provides that a person is guilty of an offence if the person makes a statement for the purpose of making an application for an apprehended personal violence order that the person knows to be false or misleading. The maximum penalty is imprisonment for 12 months, or a \$1,100 fine or both.

The Bill contains significant penalties for making a false statement in applying for an apprehended personal violence order. However, the Committee notes the false statement must be intentional thereby safeguarding against a mentally ill person being penalised for making a false statement. In addition, the new offence will protect innocent people from false or vexatious

apprehended personal violence orders. For these reasons, the Committee makes no further comment.

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

Commencement by Proclamation

26. Clause 2 of the Bill provides for the commencement of the proposed Act 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.

5. Government Sector Employment Legislation Amendment Bill 2013

Date introduced	23 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier and Minister for Western Sydney

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to align employment arrangements for senior executives in the NSW Health Service, the NSW Police Force and the Transport Service of NSW (and for certain statutory officers currently employed under senior executive service arrangements) with the new employment arrangements for senior executives in the Public Service under the *Government Sector Employment Act 2013*,
 - (b) to align employment arrangements for employees of the NSW Police Force who are not police officers with the new employment arrangements for non-executive employees of the Public Service under that Act,
 - (c) to amend that Act to make further provision with respect to misconduct and other matters,
 - (d) to make amendments to other Acts consequent on the enactment of that Act.

BACKGROUND

2. During the passage of the *Government Sector Employment Act 2013*, the NSW Government indicated that it would introduce a second Bill to align police, transport and health senior executive services to some of the new employment arrangements for senior executives under the *Government Sector Employment Act 2013*. The Public Service Commissioner, the directors general of Health and Transport and the Commissioner of Police have collaborated in developing the Bill. The Bill implements these changes as well as strengthening the misconduct regime under the Act and making a number of other consequential amendments to other pieces of 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 on the date of commencement of the *Government Sector Employment Act 2013*.

Schedule 1 Amendment of Government Sector Employment Act 2013 No 40

3. The Schedule makes a number of miscellaneous amendments to the *Government Sector Employment Act 2013*. They include:
 - (a) enabling the assignment of Public Service senior executives to the NSW Health Service, to the Police Force (other than as police officers) or to the Transport Service (other amendments made by the proposed Act provide for the assignment of senior executives from those other services to the Public Service), and
 - (b) clarifying provisions relating to the transfer or temporary secondment of government sector employees between agencies and to other bodies, and
 - (c) extending the misconduct provisions of the Act to findings of guilt for offences in addition to convictions and to interstate offences, and
 - (d) expressly excluding statutory Crown law officers from provisions of the Act that enable the summary removal of those statutory officers from office (instead of relying on the operation of the *Interpretation Act 1987* to preserve existing exclusions from any such removal from office), and
 - (e) other minor amendments.

Schedule 2 Amendment of Health Services Act 1997 No 154

4. The Schedule amends the *Health Services Act 1997* to align employment arrangements for senior executives in the NSW Health Service with the new employment arrangements for senior executives in the Public Service under the *Government Sector Employment Act 2013*. In addition, the Schedule transfers employment functions for chief executives of local health districts and specialty network governed health corporations from the Secretary of the Ministry of Health to the board of those districts and specialty networks and transfers the employment functions for senior executives in those districts and specialty networks from that Secretary to the chief executives of those districts and specialty networks.

Schedule 3 Amendment of Police Act 1990 No 47

5. The Schedule amends the *Police Act 1990* to align employment arrangements for the Commissioner of Police and senior police and administrative executives in the NSW Police Force with the new employment arrangements for senior executives in the Public Service under the *Government Sector Employment Act 2013*. In addition, the Schedule aligns employment arrangements for employees of the NSW Police Force who are not police officers with the new employment arrangements for non-executive employees of the Public Service under that Act.

Schedule 4 Amendment of Transport Administration Act 1988 No 109

6. The Schedule amends the *Transport Administration Act 1988* to align employment arrangements for senior executives in the Transport Service of New South Wales with the new employment arrangements for senior executives in the Public Service under the *Government Sector Employment Act 2013*. In addition, the Schedule transfers from the Public Service to the Transport Service the staff of the State Transit Authority and Roads and Maritime Services.

Schedule 5 Amendment of other Acts

7. The Schedule amends various Acts to update provisions consequent on the enactment of the *Government Sector Employment Act 2013* and the enactment of the proposed Act. A number of the amendments align employment arrangements for certain statutory officers currently employed under senior executive service arrangements with the new employment arrangements for senior executives in the Public Service under the *Government Sector Employment Act 2013*. Other amendments update terminology with respect to Public Service agencies, heads of agencies and employees.

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.

6. Motor Dealers and Repairers Bill 2013

Date introduced	24 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Fair Trading

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to establish a scheme for the licensing and regulation of motor dealers, motor vehicle repairers, motor vehicle recyclers and motor vehicle tradespersons,
 - (b) to provide for remedies for customers of motor dealers and motor vehicle repairers who suffer loss as a result of illegal or unjust conduct by motor dealers or motor vehicle repairers,
 - (c) to empower the Consumer, Trader and Tenancy Tribunal (the Tribunal) to declare terms of contracts for the supply of motor vehicles by manufacturers to motor dealers unfair and to make orders for the protection of motor dealers,
 - (d) to repeal the Motor Dealers Act 1974 and the Motor Vehicle Repairs Act 1980,
 - (e) to make amendments consequential on the enactment of the proposed Act and to enact provisions of a savings and transitional nature as a consequence of that enactment.

BACKGROUND

2. In his second reading speech to Parliament, the Hon. Anthony Roberts MP, Minister for Fair Trading indicated the Bill is the result of a comprehensive consultation process which began late in 2011, when Fair Trading commenced a review of the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*. The review found that while the Acts generally worked well and are understood by industry, there were opportunities to consolidate them into a single Act, improve consumer protection and cut red tape for business.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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, except for proposed Part 6 relating to the matters referred to in paragraph (c) of the Overview (which will commence on the date of assent to the proposed Act).

5. Clause 3 sets out the objects of the proposed Act.
6. Clause 4 defines certain words and expressions used in the proposed Act. A licence is defined to include a motor dealer's licence, a motor vehicle repairer's licence, a motor vehicle recycler's licence and a tradesperson's certificate.
7. Clause 5 defines a motor dealer as a person who carries on the business of dealing in motor vehicles on a wholesale or retail basis and excludes financiers, manufacturers and motor vehicle brokers from that definition.
8. Clause 6 defines a motor vehicle repairer as a person who carries on the business of carrying out one or more classes of repair work. The classes of work that are repair work are to be prescribed by the regulations.
9. Clause 7 provides that a reference to carrying on a business includes carrying on a business in partnership or by an employee, contractor, agent or other person.
10. Clause 8 defines close associate of an applicant for a licence or a licence holder.
11. Clause 9 exempts certain motor vehicles from the operation of the proposed Act.

Part 2 Licences

Division 1 Offences

12. Clause 10 defines transport service owner.
13. Clause 11 prohibits a person from carrying on, or advertising that the person carries on or is willing to carry on, the business of a motor dealer unless the person holds a motor dealer's licence, carries on the business at a place for which the licence is granted and complies with the licence.
14. Clause 12 prohibits a person from carrying on, or advertising that the person carries on or is willing to carry on, the business of a motor vehicle repairer unless the person holds a motor vehicle repairer's licence, carries on the business at a place for which the licence is granted and complies with the licence.
15. Clause 13 prohibits a person from carrying on, or advertising that the person carries on or is willing to carry on, the business of a motor vehicle recycler unless the person holds a motor vehicle recycler's licence, carries on the business at a place for which the licence is granted and complies with the licence.
16. Clause 14 provides that a person is not guilty of an offence under the proposed Division if the person carries on business in partnership with another person who complies with the requirements of the proposed Division for that business.
17. Clause 15 prohibits agreements or arrangements by motor vehicle repairers or transport service owners for classes of repair work to be done by other persons who do not hold motor vehicle repairer licences. It also prohibits insurers from requiring repair work to be done by a person who does not hold such a licence.
18. Clause 16 requires a motor vehicle repairer, motor dealer or transport service owner to have repair work done by the holder of an appropriate tradesperson's certificate.

19. Clause 17 prohibits a person from falsely holding himself or herself out as the holder of a licence or as being authorised to carry out a class of repair work.
20. Clause 18 prohibits the holder of a tradesperson's certificate from transferring or attempting to transfer or lending the certificate to another person. It will also be an offence to attempt to obtain such a transfer or loan.
21. Clause 19 makes it an offence for the holder of a licence to fail, without a reasonable excuse, to produce the licence to an authorised officer, if the request is made at a place of business specified in the licence and, in the case of a tradesperson's certificate, the place is also a place where the holder does repair work.

Division 2 Licences generally

22. Clause 20 empowers the Secretary (defined as the head of the Public Service agency to which the administration of the proposed Act is assigned) (the Secretary) to issue motor dealers' licences, motor vehicle repairers' licences, motor vehicle recyclers' licences and tradespersons' certificates (licences).
23. Clause 21 applies Part 2 of the Licensing and Registration (Uniform Procedures) Act 2002 to the licences, subject to modifications contained in or prescribed under the proposed Act. The Part applied contains procedures for the making of applications for licences and the granting, transfer, renewal, restoration and replacement of licences.
24. Clause 22 enables a person to hold 2 or more different licences.

Division 3 Grant and refusal of licence applications

25. Clause 23 enables the Secretary to make inquiries relating to applications for licences and also requires the Commissioner of Police, if requested by the Secretary, to investigate and report on an application for a licence.
26. Clause 24 requires licence applications to be accompanied by the application fee prescribed by the regulations.
27. Clause 25 sets out mandatory grounds for refusal of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence. In the case of individuals, the grounds include being under the age of 18, not being a fit and proper person to hold a licence, being a controlled member of a declared organisation, being an undischarged bankrupt, having been found guilty within the previous 10 years of a motor vehicle stealing offence and not having qualifications prescribed by the regulations. In the case of corporations, a licence may be refused if a director or person involved in management would not be able to get a licence, if the officers of the corporation do not have the qualifications prescribed by the regulations or the reputation of the corporation is such that it is not a fit and proper person to hold a licence. A licence must also be refused if the Secretary is satisfied that the applicant is not likely to carry on the business honestly and fairly or that the carrying on of the business at a proposed place is unlawful for any reason. A licence may be refused on the ground that the applicant has a close associate who is not a fit and proper person to hold a licence.
28. Clause 26 sets out mandatory grounds for refusal of tradespersons' certificates, including not being a fit and proper person to hold a licence, not having the required qualifications and being an apprentice or trainee.

29. Clause 27 sets out matters that may be considered in determining whether a person is a fit and proper person to hold a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence. A person who is a member of, or regularly associates with members of, a declared organisation under the Crimes (Criminal Organisations Control) Act 2012 will not be a fit and proper person. A person will also not be a fit and proper person if there is a reasonable inference from the applicant's relationship with such an organisation that granting the licence is likely to further the organisation's criminal activities.

Division 4 Terms of licences

30. Clause 28 provides that a motor dealer's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor dealer.
31. Clause 29 provides that a motor vehicle repairer's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor vehicle repairer.
32. Clause 30 provides that a motor vehicle recycler's licence is to specify the place or places of business at which the licence holder may carry on the business of a motor vehicle recycler.
33. Clause 31 provides that a tradesperson's certificate is to specify the class or classes of repair work authorised by the certificate.
34. Clause 32 enables conditions to be imposed on licences by the Secretary or by regulations.
35. Clause 33 provides that a licence has effect for a maximum term of 3 years.
36. Clause 34 enables applications to amend licences to be made.
37. Clause 35 enables licences to be surrendered.
38. Clause 36 enables duplicate licences to be issued.
39. Clause 37 requires a licence holder to notify the Secretary if the licence holder ceases to carry on business at a place specified in the licence.

Part 3 Disciplinary provisions

Division 1 Grounds for disciplinary action

40. Clause 38 sets out the grounds on which action may be taken against a licence holder or former licence holder. The grounds include contravening or being likely to contravene the proposed Act or regulations or a licence condition, not being a fit and proper person to hold a licence, receiving or dealing in stolen goods and improperly obtaining a licence.
41. Clause 39 sets out additional grounds on which disciplinary action may be taken against the holder or former holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence. The grounds include carrying on a business in a dishonest or unfair manner and, in the case of a motor dealer's licence, contravening trust account requirements relating to sales on consignment.

42. Clause 40 enables disciplinary action to be taken against the holder of a tradesperson's certificate on the ground that the person is not competent to do the repair work authorised by the certificate.

Division 2 Disciplinary process

43. Clause 41 requires a show cause notice to be issued by the Secretary to a person before the Secretary takes disciplinary action against the person. The notice must set out the grounds for the proposed action and specify a period within which the person may make submissions to the Secretary. The Secretary must consider any such submissions before taking action.
44. Clause 42 enables the Secretary to suspend a person's licence pending a decision as to whether to take disciplinary action against the person.
45. Clause 43 empowers the Secretary to conduct inquiries and investigations relating to matters to which a show cause notice relates and any submissions made in response to a notice.
46. Clause 44 provides that the Secretary may decide to take no further action in respect of a disciplinary matter, other than in relation to a matter where a licence is required to be cancelled.
47. Clause 45 sets out the actions that the Secretary may take if satisfied there are grounds for taking disciplinary action. The actions include a reprimand, directions to take specified action, suspension or cancellation of a licence, disqualification from holding a licence and a requirement to pay a contribution to the Motor Dealers and Repairers Compensation Fund (the Compensation Fund).
48. Clause 46 requires a person's licence to be cancelled if the Secretary is satisfied that the person has committed a motor vehicle stealing offence within the preceding 10 years or that the person is not a fit and proper person to hold a licence.
49. Clause 47 makes it an offence to be involved in a business contrary to a disqualification under the proposed Act and also requires a suspended or cancelled licence to be returned within 7 days of suspension or cancellation.

Part 4 Obligations relating to sale, recycling and repair of motor vehicles

Division 1 Sale of motor vehicles generally

50. Clause 48 makes it an offence for the holder of a motor dealer's licence to offer or display a motor vehicle for sale at a place that is not specified in the licence, except in the case of a trade show or at the request of a prospective buyer.
51. Clause 49 makes it an offence for a motor dealer, or an employee or agent of a motor dealer, to fail to disclose that a sale is being made in that capacity.
52. Clause 50 provides that representations made in the course of a motor dealer's business by an employee or agent of a motor dealer about a motor vehicle are taken to have been made by the motor dealer. It also provides that a motor dealer is taken to have complied with a provision of the proposed Part if an employee or agent of the motor dealer complies with the provision.

53. Clause 51 makes it an offence to make a false representation about the year of manufacture or first registration or the model designation of the motor vehicle in connection with offering or displaying for sale, or sale, of the motor vehicle. A court that convicts a person of such an offence may order the person to pay compensation of an amount equal to the difference between the sale price of the motor vehicle and its fair price at the time of sale.
54. Clause 52 makes it an offence to alter an odometer reading or to remove, replace or render an odometer inoperative or inaccurate. Repairs or replacement may be carried out if the Secretary is notified and the odometer is restored or replaced so that it accurately reflects the reading when it was restored or replaced. A court that convicts a person of such an offence may order the person to pay compensation of an amount equal to the difference between the sale price of the motor vehicle and its fair price at the time of sale.
55. Clause 53 makes it an offence to fit to a motor vehicle a device capable of rendering the odometer inoperative or inaccurate.
56. Clause 54 requires a licence holder or any employee of a licence holder to report, without delay, suspected odometer tampering to an authorised officer.

Division 2 Inspection report and number-plate requirements

57. Clause 55 applies the proposed Division to sales of motor vehicles by auction and other motor vehicle sales (other than sales of newly registered motor vehicles, trade sales, and sales of substantially demolished or dismantled motor vehicles by motor vehicle recyclers).
58. Clause 56 defines current inspection report as an inspection report issued within a prescribed period before it is relied on.
59. Clause 57 requires a current inspection report to be attached to a motor vehicle (with a number-plate) that is offered or displayed for sale or sold by auction. If no report is attached, the motor vehicle may be displayed or offered for sale or sold by auction if a current inspection report is subsequently obtained within a specified period, the purchase price is not altered and the purchaser is not required to pay the cost of any repairs needed to obtain the report.
60. Clause 58 requires a current inspection report to be given by a motor dealer to the purchaser of a motor vehicle (with a number-plate) that is sold (other than by auction) by the motor dealer.
61. Clause 59 requires the provision, in the case of the sale by a motor dealer of a motor vehicle without number-plates, of a certificate, issued by Roads and Maritime Services or an equivalent body of the applicable jurisdiction, relating to the surrender or receipt of number-plates for the motor vehicle or a declaration by the motor dealer that sets out the reasons for the absence of the number-plates and any such certificate or receipt.

Division 3 Dealers' notices

62. Clause 60 applies the proposed Division to sales of motor vehicles (other than bona fide auctions, trade sales, and sales of substantially demolished or dismantled motor vehicles by motor vehicle recyclers or sales to motor vehicle recyclers).

63. Clause 61 defines demonstrator motor vehicle.
64. Clause 62 sets out general requirements for dealers' notices, including that they be in a form prescribed by the regulations and contain all required information and no information that is false or misleading in a material particular. Two or more dealers' notices are to be included in one notice.
65. Clause 63 requires a dealer's notice to be attached to a second-hand motor vehicle (other than a motor cycle or a demonstrator motor vehicle) offered or displayed for sale by a motor dealer. The motor dealer must not sell any such motor vehicle unless the dealer's notice is signed by the motor dealer at or before the sale and the purchaser and the purchaser is given a copy of the notice to keep.
66. Clause 64 provides that a motor dealer must not sell a second-hand motor cycle or a demonstrator motor vehicle unless a dealer's notice is signed by the motor dealer at or before the sale and the purchaser and the purchaser is given a copy of the notice to keep.
67. Clause 65 requires a dealer's notice setting out particulars of damage to be signed by both the motor dealer who sells a damaged motor vehicle (not being a second-hand motor vehicle) and the purchaser, with a copy to be given to the purchaser to keep.
68. Clause 66 establishes defences to offences under the proposed Division.

Division 4 Defects in motor vehicles sold by motor dealers

69. Clause 67 defines words and expressions used in the proposed Division. A defective vehicle is defined as a motor vehicle that is in such a condition, or has such a defect, that the supply of the motor vehicle would constitute a breach of a guarantee that applies under sections 54–57 of Part 3-2 of the Australian Consumer Law (NSW). The limitation period is the period for which the dealer guarantee is in force for a motor vehicle.
70. Clause 68 imposes on a motor dealer the obligation to repair or make good a defective vehicle sold by the motor dealer so as to place it in a reasonable condition having regard to its age (the dealer guarantee). The dealer guarantee can be enforced by the purchaser of the motor vehicle and a subsequent owner other than the motor dealer or another motor dealer. The dealer guarantee does not apply unless a limitation period is specified for the vehicle and only applies to a defect or condition that occurs before the end of the limitation period, whether or not it is known during that period.
71. Clause 69 provides that a limitation period for a vehicle ends when either the distance limit or time limit for the motor vehicle is first reached. The proposed clause sets out the distance limits and time limits for specified vehicles.
72. Clause 70 enables the distance and time limits to be varied by the regulations under the proposed Act.
73. Clause 71 makes the dealer guarantee enforceable by a purchaser or owner of a motor vehicle as if it were a term of a contract.
74. Clause 72 excludes certain vehicles from the dealer guarantee.

75. Clause 73 excludes certain damage from being covered by the dealer guarantee, including incidental or accidental damage after sale when the motor vehicle was not in the possession of the motor dealer, damage caused by motor racing and other driver activities and superficial damage to paint-work or upholstery of a second-hand motor vehicle.
76. Clause 74 excludes second-hand motor vehicles from the dealer guarantee if requirements relating to the display and provision of defect notices and current inspection reports are complied with. The exclusion will not apply to a defect that is not specified in a defect notice and is not also specified in the relevant current inspection report. If the dealer guarantee is excluded, the purchaser may recover from the motor dealer the difference between the reasonable cost of repairing a defect specified in the dealer's notice and the estimated cost of repair specified in that notice.
77. Clause 75 provides that the holder of a motor dealer's licence is not liable for the dealer guarantee for a motor vehicle sold by or on behalf of another motor dealer.
78. Clause 76 makes a motor dealer liable for damage that occurs during the period between the delivery of a motor vehicle to the motor dealer for repair under the dealer guarantee and the return of the motor vehicle to the purchaser or owner.
79. Clause 77 prevents a person from taking action under both the proposed Act and the Australian Consumer Law (NSW) in respect of any aspect of a motor vehicle.

Division 5 Dealer-financed purchases of motor vehicles

80. Clause 78 applies the proposed Division to a purchase of a motor vehicle where the purchaser obtains credit for the purchase from the motor dealer or a linked credit provider of the motor dealer. The proposed Division will not apply to sales to motor dealers, financiers or motor vehicle recyclers, to bona fide auctions or business or commercial purchases or where the credit is not arranged by the motor dealer.
81. Clause 79 defines tied loan contract and trade-in (a motor vehicle given or agreed to be given in consideration for the whole or part of the purchase price of a motor vehicle).
82. Clause 80 defines the cooling off period for the purchase of a motor vehicle.
83. Clause 81 confers on the purchaser of a motor vehicle the right to terminate the contract for sale by notice in writing given during the cooling off period and permits termination even if the purchaser is in possession of the motor vehicle. A purchaser's rights to terminate in this period are to be included in the contract for the sale of a motor vehicle.
84. Clause 82 provides for a waiver of the right to terminate.
85. Clause 83 prohibits a motor dealer from selling, giving in exchange or otherwise disposing of a trade-in during the cooling off period for the purchase for which the trade-in is given.
86. Clause 84 requires a motor dealer, on termination during the cooling off period, to refund to the purchaser any money received by the motor dealer and to return any trade-in. The motor dealer is liable for any damage to the trade-in while it is in the motor dealer's possession, other than fair wear and tear.

87. Clause 85 requires a purchaser, on termination during the cooling off period, to pay to the motor dealer the lesser of \$250 or 2% of the purchase price and any amount paid to the purchaser for any trade-in. A purchaser is liable for any damage to the purchased motor vehicle while it is in the purchaser's possession, other than fair wear and tear.
88. Clause 86 provides for the return of a motor vehicle that is incapable of being driven or is unroadworthy and that is required to be returned under the proposed Division.
89. Clause 87 terminates a tied loan contract related to a contract terminated under the proposed Division and enables regulations to be made with respect to termination of tied loan contracts.

Division 6 Sales of motor vehicles on consignment

90. Clause 88 defines consignor and trust account.
91. Clause 89 requires a motor dealer to notify the Secretary in writing if the motor dealer proposes to commence selling motor vehicles on consignment and provides that notice may be given in an application for a licence.
92. Clause 90 requires a motor dealer who sells vehicles on consignment to establish a trust account for amounts received for vehicles sold on consignment.
93. Clause 91 requires an amount equal to the amount received for the sale of a motor vehicle on consignment to be paid to the trust account not later than the next business day after the amount is received.
94. Clause 92 sets out the purposes for which money in a trust account may be used, including payments to the consignor and of debts owed by the consignor to the consignee.
95. Clause 93 protects an authorised deposit-taking institution from liability for things done in relation to any such trust account that do not comply with the proposed Division or regulations made under the proposed Division.
96. Clause 94 requires a motor dealer to account to a consignor for a sale on consignment within 14 days of the sale or within such other period as the regulations may prescribe.
97. Clause 95 requires a motor dealer to ensure that the trust account is audited annually and enables regulations to be made with respect to audit requirements.
98. Clause 96 enables the Secretary to require a motor dealer to provide an audit of a trust account and to lodge security with the Secretary in respect of the sale of motor vehicles on consignment by the motor dealer.

Division 7 Obligations of motor vehicle recyclers

99. Clause 97 requires a motor vehicle recycler who acquires a motor vehicle for demolition or dismantling or a substantially demolished or dismantled motor vehicle to surrender any attached number-plate to Roads and Maritime Services. A motor vehicle recycler is prohibited from selling any such vehicle with a number-plate attached.

100. Clause 98 limits the motor vehicles that may be sold by motor vehicle recyclers to demolished or dismantled motor vehicles, motor vehicles for private use by the motor vehicle recycler or employees or motor vehicles that are used in the business of the motor vehicle recycler.
101. Clause 99 provides that a motor vehicle recycler must mark parts or accessories (prescribed by the regulations) as soon as practicable after they are acquired or obtained.

Division 8 Record keeping obligations

102. Clause 100 requires the holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence to keep a register relating to the business.

Division 9 Suspicious goods

103. Clause 101 requires a licence holder, or any employee of a licence holder, to notify the Secretary of any motor vehicle, motor vehicle part, accessory or other thing that is suspected of being stolen or unlawfully obtained.
104. Clause 102 enables an authorised officer to issue a non-disposal notice to a licence holder prohibiting, for 14 days, the alteration, sale or other disposal of a motor vehicle, motor vehicle part, accessory or other thing that the officer has reasonable grounds to believe is stolen or unlawfully obtained.

Division 10 Motor vehicle brokers' obligations

105. Clause 103 requires a motor vehicle broker to disclose any financial or other business relationship with the supplier of a motor vehicle for which broking services are provided before those services are provided.

Part 5 Remedies relating to conduct by motor dealers, motor vehicle repairers and motor vehicle recyclers

Division 1 Unjust conduct by motor dealers, motor vehicle repairers and motor vehicle recyclers

106. Clause 104 applies the proposed Division to the holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence.
107. Clause 105 defines unjust conduct to be conduct that is dishonest or unfair, is a breach of contract, contravenes the proposed Act or regulations or any other Act or regulation administered by the Minister or consists of a failure to comply with a licence or an order by the Tribunal.
108. Clause 106 enables the Secretary, with the consent of the Minister, to require a licence holder who has repeatedly engaged in unjust conduct to enter into undertakings relating to previous unjust conduct and future conduct. A licence holder who observes the undertakings is not liable for disciplinary action for conduct the subject of the undertakings or to action for a Tribunal order.
109. Clause 107 requires the Secretary to lodge deeds setting out undertakings with the Tribunal and to keep a Register of Undertakings.

110. Clause 108 confers on the Tribunal power to order a licence holder to refrain from engaging in unjust conduct in the course of carrying on business as a motor dealer, motor vehicle repairer or motor vehicle recycler. An order may be sought if a licence holder repeatedly engages in unjust conduct or fails to observe an undertaking as to conduct. An order may extend to a director or person concerned in the management of a body corporate that is a licence holder.
111. Clause 109 enables the Tribunal to vary or discharge an order, on the application of the Secretary.

Division 2 Disputes

112. Clause 110 defines complainant and extends the application of the proposed Division to former motor dealers and former motor vehicle repairers.
113. Clause 111 applies the proposed Division to disputes relating to the dealer guarantee and to disputes about repair work.
114. Clause 112 enables the Secretary, on application by a purchaser or owner of a motor vehicle who is a party to a dispute, to attempt to resolve the dispute and to investigate the dispute if it is not resolved.
115. Clause 113 enables the Secretary to make a rectification order requiring a motor dealer to make good a defective vehicle or a motor vehicle repairer to complete or rectify repair work.
116. Clause 114 provides that a rectification order does not give rise to any rights or obligations.

Division 3 Rescission of motor vehicle sales and other orders

117. Clause 115 defines cash price and rescission order.
118. Clause 116 confers jurisdiction to make a rescission order in relation to the sale of a motor vehicle on the Local Court and the District Court (depending on the cash price of the motor vehicle) and on the Supreme Court.
119. Clause 117 enables a court to make an order rescinding the sale of a motor vehicle by a motor dealer and requiring the return of the motor vehicle and repayment to the purchaser of amounts paid by the purchaser, on application by the Secretary. The order may be made on specified grounds, including a failure to comply with a dealer's notice and inspection report requirements and the condition of the motor vehicle when it was sold.
120. Clause 118 enables a Local Court to make an order rescinding the sale of a motor vehicle by a motor dealer and requiring the return of the motor vehicle and repayment to the purchaser of amounts paid by the purchaser if a motor dealer is found guilty of an offence under proposed Part 4 and the cash price of the motor vehicle did not exceed the Court's jurisdictional limit.
121. Clause 119 provides that the fact that the parties to a sale contract or an associated credit contract cannot be restored to their previous positions is not a bar to the making of a rescission order.

122. Clause 120 transfers the liabilities and rights of a purchaser under a credit contract linked with a sale contract or a sale contract the subject of a rescission order to the motor dealer.
123. Clause 121 prevents a court from making a rescission order unless the Secretary, a representative of the Secretary and any other person likely to be affected by the making of the order has been given an opportunity to be heard.

Division 4 Penalties for unlicensed motor dealers and motor vehicle recyclers

124. Clause 122 defines forfeiture order, proceeds order and restraining order.
125. Clause 123 confers jurisdiction on a court that convicts a motor dealer or a motor vehicle repairer of a licensing offence to make an order forfeiting a specified motor vehicle to which the offence relates to the Crown (a forfeiture order) or ordering that the convicted person pay to the Crown the proceeds of the offence or any other offence of that kind (a proceeds order). An amount paid under a proceeds order is to be paid to the Compensation Fund.
126. Clause 124 provides for appeals against forfeiture orders and proceeds orders.
127. Clause 125 confers jurisdiction on a court in proceedings against a motor dealer or a motor vehicle repairer for a licensing offence, or on a court that makes a proceeds order, to make an order restraining the person from being prosecuted and any other specified person from disposing or otherwise dealing with specified property. The Supreme Court may vary or revoke any restraining order.

Division 5 Administration of motor dealers and motor vehicle recyclers

128. Clause 126 defines words and expressions used in the proposed Division.
129. Clause 127 confers jurisdiction on the Supreme Court to appoint an administrator for the affairs (relating to the carrying on of a business for which a licence must be held) and property of a licence holder if it is satisfied that there are grounds for suspending or cancelling the licence, that the licence holder has repeatedly engaged in unjust conduct or that it is desirable in the public interest to do so having regard to the circumstances of the licence holder.
130. Clause 128 confers jurisdiction on the Supreme Court to appoint an administrator for the affairs (relating to the carrying on of a business for which a licence must be held) and property of a former licence holder if the person's licence has been suspended or cancelled or it is satisfied that it is necessary or desirable to protect the interests of persons who had dealings with the person.
131. Clause 129 provides for notification of the order appointing an administrator.
132. Clause 130 refers to proposed Schedule 1 which contains further provisions relating to the functions of an administrator and the conduct of administration.
133. Clause 131 makes it an offence for a person, without reasonable excuse, to obstruct, hinder or delay an administrator exercising functions as an administrator.
134. Clause 132 sets out the circumstances in which an administrator vacates office.

135. Clause 133 enables the Supreme Court to revoke the appointment of an administrator on the application of the administrator, the Secretary or the person subject to administration.
136. Clause 134 provides for the Supreme Court to make orders transferring property when an administration is terminated or a new administrator is appointed.
137. Clause 135 provides for the Supreme Court to make orders transferring property to the person who was subject to administration where the administrator vacates office and no new administrator is appointed.
138. Clause 136 requires an order by the Supreme Court that transfers property formerly under administration to provide for the payment of the costs of the administrator by the person who was subject to administration.
139. Clause 137 confers on the Supreme Court power to make additional orders necessary to enable an administrator to administer the affairs and property of a person.
140. Clause 138 gives a person who is subject to an application for administration or to an application for other orders relating to the administration a right to be given a copy of the originating process and to appear and be heard by the Supreme Court.
141. Clause 139 makes it an offence, for the purpose of defeating the purposes of the proposed Division, to withdraw money or make payments from accounts and to destroy or conceal or remove property or to deliver it to another person. It will also be an offence to withdraw money from or make a payment from an account, or to destroy or conceal or remove property subject to an administration order or to deliver it to another person without the authority of the administrator.
142. Clause 140 enables an application to be made to the Supreme Court for a direction as to the exercise of functions by an administrator.

Part 6 Unfair contracts and unjust conduct affecting motor dealers

143. Clause 141 defines words and expressions used in the proposed Part.
144. Clause 142 provides that a term of a supply contract for the supply of motor vehicles to a motor dealer by a manufacturer is unfair if it would cause a significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect the interests of the advantaged party and would cause financial or other detriment to a party if relied on. The provision also sets out examples of unfair provisions.
145. Clause 143 provides that conduct of a manufacturer is unjust if it occurs in connection with a supply contract and is dishonest or unfair or is authorised by an unfair term of a supply contract.
146. Clause 144 enables a motor industry group (representing motor dealers) or a motor dealer to raise a dispute with a manufacturer about an unfair term of a supply contract or class of supply contracts or unjust conduct by a manufacturer with the Small Business Commissioner. The dispute will be dealt with under the procedures under the Small Business Commissioner Act 2013 that provide for mediation and certification by the Commissioner when a dispute cannot be resolved.

147. Clause 145 enables a motor industry group or the Small Business Commissioner or a motor dealer to apply to the Tribunal for a declaration that a term of a supply contract or class of supply contracts is unfair or a motor dealer to apply for such a declaration about a term of a particular supply contract. An application can only be made if there has been a certification by the Small Business Commissioner about the matter.
148. Clause 146 confers jurisdiction on the Tribunal to make such a declaration after taking into account all the circumstances of the case. Among other things, the Tribunal may consider whether another party to the supply contract exerted undue influence, unfair pressure or unfair tactics on the motor dealer.
149. Clause 147 sets out the orders the Tribunal may make if it makes such a declaration, including orders declaring part or the whole of supply contracts to be void, varying supply contracts, directing parties to supply contracts to take or not take actions and ordering the payment of compensation.
150. Clause 148 makes it clear that the proposed Part does not limit or restrict any other law that provides for relief against unjust conduct or unfair contract terms.

Part 7 Enforcement and offences

Division 1 Inspection powers

151. Clause 149 enables authorised officers to be appointed by the Secretary and also makes the Secretary, police officers and other members of the NSW Police Force, investigators appointed under the Fair Trading Act 1987 and persons authorised by the Chief Executive of Roads and Maritime Services authorised officers.
152. Clause 150 specifies that the powers of authorised officers are to be used for ascertaining whether the proposed Act or the regulations under the proposed Act are being or have been contravened, investigating complaints and for other related purposes.
153. Clause 151 sets out the powers of entry and investigation of authorised officers.
154. Clause 152 enables an authorised officer, by notice in writing, to require documents to be produced.
155. Clause 153 confers on police officers a power of entry and search in connection with stolen motor vehicles and stolen parts and accessories for motor vehicles.
156. Clause 154 enables an authorised officer to obtain a search warrant to search premises if the officer believes on reasonable grounds that a provision of the proposed Act or the regulations is being or has been contravened on the premises.
157. Clause 155 sets out offences related to failure to comply with requirements made, or to answer questions by, an authorised officer or police officer under the proposed Division, as well as other related offences.

Division 2 Proceedings for offences

158. Clause 156 limits the persons who may take proceedings for offences under the proposed Act to the Secretary and the Chief Executive of Roads and Maritime Services (or persons acting on their behalf) and police officers. Offences are to be dealt with

summarily, and with certain exceptions, must be commenced within 1 year of the alleged time when the offences are committed. There will be a 3-year period for commencing proceedings for licensing and odometer offences.

159. Clause 157 enables a court that finds a person guilty of an offence against the proposed Act or the regulations to make determinations and orders, in addition to any penalty imposed, including orders for the payment of compensation and the carrying out of work.
160. Clause 158 enables penalty notices to be issued for offences under the proposed Act that are prescribed by the regulations.

Part 8 Motor Dealers and Repairers Compensation Fund

161. Clause 164 defines a failure to account by a motor dealer.
162. Clause 165 provides for the establishment of the Compensation Fund.
163. Clause 166 sets out the amounts to be paid to the Compensation Fund, including licence fees and contributions after disciplinary action.
164. Clause 167 sets out the amounts to be paid from the Compensation Fund, including losses certified by the Secretary under the proposed Part and legal and administrative costs.
165. Clause 168 specifies the losses for which a person may claim compensation from the Compensation Fund, including losses incurred because of incompetent repair work, a contravention or breach of contract by a motor dealer or a failure to give an unencumbered title to a motor vehicle.
166. Clause 169 sets out the procedure for making claims for compensation.
167. Clause 170 empowers the Secretary to determine claims for compensation and provides that a claim may be disallowed to the extent that loss was suffered because of failure to mitigate it or delay in making a claim. A claim must be disallowed unless the person against whom the claim was made was licensed or reasonably thought to be licensed.
168. Clause 171 enables the Secretary to certify an amount of loss not exceeding \$40,000.
169. Clause 172 provides for the Secretary, at the request of a claimant, to review a disallowed claim.
170. Clause 173 subrogates the Crown to all the rights and remedies of a claimant in respect of the claim, if payment is made to the claimant. The amount paid is taken to be a debt due to the Crown and the Secretary may take action on behalf of the Crown.
171. Clause 174 enables the Secretary to recover amounts payable by a corporation as a result of a payment from the Compensation Fund from the directors of the corporation at the time the relevant conduct occurred.
172. Clause 175 provides for payments and priorities of payments from the Compensation Fund when the Compensation Fund is not sufficient to account for the amounts payable from the Compensation Fund.

Part 9 Miscellaneous

173. Clause 176 confers jurisdiction on the Administrative Decisions Tribunal to review licensing decisions made by the Secretary.
174. Clause 177 requires the Secretary to keep a register of licences issued under the proposed Act.
175. Clause 178 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act except with the consent of the person concerned or in other specified circumstances.
176. Clause 179 makes it clear that the proposed Act does not limit, restrict or otherwise affect any other right or remedy of a person under any other law.
177. Clause 180 provides that the provisions of the proposed Act prevail over any attempt by a contract to annul, vary or exclude the provisions.
178. Clause 181 prohibits a motor dealer from obtaining an indemnity from the previous owner of a motor vehicle in relation to costs or expenses incurred by the motor dealer because of the proposed Act.
179. Clause 182 requires the NSW Police Force and Roads and Maritime Services to provide information to the Secretary for the purposes of licensing, disciplinary proceedings, investigations or law enforcement under the proposed Act. The Secretary will also have a duty to supply information to police for law enforcement purposes and may enter into agreements with other jurisdictions for the supply of information.
180. Clause 183 makes it an offence to enter information in a register knowing it to be false or misleading in a material particular.
181. Clause 184 makes it an offence to submit a document for signature by a person, being evidence of the sale of a motor vehicle, unless all material particulars in the document have been completed.
182. Clause 185 sets out the manner in which documents may be served under the proposed Act.
183. Clause 186 enables the Governor to make regulations for the purposes of the proposed Act.
184. Clause 187 enables the Secretary to delegate his or her functions under the proposed Act.
185. Clause 188 excludes the Secretary, an authorised officer and persons acting under their direction from personal liability for acts or omissions done in good faith for the purposes of administering the proposed Act.
186. Clause 189 provides that the proposed Act is to bind the Crown.
187. Clause 190 repeals the Motor Dealers Act 1974 and the Motor Vehicle Repairs Act 1980.
188. Clause 191 provides for the review of the proposed Act in 5 years.

Schedule 1 Administration of businesses

189. Schedule 1 contains additional provisions relating to the powers that may be exercised by an administrator of the affairs and property of a licence holder.

Schedule 2 Savings, transitional and other provisions

190. Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Consequential amendment of other Acts

191. Schedule 3 amends the Acts specified in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of Association

192. Clause 27 (2) of the Bill provides that a person is not a fit and proper person to be the holder of a motor dealer's licence, a motor vehicle repairer's licence or a motor vehicle recycler's licence if the Secretary (currently the Commissioner of Fair Trading) has reasonable grounds to believe from information provided by the Commissioner of Police that the applicant regularly associates with one or more members of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.

By providing that a person may be excluded from being able to obtain a licence under the Bill if there is reason to believe the person regularly associates with members of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012*, and regardless of whether the person has him or herself committed any offence, clause 27 of the Bill may unduly impact on the right to freedom of association. The Committee notes the objectives of the Bill and makes no further comment.

Natural Justice

193. Clause 41 of the Bill provides the Secretary may give a show cause notice to a person if he or she believes there are reasonable grounds to take disciplinary action against the person. The notice requires the person to show cause why disciplinary action detailed in the notice (e.g. suspension of the person's licence) should not be taken against the person under the Bill on the grounds specified in the notice.
194. Clause 42 of the Bill provides that when a show cause notice is given to a person the Secretary may suspend the person's licence for 60 days pending a determination by the Secretary of whether to take disciplinary action under the Bill, and that the Secretary is not required to give a person an opportunity to be heard before taking such action.

By providing the Secretary is not required to give a person an opportunity to be heard before temporarily suspending his or her licence, clause 42 of the Bill may unduly impact on that person's right to be afforded natural justice. Nonetheless, as the suspension must not be for more than 60 days, the Committee makes no further comment.

Increased Penalty

195. Clause 52 of the Bill doubles the maximum penalty for tampering with an odometer, raising it to a \$22,000 fine.

The Committee notes clause 52 of the Bill significantly increases the maximum penalty for tampering with an odometer. However, given the consumer protection objects of the Bill, the Committee makes no further comment.

Entry, Search and Seizure Without Warrant

196. Clause 151 of the Bill provides an authorised officer may, without warrant, enter non-residential premises at any reasonable time where he or she believes on reasonable grounds that the premises are used for carrying on a business for which a licence is required under the Bill, whether or not the business is being carried out by the holder of a licence.
197. The authorised officer may inspect, copy and take possession of records for the purpose of obtaining evidence or protecting evidence from destruction, and search for and examine any motor vehicles and parts and accessories of motor vehicles. Clause 150 provides these powers may be exercised to ascertain whether the Bill is being complied with, to obtain evidence of a contravention, and to investigate complaints made under the Bill. Similar powers of entry and search exist for police under section 153 of the Bill.

The Committee notes clause 151 of the Bill allows authorised officers entry, search and seizure powers without the requirement to obtain a warrant. Clause 153 of the Bill allows police similar powers. These powers may be used without the need for authorised officers and police officers to have a reasonable suspicion that a contravention of the Bill or another law has been committed by a person connected with the premises so entered. Therefore, clauses 151 and 153 may expose people to arbitrary search, seizure and entry. The Committee refers this matter to Parliament for further consideration.

Right Against Self-Incrimination

198. In carrying out the entry powers described above, Clause 151 of the Bill also provides an authorised officer may require any person on the premises to answer questions or otherwise furnish information in relation to records at the premises or any statement made by the person. The Bill does not provide an exception for information that may incriminate the person.

The Committee notes that in requiring a person to answer the questions of an authorised officer, and to otherwise furnish information, without providing an exception for information that may incriminate the person, clause 151 of the Bill may unduly impact on the person's right against self-incrimination. The Committee refers the matter to Parliament for further consideration.

Strict Liability

199. Clause 159 of the Bill provides that a person is liable for certain offences committed by a corporation of which he or she is director (including carrying on a motor vehicle repairs business without a licence) if the director knows *or ought reasonably to know* that the offence is being committed.

By providing for director's liability for certain offences committed by a corporation where the director ought reasonably to have known that the offence was being committed, clause 159 of the Bill imposes strict liability. While the maximum penalty for one of the relevant offences under the Bill (carrying on a motor vehicle repairs business unlicensed) is significant – a \$110,000 fine or imprisonment for 12 months or both - the imprisonment can only be imposed for second or subsequent offences. Given this and the consumer protection objects of the Bill, the Committee makes no further comment.

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

Ill-Defined and Wide Power

200. Clause 25(4) of the Bill provides the Secretary must not grant certain licences under the Bill to any applicant, if the Secretary is satisfied that the applicant is not likely to carry on the business for which the licence is sought honestly and fairly.

In the Committee's view, by providing that the Secretary must not grant a licence if satisfied that the applicant is "not likely to carry on the business for which the licence is sought honestly and fairly" without providing further guidance as to how the Secretary would reach this decision, clause 25(4) of the Bill provides the Secretary with an ill-defined and wide power.

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

No Requirement to Give Reasons

201. Clause 27(3) of the Bill provides that the Secretary is not required to give any reasons for refusing an application for a licence or taking disciplinary action against a person to the extent that giving those reasons would disclose any criminal intelligence.

The Committee notes the Secretary is not required to give reasons for refusing a licence application or taking disciplinary action against a person to the extent that giving the reasons would disclose a criminal intelligence. However, as this exemption is limited to cases where reasons would disclose a criminal intelligence, the Committee makes no further comment.

Excludes Judicial Review

202. Clause 172 of the Bill provides that a decision of the Secretary with regard to a claim determination relating to the Motor Dealers and Repairers Compensation Fund, may be re-considered by the Secretary. However, once re-considered, the Secretary's decision is final, and there is no provision in the Bill for independent oversight of the Secretary's claim determinations.

The Committee notes the Bill does not provide for independent oversight of the Secretary's claim determinations relating to the Motor Dealers and Repairer's Compensation Fund.

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

Commencement by Proclamation

203. Clause 2 of the Bill provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, with the exception of Part 6, which commences on the date of assent.

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

7. National Disability Insurance Scheme (NSW Enabling) Bill 2013

Date introduced	23 October 2013
House introduced	Legislative Council
Minister responsible	The Hon. John Ajaka MLC
Portfolio	Minister for Ageing, Minister for Disability Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to authorise and facilitate the transfer of the State's public sector disability services assets in connection with the implementation of the National Disability Insurance Scheme of the Commonwealth. The Bill also makes detailed arrangements for the transfer of the employment and entitlements of public sector disability services employees.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. John Ajaka MLC, Minister for Ageing and Minister for Disability Services noted that in December 2012, NSW signed on to the National Disability Insurance Scheme through a Heads of Agreement with the Commonwealth.
3. Consequently, from 2018 NSW will no longer provide or fund disability or community care support and the National Disability Insurance Agency will take over responsibility for the development of the sector and the funding of support for people. Mr Ajaka advised that this means the existing State service capacity, workforce and expertise need to be placed in the hands of the non-government sector and reinvested in the marketplace for the National Disability Scheme to succeed. The key purpose of the Bill is to provide for this transfer.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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 specifies the objects of the proposed Act, which include ensuring that the State's implementation of the National Disability Insurance Scheme of the Commonwealth is managed in a way that promotes service continuity for people receiving disability services and community care supports.
7. Clause 4 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines disability services assets to mean assets, rights and

liabilities of a public sector agency of the State that are assets, rights and liabilities of the agency in connection with the exercise of disability services functions by the agency or another public sector agency of the State. The authorised implementation is defined to mean the transfer of disability services assets authorised by clause 5.

8. Clause 5 authorises the transfer of disability services assets from a public sector agency of the State to the non-government sector or from a public sector agency of the State to any other public sector agency (whether or not a New South Wales public sector agency).
9. Clause 6 empowers the Minister to provide financial assistance to a person in the non-government sector to whom disability services assets are transferred for the purposes of the authorised implementation.

Part 2 Facilitating the authorised implementation

10. Clause 7 provides that the Minister has and may exercise all such functions as are necessary or convenient for the purposes of the authorised implementation.
11. Clause 8 provides that the authorised implementation is to be effected as directed by the Minister in any manner that the Minister considers appropriate.
12. Clause 9 provides for the establishment of companies as implementation companies for the purposes of the authorised implementation.
13. Clause 10 provides that each disability services agency and implementation company has and may exercise all such functions as are necessary or convenient for the purposes of the authorised implementation.
14. Clause 11 provides that each disability services agency and implementation company is subject to the direction and control of the Minister in the exercise of any of its functions for the purposes of the authorised implementation.
15. Clause 12 provides that the proceeds of the transfer of disability services assets to the non-government sector pursuant to the authorised implementation belong to and are payable to the State.

Part 3 Arrangements for transfer of staff

16. Clause 13 provides for the transfer of the employment of a disability services employee to the employment of another public sector agency.
17. Clause 14 provides for the transfer of the employment of a disability services employee to the employment of a non-government sector employer.
18. Clause 15 provides for the continuity of the employment entitlements of employees transferred under the proposed Part.
19. Clause 16 provides for the operation of other laws and entitlements in relation to the transfer of a person's employment under the proposed Part.
20. Clause 17 provides for the Fair Work Act 2009 of the Commonwealth to override the proposed Part, to the extent of any inconsistency between them.

Part 4 Arrangements for transfer of assets and functions

21. Clause 18 authorises the Minister to make vesting orders under proposed Schedule 2 for the purposes of the authorised implementation.
22. Clause 19 provides for the Minister to direct that specified fixtures are severed from the land on which they are situated.
23. Clause 20 provides for the Minister to give directions for the grant of any relevant authorisations under various laws to a person who becomes or is proposed to become the new operator of any disability services assets pursuant to the authorised implementation.

Part 5 Operation of other laws

24. Clause 21 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised implementation and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with the authorised implementation.
25. Clause 22 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.
26. Clause 23 provides that the Public Authorities (Financial Arrangements) Act 1987 does not apply to any transaction, agreement or other arrangement entered into for the purposes of the authorised implementation. This clause further provides that the approval of the Treasurer is required for any implementation arrangement that involves a public sector agency of the State obtaining financial accommodation, entering into a joint financing arrangement or carrying on a joint venture.
27. Clause 24 authorises the release of information by the Auditor-General for the purposes of the authorised implementation.
28. Clause 25 exempts contracts for the sale of land from section 52A of the Conveyancing Act 1919 when entered into for the purposes of the authorised implementation.
29. Clause 26 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.
30. Clause 27 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Part 6 Miscellaneous

31. Clause 28 authorises the delegation of functions of the Minister and the Treasurer under the proposed Act.
32. Clause 29 provides for the proposed Act to bind the State and all other Australian jurisdictions.
33. Clause 30 provides for the operation of the proposed Act outside the State.
34. Clause 31 provides for when orders take effect and for evidence of and presumptions about orders.

35. Clause 32 provides for how documents are to be given or served for the purposes of the proposed Act.

36. Clause 33 is a general regulation-making power.

Schedule 1 Interpretative provisions

37. Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Vesting of assets, rights and liabilities

38. Schedule 2 provides for the making of vesting orders by the Minister for the purposes of the authorised implementation. Vesting orders operate to vest assets, rights and liabilities comprising disability services assets in the transferee specified in the order.

Schedule 3 Savings, transitional and other provisions

39. Schedule 3 enacts a savings and transitional regulation-making power.

Schedule 4 Amendment of Acts

40. Schedule 4 makes a consequential amendment to the Community Services (Complaints, Reviews and Monitoring) Act 1993.

ISSUES CONSIDERED BY COMMITTEE

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

Official Powers

41. Part 3, Clauses 13 and 14 of the Bill provide that a disability services employee may be transferred within the public sector or transferred to the employment of a non-government sector employer, and such transfer does not require the consent of the person transferred.

The Committee notes that State employees may have a preference to work for the agency to which they applied to work, or a general preference to work in the public sector. However, given the objects of this Bill, and the fact that Part 3 of the Bill provides for the continuity of employment entitlements of employees transferred, the Committee makes no further comment.

Denial of Certain Civil Law Remedies

42. Clause 26 of the Bill prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations. For example, an authorised action under the Act does not give rise to any right or remedy by a party to a contract.

The Committee is concerned that by removing certain civil law remedies the Bill may impact on the rights and liberties of individuals. However, given the Bill's objects the Committee makes no further comment.

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

Lack of Clarity

43. Schedule 3 of the Bill allows regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act or any Act that amends the proposed Act.

The Committee notes that by listing “any Act that amends this Act” rather than listing the names of each of those amending Acts, schedule 3 of the Bill is of limited clarity. The Committee prefers the name of each Act to be listed to avoid this lack of clarity. However, as schedule 3 relates to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertions ensure these schedules are comprehensive, the Committee makes no further comment.

8. Planning Bill 2013; Planning Administration Bill 2013

Date introduced	22 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Planning

PURPOSE AND DESCRIPTION

1. The object of the *Planning Bill 2013* is to introduce a new planning system for New South Wales as outlined in the Government's White Paper released in April 2013. Following public consultation, a number of changes have been made to the reforms outlined in the White Paper, in particular to increase community participation and local community powers in relation to planning matters and to provide greater scrutiny of planning decisions.
2. The object of the *Planning Administration Bill 2013* is to make provisions relating to the administration of planning legislation. As such, the *Planning Administration Bill 2013* is cognate with the *Planning Bill 2013*.

BACKGROUND

3. These Bills are the conclusion of a process that commenced in July 2011 with the establishment of an independent panel to review the State's planning system.
4. In June 2012, following extensive community engagement, the independent panel produced a detailed report with 374 recommendations for consideration by the Government. The Government responds with the release of the green paper in July 2012, which set out the major proposed reforms and responded to the independent panel's report. Over 1,500 submissions were received concerning the Green Paper, and more than 2,000 people contributed through community workshops, practitioner forums and online discussions.
5. A White Paper and exposure draft of the Bills were released in April 2013 for further consultation. Almost 5,000 submissions were received in response.
6. The Minister advised during his Second Reading Speech that over \$20 billion of potential economic activity passes through the planning system in any given year via the development assessment system. An independent study into the proposed planning system undertaken by the Centre of International Economics confirmed that the delivery of these planning reforms will contribute and estimated \$2 billion to \$3 billion per year to the State's economy.
7. The Minister further advised the House that the Government followed the approach to leading practice planning systems identified by the Grattan Institute, the Productivity

Commission, and the Council of Australian Governments Reform Council in the development of these reforms.

OUTLINE OF PROVISIONS

Planning Bill 2013

8. Division 1.1 contains preliminary provisions, including the name of the proposed Act, the commencement of the proposed Act on a date to be proclaimed and the following objects of the proposed Act:

- (a) to promote the growth of the State's economy and increased productivity,
- (b) to promote sustainable development,
- (c) to provide opportunities for early and on-going community participation in strategic planning and to promote transparent decision-making,
- (d) to facilitate and manage growth by the co-ordination, planning, delivery and integration of infrastructure and services in strategic planning, (including for housing choice and affordable housing),
- (f) to promote the protection of the environment and heritage, including by:
 - (i) the conservation of biodiversity, and
 - (ii) the conservation and sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to enable the effective management of natural hazards and natural resources, including agricultural land, water and minerals,
- (h) to promote health and safety in the design, construction and performance of buildings,
- (i) to promote health, amenity and quality in the design and planning of the built environment,
- (j) to promote efficient and timely development assessment that is proportionate to the likely impacts of proposed development,
- (k) to share responsibility between all levels of government for planning and the management of growth.

Sustainable development is defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Sustainable development is achieved by the integration of relevant economic, environmental and social considerations in decision-making about planning and development.

9. Division 1.2 deals with the interpretation of words and expressions used in the proposed Act. The Division contains the definitions of key words and expressions—Schedule 1 contains a dictionary of all relevant words and expressions. The key words and expressions include the following:

- (a) development,
- (b) strategic plans (namely, NSW planning policies, regional growth plans, subregional delivery plans and local plans),
- (c) planning approvals (namely, development consents, State infrastructure approvals and construction and other certificates under Part 8),

- (d) infrastructure plans and contributions (including local infrastructure plans and growth infrastructure plans),
 - (e) development likely to significantly affect threatened species and biodiversity offsets.
10. Division 1.3 contains general provisions that list the categories of development and that provide for criminal and civil enforcement for carrying out prohibited development or development without or contrary to planning approval or building and related work activity without a certificate under Part 8.
 11. Part 2 sets out the Community Participation Charter which contains principles to engage the community (including industry, businesses, residents, interest groups and organisations) in strategic planning, planning decisions and other planning matters. The Part requires planning authorities (including the Minister and councils) to exercise their planning functions consistently with the Charter. For that purpose, planning authorities are to have community participation plans about how they will undertake community participation. Certain community participation requirements will be mandatory (see Part 1 of Schedule 2 to the proposed Act). The NSW Planning Director-General is also required to provide online delivery of planning information and services (including on the NSW planning portal).
 12. Division 3.1 contains introductory provisions, including identifying the relevant planning authority for preparing strategic plans, being the NSW Planning Director-General for NSW planning policies or regional growth plans, the relevant subregional planning board for subregional delivery plans and the council (or other designated authority) for local plans.
 13. Division 3.2 deals with the preparation and making of strategic plans (other than local plans). The Division sets out what each such plan is to contain and establishes a hierarchy of plans that give effect to each other (namely NSW planning policies, then regional growth plans, then subregional delivery plans and finally local plans).
 14. Division 3.3 makes general provisions in relation to local plans. The Division establishes a local plan for each council area (and for any other areas not within a council area). The local plan is to comprise provisions as follows:
 - (a) strategic context provisions,
 - (b) planning control provisions,
 - (c) development code or guide provisions,
 - (d) contribution provisions.
 15. The Division declares that the Minister may make the provisions of local plans, but authorises the council to make planning control provisions authorised by a gateway determination, local infrastructure contributions provisions and other provisions that are currently contained in environmental planning instruments, including land use zoning and the categories of development. The Division continues provisions relating to the standard instrument program for the planning control provisions of a local plan. The Division also continues as part of the process for making planning control provisions:
 - (a) the requirement for a planning proposal to be prepared, and

- (b) a gateway process where the Minister determines whether the proposal is to proceed and a number of related matters (such as the period of public exhibition and whether the making of the plan is devolved to the council), and
 - (c) the ability to suspend covenants and agreements.
16. Division 3.5 contains miscellaneous provisions relating to strategic plans, including provisions relating to the public exhibition of proposed plans and the circumstances in which plans can be made without compliance with the conditions precedent for their making.
17. Division 4.1 contains introductory provisions including:
- (a) declaring that the Part applies to development that requires development consent, and;
 - (b) identifying the provisions that apply to development consent in the form of a complying development certificate, and
 - (c) providing that development applications may be assessed as complying development, code assessed or merit assessed
18. Division 4.2 declares who is the consent authority for development, namely:
- (a) a certifier—for complying development the subject of an application for a complying development certificate, and
 - (b) the Minister—for State significant development, and
 - (c) a regional planning panel—for regionally significant development, and
 - (d) the council or other designated public authority—for other development.
19. Division 4.3 deals with complying development. A building or subdivision certifier is required to issue a certificate if the development complies with the relevant standards in the development code or guide provisions of the local plan.
20. Division 4.4 deals with code and merit assessment. Code assessment is a new assessment process under which consent may be granted for development that is identified in the planning control provisions of the local plan and that meets the development standards in the relevant development assessment code for precinct development (and which adopts acceptable or alternative solutions to meet the relevant performance criteria in the local plan). Code assessment will not apply to certain development (such as EIS assessed development, development that requires heritage approval or that is subject to concurrence or consultation because of the effect on threatened species).

If development is not code assessed it is to be merit assessed according to similar considerations that currently apply.

The Division continues provisions relating to the referral of proposals to the Planning Assessment Commission (*PAC*), staged development applications and other matters.

21. Division 4.5 relates to the imposition of conditions of development consent in line with existing provisions.
22. Division 4.6 makes additional provisions for State significant development. The Minister is authorised to “call in” development as State significant development.

23. Division 4.7 introduces a new procedure to enable the carrying out of development otherwise prohibited by the planning control provisions of a local plan. Proposed development may be permitted if the regional planning panel (or, in limited circumstances, the NSW Planning Director-General) issues a strategic compatibility certificate on the grounds that the planning control provisions have not yet been amended to give effect to a new regional growth plan or subregional delivery plan and that the proposed development will not have any significant adverse impact on the likely future uses of surrounding land.
24. Division 4.8 deals with the modification of development consents.
25. Division 4.9 contains miscellaneous provisions (including with respect to Crown development applications and the lapsing of development consent).
26. Division 5.1 continues arrangements under Part 5 of the existing Act for environmental impact assessment of development that is not subject to Part 4 assessment and consent. The assessment generally applies when a public authority proponent carries out development or a determining authority grants approval for the development under other legislation. The Division continues the general duty to consider the environmental impact of relevant development and to obtain and consider an environmental impact statement if the development is likely to have a significant effect on the environment (including if the development is likely to significantly affect threatened species).
27. Division 5.2 provides for the declaration of State infrastructure development that requires the approval of the Minister but does not require development consent under Part 4. The Division continues existing provisions relating to the environmental assessment and approval of such development.
28. Division 5.3 deals with a new category of development to be called public priority infrastructure. Once particular development is declared by the Minister as public priority infrastructure, it can be carried out without further planning approval. In order to be declared, the development needs to be identified as priority infrastructure in a strategic or infrastructure plan (other than a local plan) or, in the opinion of the Minister, be essential for the State. Before public priority infrastructure is carried out, the proponent is required to prepare and publicly consult on a project definition report. The other provisions of the proposed Act do not generally apply to public priority infrastructure.
29. Division 6.1 sets out the approvals under other legislation that do not apply to public priority infrastructure, State infrastructure development or State significant development (including approvals under fisheries management legislation, heritage approvals, native vegetation clearing approvals and water management approvals). The Division also sets out the approvals under other legislation that must be issued consistently for public priority infrastructure, State infrastructure development or State significant development (including environment protection licences and mining leases).
30. Division 6.2 sets out requirements in relation to development (with certain exceptions) for consultation or concurrence with relevant Ministers or agencies if the development is likely to significantly affect threatened species, if required under planning control provisions of local plans or if carried out on certain bush fire prone land. The Division continues and expands existing provisions that enable a local plan to be amended to

remove consultation or concurrence requirements or other statutory provisions so as to facilitate the carrying out of development.

31. Division 6.3 introduces a new one stop referrals and decisions process for other legislative approvals (and for concurrences and consultation) to replace existing provisions that apply to integrated development. Under the new procedure, a single set of general terms of approval for development are to be issued by the NSW Planning Director-General in accordance with State assessment requirements rather than being issued by the approval bodies. If a development consent is granted for development consistently with the general terms of approval, the approval body is to grant any related legislative approval in a form that is substantially consistent with the general terms of approval.
32. Division 7.1 contains introductory provisions, including:
 - (a) a definition of *local infrastructure* to mean local roads, local drainage works, open space and community facilities, and
 - (b) a definition of *regional infrastructure* to mean regional or State roads, land for drainage, transport infrastructure, regional open space and educational establishments, and
 - (c) the application of the Part to development that requires consent under Part 4, or any State infrastructure development that is not carried out by or on behalf of a public authority.
33. Division 7.2 empowers a consent authority, by condition of development consent, to impose a local infrastructure contribution in accordance with the contribution provisions of the local plan. A local infrastructure contribution may be a direct contribution (a reasonable contribution having a nexus with the proposed development) or an indirect contribution (a contribution based on a percentage of capital investment value or based on the area of the proposed development). The Division contains provisions for local infrastructure plans which identify the local infrastructure to be funded by local infrastructure contributions.
34. Division 7.3 empowers a consent authority, by condition of development consent, to impose a regional infrastructure contribution in accordance with the contribution provisions of the local plan. A regional infrastructure contribution is to be an indirect contribution (a contribution based on a percentage of capital investment value or calculated by reference to the area of the proposed development or other authorised method). The Division contains provisions for growth infrastructure plans which identify the regional infrastructure to be funded by regional infrastructure contributions.
35. Division 7.4 authorises a consent authority, by condition of development consent, to impose a biodiversity offset contribution for the conservation and enhancement of the natural environment of the State in accordance with the contribution provisions of the local plan. Biodiversity offset contributions are to be paid into specially created funds in the threatened species legislation.
36. Division 7.5 relates to planning agreements between public authorities and the developers of land for the payment of money, the provision of land or the carrying out of works by the developer for infrastructure, affordable housing or the conservation or enhancement of the natural environment. Planning agreements can exclude the

payment of local, regional or biodiversity offset contributions. A planning agreement can be made in contemplation of a development application or proposed change to a local plan, but cannot require a public authority to grant consent or exercise planning functions to change a local plan.

37. Division 7.6 establishes a Regional Contributions Fund for regional infrastructure contributions to be administered by the Secretary of the Treasury.
38. Division 8.1 contains introductory provisions, including the list of certificates that may be issued under the Part, namely:
 - (a) construction certificates, and
 - (b) subdivision works certificates, and
 - (c) occupation certificates, and
 - (d) subdivision certificates, and
 - (e) compliance certificates.
39. Division 8.2 sets out the requirements in order to commence building work, the requirement to obtain a construction certificate from a certifier (unless a complying development certificate has been issued as development consent) and the requirement to obtain an occupation certificate from a certifier once the work is completed.
40. Division 8.3 sets out the requirements in order to commence subdivision work, the requirement to obtain a subdivision works certificate from a certifier and the requirement to obtain a subdivision certificate to register the subdivision once the work is completed and other obligations have been complied with.
41. Division 8.4 deals with compliance certificates that may be obtained from a certifier (including a completion of work compliance certificate that can be an authorised alternative to an occupation certificate in certain cases).
42. Division 8.5 carries forward existing provisions that limit liability for defective building or subdivision work.
43. Division 8.6 contains miscellaneous provisions, including the new requirement for an owner's building manual to be provided with the issue of an occupation certificate for a building.
44. Division 9.1 contains introductory provisions, including a definition of *Court* to mean the Land and Environment Court.
45. Division 9.2 enables an applicant for development consent to request, in certain cases, a review of the determination of the application. Generally, reviews are to be conducted by a person who is not subordinate to the person who determined the application.
46. Division 9.3 continues rights of appeal to the Court under the existing Act in relation to development consent, including rights of appeal by the applicant for development consent or by the objector in the case of EIS assessed development. There is no right of appeal if the decision is made after a public hearing by the PAC or if the decision related to a complying development certificate.

47. Division 9.4 provides rights of appeal to the Court in relation to a failure or refusal to issue a certificate under Part 8.
48. Division 9.5 provides rights of appeal to the Court in relation to the issue of development control orders under Part 10.
49. Division 9.6 makes miscellaneous provisions relating to appeals.
50. Division 10.1 confers Ministerial enforcement powers, including directions to planning authorities for the timely exercise of their planning functions.
51. Division 10.2 makes provision for development control orders to enforce obligations under the proposed Act, comprising general orders, fire safety orders and brothel closure orders. The Division sets out the persons or bodies who may give orders, including councils and the Minister or NSW Planning Director-General in relation to State significant and other specified development. Detailed provisions relating to orders are contained in Schedule 10.
52. Division 10.3 continues the civil enforcement jurisdiction of the Land and Environment Court in relation to remedying or restraining breaches of the proposed Act. The Division also continues provisions:
 - (a) that limit the period for court challenges to the validity of plans and planning approvals to the period of 3 months after the plan or approval is made or given, and
 - (b) that limit the requirements of the proposed Act that are mandatory for the purposes of determining the validity of plans and approvals to the mandatory community participation requirements, and
 - (c) that make special provision where development consents are tainted by corruption.
53. Division 10.4 deals with criminal offences and proceedings. The Division sets out the maximum penalties for offences against the proposed Act, with different penalties for Tier 1, Tier 2 and Tier 3 offences. The Division also makes other provisions relating to the time within which proceedings may be commenced, penalty notices and ancillary offences.
54. Division 11.1 empowers the making of regulations for the purposes of the proposed Act, including regulations that insert or amend provisions in the ancillary Schedules of the proposed Act and savings and transitional regulations.
55. Division 11.2 provides for fees and charges under the planning legislation.
56. Division 11.3 provides for the issue of planning and building information certificates to prospective purchasers of property and other persons.
57. Division 11.4 continues provisions of the existing Act relating to the protection of existing uses.
58. Division 11.5 continues provisions of the existing Act relating to contaminated land liability.
59. Division 11.6 makes provisions for bush fire prone land, including the preparation of maps of any such land.

60. Division 11.7 contains general miscellaneous provisions, including the continuation of existing provisions relating to the disclosure of political donations in connection with planning matters.
61. Schedule 1 contains the dictionary of words and expressions used in the proposed Act. Key terms are defined in Part 1 of the proposed Act. The Schedule also sets out the test for determining whether proposed development is likely to significantly affect threatened species (which continues the existing test but provides that proposed development is not likely to do so if biodiversity assessment procedures adopted by the regulations so determine).
62. Schedule 2 sets out the mandatory community participation requirements for public exhibition or notification. Part 2 contains general provisions relating to community participation. Part 3 deals with the delivery of e-planning services and information, including the NSW planning portal.
63. Schedule 3 contains regulation-making powers.
64. Schedule 4 deals with the lapsing of consent, biobanking, orders for conditional validity of consents and other miscellaneous matters.
65. Schedule 5 continues existing provisions relating to environmental impact assessments and State infrastructure development, and regulation-making powers for that development or public priority infrastructure.
66. Schedule 6 contains a provision relating to heritage and bush fire approvals. In particular, the Schedule requires the NSW Planning Director-General to act (except in limited circumstances) in accordance with advice of the Heritage Council and the Rural Fires Services Commissioner when determining one stop referrals.
67. Schedule 7 contains regulation-making powers (including for a system of statutory charges to secure payment of contributions under Part 7). The Schedule also continues the funds under the existing Act administered by the Ministerial Corporation (re-named the Planning Growth Funds and Trust Funds).
68. Schedule 8 contains regulation-making powers.
69. Schedule 9 contains regulation-making powers.
70. Schedule 10 continues Ministerial powers to appoint regional planning panels or administrators to exercise the planning functions of councils in the place of the council in certain specified circumstances. Part 2 of the Schedule contains the detailed provisions relating to the issue of development control orders. Part 3 of the Schedule contains ancillary evidentiary provisions for civil enforcement.
71. Schedule 11 contains miscellaneous regulation-making powers and continues special provisions relating to paper subdivisions.
72. Schedule 12 contains savings and transitional provisions consequent on the repeal of the existing Act and the enactment of the proposed Act.

Planning Administration Bill 2013

73. Clause 1.1 sets out the name (also called the short title) of the proposed Act.
74. Clause 1.2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
75. Clause 1.3 defines certain words and expressions used in the proposed Act. In particular: *NSW Planning Director-General* means the Director-General of the Department of Planning and Infrastructure. *planning legislation* is defined to mean any of the following:
 - (a) the proposed *Planning Act 2013* and the instruments under that proposed Act,
 - (b) this proposed Act and the instruments under this proposed Act.
76. Clause 2.1 declares that the Minister has portfolio responsibility for planning and the administration of the planning legislation.
77. Clause 2.2 declares that the NSW Planning Director-General has departmental responsibility for planning and the administration of the planning legislation and is subject to Ministerial control (except in relation to the contents of any advice, recommendation or report made by the NSW Planning Director-General to the Minister).
78. Clause 2.3 authorises the Minister or the NSW Planning Director-General to establish committees or panels for the purposes of the planning legislation. Under the proposed *Planning Act 2013*, the Minister is required to establish a committee to advise on community participation in planning matters to be known as the Community Participation Advisory Panel.
79. Clause 2.4 authorises the Minister, the Planning Ministerial Corporation and the NSW Planning Director-General to delegate their respective functions under the planning legislation.
80. Clause 3.1 constitutes a NSW Government agency to be known as the Planning Ministerial Corporation. The corporation is a continuation of the corporation sole under the former Act known as “the Minister administering the *Environmental Planning and Assessment Act 1979*”.
81. Clause 3.2 requires the affairs of the Corporation to be managed by the NSW Planning Director-General in accordance with Ministerial directions.
82. Clause 3.3 refers to the land functions of the Corporation set out in Schedule 1 (which generally continue the existing land functions of the corporation sole under the former Act).
83. Clause 3.4 refers to Schedule 7 to the proposed *Planning Act 2013* which contains provisions relating to Planning Growth Funds and other financial provisions relating to the Corporation (which generally continue the existing financial functions of the corporation sole under the former Act).

84. Clause 4.1 constitutes the Planning Assessment Commission (the *Commission* or *PAC*) as a NSW Government agency. The Minister does not have the power to direct and control the Commission, except in relation to certain procedural and other matters.
85. Clause 4.2 provides that the Commission is to consist of between 4 and 9 members appointed by the Minister with expertise in relevant fields.
86. Clause 4.3 sets out the functions of the Commission, including the provision on request of advice to the Minister or the NSW Planning Director-General, the holding of public hearings at the request of the Minister and, in certain circumstances, the performance of the functions of a regional planning panel or subregional planning board.
87. Clause 4.4 sets out how the Commission is to be constituted for the purposes of carrying out any of its functions, including the number of members.
88. Clause 4.5 provides for the work of the Commission to be allocated by its chairperson.
89. Clause 4.6 allows for the functions of the Commission to be delegated with the approval of the Minister.
90. Clause 5.1 constitutes the regional planning panels listed in Schedule 3 (being the joint regional panels under the existing Act).
91. Clause 5.2 requires regional planning panels to comprise 3 State members and 2 nominees of the applicable council with expertise in relevant fields.
92. Clause 5.3 outlines the functions of regional planning panels, including the specified functions of a consent authority for regionally significant development.
93. Clause 5.4 deals with the members and procedure of regional planning panels.
94. Clause 5.5 allows, with the approval of the Minister, the functions of regional planning panels to be delegated to a council or its staff.
95. Clause 6.1 constitutes the subregional planning boards to be listed in Schedule 4 by Ministerial planning order.
96. Clause 6.2 requires subregional planning boards to comprise not more than 4 State members, nominees from councils in its area and a chairperson with expertise in relevant fields. Clause 6.3 declares that subregional planning boards have the functions conferred or imposed on them under the planning legislation or any other legislation.
97. Clause 6.4 deals with the functions, members and procedure of subregional planning boards.
98. Clause 7.1 makes provisions for a council to constitute panels of experts (independent hearing and assessment panels) to exercise the council's function of determining development applications, or to assess those applications, as may be required by the planning control provisions of the local plan or determined by the council.

99. Clause 7.2 requires the Planning Assessment Commission or a regional planning panel to consult with a council on matters having a significantly adverse financial impact on the council.
100. Clause 7.3 requires councils to provide requested assistance, including facilities and staff, to the Planning Assessment Commission or a regional planning panel.
101. Clause 7.4 limits the operation of the *Local Government Act 1993* with respect to delegations to the general manager or other staff of a council under the proposed Act.
102. Clause 8.1 defines certain words and expressions used in the Part. In particular:
103. (a) *investigation authority* means:
 - (i) a council, in relation to an investigation officer appointed by the council, or
 - (ii) the NSW Planning Director-General, in relation to any other investigation officer.

(b) *investigation officer* means a person appointed as an investigation officer under the proposed Part by the NSW Planning Director-General (a *departmental investigation officer*) or by a council (a *council investigation officer*).
104. Clause 8.2 provides for the appointment of investigation officers by the NSW Planning Director-General or a council.
105. Clause 8.3 specifies the purposes for which departmental investigation officers can exercise their powers, including to determine whether there has been compliance with or a contravention of the planning legislation. The clause also specifies the purposes for which council investigation officers can exercise their powers.
106. Clause 8.4 enables investigation officers to enter and search premises (excluding residential premises) without a search warrant or the consent of the occupier.
107. Clause 8.5 requires an investigation officer to provide notice to the owner or occupier of premises before entering without consent. The clause also lists exceptions to this requirement.
108. Clause 8.6 sets out a list of things an investigation officer can lawfully do upon entering premises (including the power to seize anything connected with an offence).
109. Clause 8.7 relates to the issuing of search warrants to investigation officers.
110. Clause 8.8 requires investigation officers to do as little damage as possible in the exercise of a power of entering or searching.
111. Clause 8.9 requires an investigation officer who uses force to enter, or enters in an emergency, to notify the investigation authority.
112. Clause 8.10 enables an investigation officer to issue a notice requiring a person to provide that officer with information and records connected with an investigation purpose.

113. Clause 8.11 enables an investigation officer to require a person to answer questions in relation to matters connected with an investigation purpose.
114. Clause 8.12 allows an investigation officer to record any questions and answers given under the proposed Division if the officer has informed the person being questioned that such a recording will be made.
115. Clause 8.13 specifies certain offences and penalties under proposed Part 8.
116. Clause 8.14 requires an investigation officer to produce an identification card upon request when exercising functions under proposed Part 8.
117. Clause 8.15 enables the investigating authority to require an owner or occupier to provide reasonable assistance and facilities where required under proposed Part 8.
118. Clause 8.16 relates to compensation for any damage caused by the actions of investigation officers.
119. Clause 8.17 enables an investigation authority to recover costs related to entry and inspection.
120. Clause 8.18 contains general provisions relating to notices.
121. Clause 8.19 deals with the admissibility of records, information and answers collected pursuant to the proposed Act for the purposes of criminal proceedings.
122. Clause 8.20 enables an authorised fire officer to exercise the powers of an investigation officer in relation to fire safety issues.
123. Clause 8.21 provides that the regulations may confer certain investigative powers on a building certifier or subdivision certifier.
124. Clause 9.1 states that the proposed Part applies to the carrying out of State significant development, or State infrastructure development, that has planning approval under the planning legislation.
125. Clause 9.2 is an interpretive provision that includes the following definitions for the purposes of the proposed Part:
 - (a) *monitoring* of development is the monitoring of the carrying out of the development to provide data on compliance with the approval of the development or on the development's environmental impact,
 - (b) *an environmental audit of development* is a periodic or particular documented evaluation of approved development to provide information to the proponent of the development and to the persons administering the planning legislation on compliance with the approval of the development or on the development's environmental management or impact.
126. Clause 9.3 enables the Minister to require an environmental audit or monitoring of a development as a condition of approval for that development.

127. Clause 9.4 contains provisions relating to the possible forms of monitoring and environmental audit that may be required as a condition of approval.
128. Clause 9.5 specifies offences and penalties relating to proposed Part 9, including the provision of false or misleading information and the failure to provide relevant information with respect to monitoring data or an audit report.
129. Clause 9.6 makes it clear that self-incriminatory information is not exempt from the disclosure requirements and that any such information is admissible as evidence in the prosecution of an offence.
130. Clause 10.1 contains general provisions in relation to the disclosure and misuse of information obtained in connection with the administration of the planning legislation. In particular, the clause prohibits a person acting in the administration of the planning legislation to use his or her position to gain a personal advantage. This prohibition extends to associated persons.
131. Clause 10.2 provides for an exclusion of personal liability for persons acting in the administration of the planning legislation when acting in good faith.
132. Clause 10.3 relates to the delegation of functions under the planning legislation. In particular, the clause allows public authorities to delegate functions to staff members.
133. Clause 10.4 relates to the publication of instruments of delegation on the NSW planning portal.
134. Clause 10.5 enables the Governor to make regulations for the purposes of the proposed Act.
135. Schedule 1 contains general provisions in relation to land functions of the Planning Ministerial Corporation, including the ability of the Corporation to sell, lease, exchange or otherwise dispose of or deal with land. The Schedule empowers the Corporation to acquire land by agreement and by compulsory processes.
136. Schedule 2 contains general provisions relating to the Planning Assessment Commission, including provisions relating to public hearings and the procedure of those hearings.
137. Schedule 3 constitutes the 6 existing regional planning panels and specifies the local government areas associated with each panel.
138. Schedule 4 constitutes the subregional planning boards (which are to be inserted by Ministerial order).
139. Schedule 5 defines certain terms relevant to Schedule 5, including *planning body* which is to include either the Planning Assessment Commission, a regional planning panel, a subregional planning board or a committee or panel established by the Minister or the NSW Planning Director-General under section 2.3 of the proposed Act. Part 2 contains general provisions relating to the members of planning bodies, including the duration of terms of office, remuneration and removal from office. Part 3 contains general provisions relating to the procedure of planning bodies.

140. Schedule 6 contains savings and transitional positions that provide for continuity between the proposed Act and the *Environmental Planning and Assessment Act 1979 (former Act)*. These provisions enable regulations of a savings or transitional nature to be made. The Schedule also continues entities established under the former Act and preserves some appointments made under the former Act.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity, Denial of Compensation

141. Part 10.13 of the Planning Bill provides for special provisions where development consent has been tainted by corruption. In such circumstances, compensation is not payable by the Minister or the State for any loss suffered by a person because a development consent has been suspended or revoked due to findings of corrupt conduct. This rule applies to decisions made by a consent authority before or after the commencement of this section, as well as to corrupt conduct that took place before or after the commencement of this section.
142. The Committee ordinarily considers that provisions in legislation that are made with retrospective effect are unfair to the affected parties. However, the Committee also notes the significant public interest that exists in ensuring development consents are achieved through due processes, and untainted by corruption.

The Committee notes that the development consents can be revoked without compensation payable, and with retrospective effect. However, given these provisions are reserved for instances where development consents have been tainted by corruption, the Committee does not consider these provisions to be unreasonable in the circumstances.

Ancillary Offences

143. Part 10.21 of the Planning Bill provides that a person who aids, abets, counsels or procures another person to commit or conspires to commit an offence under another provision of the planning legislation, is guilty of an offence against that other provision and is liable to the same applicable penalty as that other offence. In some cases, the gravity of the ancillary offence is inferior to the principal offence.

The Committee notes that the Bill provides that an individual is liable to the same penalty for ancillary offences as to the principal offence. In some cases, the gravity of the ancillary offence is inferior to the principal offence. As such, the Committee considers the penalty provisions may be disproportionate to the offence committed.

Search and Seizure

144. Part 8.6 of the Planning Administration Bill provides that an investigation officer who lawfully enters premises for the purpose of an inspection may open any ground, remove any flooring, require the cutting into or pulling down, of anything to the premises has been done in contravention of the planning legislation.
145. The effect of this provision would authorise investigation officers to damage, or possibly destroy, property or parts of property as part of their investigation.

146. However, the Committee notes that the investigation powers are tempered by requirements that investigating officers take care to do as little damage as possible (under Part 8.8), and that the State compensate all interested parties for any damage caused (under Part 8.16).

The Committee notes that the search and seizure powers authorise investigating officers to search property in a manner that may cause damage. However, their ability to do this is tempered by requirements that care is given during their search, and that affected parties be compensated for any damage caused. Given these safeguards, the Committee makes no further comment.

Self-Incrimination

147. Part 8.19(2) of the Planning Administration Bill provides that a person is not excused from answering any question or providing any document for investigation of an offence under the Bill that might incriminate that person or make them liable for a penalty. The Committee generally considers such provisions to be an affront to the right against self-incrimination.
148. However, the Committee notes that Part 8.19(3) provides that any answer given or document provided is inadmissible in evidence against that person if the person concerned had objected to complying on the grounds that it might incriminate them, or if the person was not warned that complying might incriminate them.

The Committee generally considers that provisions in which self-incrimination is not an excuse to providing documents or answering questions to be a trespass on individual right and liberties. However, given the safeguards provided for in this Bill, including the warnings to be given and objections that are allowed to be made, the Committee makes no further comment.

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

Matters Set by Regulation

149. Part 10.20(6) of the Planning Bill provides that the regulations may prescribe certain planning offences, together with the amount of penalty payable for the offences. The maximum penalty to be set by the regulation is only limited through Part 10.20(7) which provides that the amount of a penalty prescribed is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
150. The Committee notes that offences and penalties are ordinarily matters that should be set by Parliament to enable sufficient scrutiny and oversight of the proposed offences and their attendant penalties. The Committee also notes that the parameters set by the Bill for the making of offences and penalties by regulation, are limited.

The Committee considers that enabling the regulations to prescribe certain offences and set the applicable penalties may be considered an inappropriate delegation of legislative power.

Matters Set by Regulation

151. Part 11.1(3) of the Planning Bill provides that general regulations can be made with respect to any matter in connection with the Bill. The regulations may create offences punishable by a penalty not exceeding \$110,000.

The Committee considers that regulations that may create offences punishable by a penalty of up to \$110,000 may be an inappropriate delegation of legislative power to the executive.

Commencement by Proclamation

152. Part 1.2 of both the Planning Bill and Planning Administration Bill provide that the Act commences 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 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.