



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

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

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# Membership

|                        |   |
|------------------------|---|
| <b>CHAIR</b>           | Mr Michael Johnsen MP, Member for Upper Hunter  |
| <b>DEPUTY CHAIR</b>    | Mr Lee Evans MP, Member for Heathcote   |
| <b>MEMBERS</b>         | Ms Melanie Gibbons MP, Member for Holsworthy<br>Mr Alister Henskens SC MP, Member for Ku-ring-gai<br>Mr David Mehan MP, Member for The Entrance<br>The Hon Shaoquett Moselmane MLC<br>The Hon Gregory Pearce MLC<br>Mr David Shoebridge MLC |
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# Guide to the Digest

## COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

## COMMENT ON REGULATIONS

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.

# Conclusions

## PART ONE – BILLS

### 1. CLIMATE CHANGE BILL 2016\*

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

### 2. CROWN LAND MANAGEMENT BILL 2016

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

#### *Property*

The Committee notes the provisions in the Bill which enable the Minister to vest certain Crown land in local councils and government agencies. Once the land has been vested in a local council or a government agency it ceases to be Crown land and may impact on the ability to make any future Aboriginal land claims under the *Aboriginal Land Rights Act 1983* (the ALRA).

The Committee notes the provisions which require the written consent from either the Local Aboriginal Land Council or the New South Wales Aboriginal Land Council for the vesting of land where a claim has already been lodged under the ALRA. The Committee also notes the requirement to adhere to a community engagement strategy for any dealings, including the vesting of Crown land in local councils and government agencies. The Committee makes no further comment.

#### *Reversal of onus of proof and right to be presumed innocent*

The Committee notes that proposed section 11.8 of the Bill reverses the onus of proof so that a person who is responsible for a vehicle, stock or a structure is taken to be guilty of a related offence as if they were the actual offender. The Bill provides for several different scenarios in which a person could be deemed to be a 'responsible person'. The Committee notes that the intention of the provision is to allow for action to be taken against someone such as the owner of stock where there is damage to Crown Land but the actual offender is not known. The Committee acknowledges that some defences are available to an affected individual. For these reasons, the Committee makes no further comments.

#### *Orders applying to trivial offences*

Division 11.3 of the Bill empowers the court to make a number of orders where the court finds an offence proved. These orders are in addition to any penalty that may be imposed for the offence and can apply to situations where the court also makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* to dismiss a charge.

The Committee notes that some of the orders under Division 11.3 may be appropriate for persons who have been dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, particularly to address harm caused to Crown Land as a result of the offence. However, in the Committee's view, other orders, such as requiring an offender to publicise their offence, appear to contradict the intention of the scheme established under section 10. This scheme is normally reserved for more trivial offences and convictions are not recorded. Such individuals have additional rights under existing NSW laws, such as the *Criminal Records Act 1991*.

The Committee refers Division 11.3 of the Bill to Parliament for further consideration as to whether the extension of that Division to offences subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999* unfairly conflicts with existing rights.

*Denial of compensation*

The Bill provides that the State is not liable for compensation for the enactment or operation of the Act or related statements or conduct. The Committee notes that it is reasonably common to see provisions of this kind in NSW legislation. However, the Bill establishes a new scheme for the management of Crown Land and the Committee has highlighted some potential rights and liberties issues. The Committee therefore refers to Parliament for consideration whether the State should be protected from liability to pay compensation in circumstances where there has been a negligent, false or misleading statement or conduct which may be unconscionable, misleading or deceptive.

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

*Ill-defined and wide powers*

The Committee notes the provision which enables the Minister to vest certain Crown land in a government agency if it is in the public interest to do so. The Committee notes the wide discretion available to the Minister to vest land under this provision. However, the Committee also notes that any vesting must be to an agency who is an appropriate owner of the land and any vesting is subject to a community engagement strategy. The Committee makes no further comment.

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

*Commencement by proclamation*

The Committee generally prefers legislation to commence on assent or a fixed date. However, as outlined in the explanatory note to this Bill, this Bill is the first stage in a process of creating a new legislative regime for Crown land in New South Wales. The second stage will be further legislation introduced in 2017 which will make consequential amendments and further repeals if necessary. Given the staged approach to the new legislative regime, the Committee considers flexibility as to the commencement date for this Bill is desirable. The Committee makes no further comment.

**3. LAND ACQUISITION (JUST TERMS COMPENSATION) AMENDMENT BILL 2016**

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

*Commencement by proclamation*

The Committee generally prefers legislation to commence on a fixed date, or on assent, so the Executive does not have unfettered control over the commencement date. However, the Committee acknowledges that this Bill makes key changes to the land acquisition system and considers some flexibility may be desirable with respect to the commencement date. The Committee makes no further comment.

**4. MINING AMENDMENT (CLIMATE PROTECTION – NO NEW COAL MINES) BILL 2016\***

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

*Denial of compensation*

The Committee notes that the denial of compensation due to the enactment of this provision may run counter to the rule of law and procedural fairness. In some circumstances, the Committee may regard this as an undue trespass on personal rights and liberties. However, the Committee also notes that individuals are unlikely to be affected parties under this legislation. The Committee makes no further comment.

5. PLASTIC SHOPPING BAGS (PROHIBITION ON SUPPLY BY RETAILERS) BILL 2016\*

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

*Strict liability*

The Committee notes that while the Bill introduces an offence of strict liability, it also accepts that this provision is aimed at ensuring retailers comply with the new provisions and the objects of the Act. The Committee makes no further comment.

6. REGULATORY AND OTHER LEGISLATION (AMENDMENTS AND REPEALS) BILL 2016

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

*Commencement by proclamation*

The Committee prefers legislation to commence on assent or a fixed date. However, in the present case the Committee notes that the provisions commencing by proclamation concern changes to regulatory schemes and flexibility as to when they commence may be desirable. The Committee makes no further comment.



# Part One – Bills

## 1. Climate Change Bill 2016\*

|                    |                        |
|--------------------|------------------------|
| Date introduced    | 20 October 2016        |
| House introduced   | Legislative Assembly   |
| Member responsible | Ms Jenny Leong MP      |
|                    | *Private Member's Bill |

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to set targets to reduce greenhouse gas emissions,
  - (b) to facilitate the Government's development of strategies, policies and programs to meet those targets and to adapt to the effects of climate change,
  - (c) to promote transparency and accountability by facilitating the provision of accessible information about the effects of climate change on people, communities and ecosystems across the State,
  - (d) to encourage the local government sector, the private business sector and the wider community to take action to address climate change.

### BACKGROUND

2. In the Second Reading Speech to the Bill, Ms Jenny Leong MP stated that this Bill seeks to ensure that the New South Wales Government delivers an adequate and coordinated approach to climate change. Measures in the Bill include:
  - a set of guiding principles which all New South Wales legislation is to be interpreted against;
  - a primary target of achieving net zero greenhouse gas emissions by 2040, with interim targets of 25 per cent below 2000 levels by 2020, 40 per cent to 50 per cent by 2025, and 60 per cent to 80 per cent by 2030;
  - a requirement that all government departments, local councils and other public authorities prepare a Climate Change Action Plan at four year intervals; and
  - the establishment of a NSW Climate Change Commission to provide independent advice and recommendations.

### 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 (NSW)*.**

## 2. Crown Land Management Bill 2016

|                      |                          |
|----------------------|--------------------------|
| Date introduced      | 19 October 2016          |
| House introduced     | Legislative Council      |
| Minister responsible | The Hon. Niall Blair MLC |
| Portfolio            | Primary Industries       |

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
  - (a) to consolidate in one Act the statutory provisions dealing with the ownership, use and management of the Crown land of New South Wales, and
  - (b) to repeal certain legislation consequentially.

### Summary of the operation of this Bill

#### *Background*

2. The *Crown Lands Act 1989* and *Crown Lands (Continued Tenures) Act 1989* were enacted to reform the law relating to the Crown land of New South Wales.
3. Until that time, the law applicable to Crown land was to be found in a miscellany of Acts, including the Acts known as the Closer Settlement Acts and the *Crown Lands Consolidation Act 1913*. There were also many different kinds of leases and other kinds of tenures that could be granted over Crown land.
4. The *Crown Lands Act 1989* repealed those Acts and sought to simplify the law applicable to Crown land and the kinds of tenures that could be granted over it. The principal focus of that Act was Crown land in the Eastern and Central Division of the State. The Act also provided for a process of Crown land assessment to identify the Crown land of the State and its potential capabilities and uses.
5. However, the *Crown Lands Act 1989* does not deal exhaustively with all Crown land. In particular, the *Crown Lands (Continued Tenures) Act 1989* has continued in force in relation to certain pre-1989 leases and other tenures over Crown land and modified the application of the *Crown Lands Act 1989* over them. Also, the *Western Lands Act 1901* has continued to make special provision in relation to leases and other tenures over Crown land in the Western Division of the State.

#### *This Bill*

6. This Bill will consolidate in one Act the statutory provisions applicable to the ownership, use and management of the Crown land of New South Wales.
7. This Bill is the first stage of the process of creating a new legislative regime for Crown land by making provision for substantive matters concerning Crown land.

8. The second stage of the process will involve making consequential amendments to legislation and further repeals if required. It is intended that a Bill for that purpose will be introduced in 2017.

*Application of proposed Act*

9. The proposed Act will apply to both the Eastern and Central Division and the Western Division of the State, but not Lord Howe Island.
10. The new Act will increase the current inventory of the Crown land of New South Wales and bring it into one statutory regime. The land to be added includes the following:
  - (a) any land vested in the Crown dedicated for a public purpose (as referred to in paragraph (a) of the definition of Crown land in section 3 (1) of the *Crown Lands Act 1989*),
  - (b) any land in which an estate in fee simple is, or is taken to be, vested in a reserve trust (including land acquired by a reserve trust under section 101 of the *Crown Lands Act 1989*), but not including certain land vested by means of a Crown grant,
  - (c) any land to which section 126 or 127 of the *Crown Lands Act 1989* applies,
  - (d) any common to which the *Commons Management Act 1989* applies,
  - (e) certain land to which the *Trustees of Schools of Arts Enabling Act 1902* applies that is vested in the Crown or was formerly vested in the Crown,
  - (f) any land in the Area as defined in the *Hay Irrigation Act 1902*,
  - (g) the land comprised by the Orange Show Ground,
  - (h) any land in the Area as defined in the *Wentworth Irrigation Act 1890*.

*Reforms to be introduced by proposed Act*

11. The proposed Act will introduce a number of reforms. Some of these reforms were outlined in the Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (October 2015, ISBN 978 1 74256 694 8) published by the Department of Industry, Skills and Regional Development.
12. In addition to increasing the current inventory of the Crown land of New South Wales, the principal reforms are as follows:
  - (a) dedicated or reserved Crown land will no longer be vested in reserve trusts,
  - (b) the Minister will, instead, be able to appoint Crown land managers for dedicated or reserved Crown land (including local councils),
  - (c) the Minister will be able to create statutory land managers for appointment as Crown land managers (with board members of reserve trusts being automatically appointed by the proposed Act to statutory land managers for former reserve trust lands),
  - (d) better governance structures and conduct requirements will be introduced for Crown land managers and their boards (where applicable),

- (e) the Minister will be able to issue Crown land management rules for the management of dedicated or reserved Crown land,
- (f) the Minister will be required to approve community engagement strategies for certain dealings or other action affecting Crown land (including altering or removing purposes for which Crown land is dedicated or reserved and preparing certain plans of management),
- (g) the terms and conditions of certain holdings will be permitted to deal with particular matters (such as the determination and redetermination of rent and the granting of subleases and sublicences) in a way that is different from default provisions for those matters set out in the proposed Act,
- (h) the determination and redetermination of rent for holdings over Crown land will be rationalised and simplified (and applied to certain existing special tenures after a transitional period),
- (i) the holder of a holding or permit will be required to pay any rent or other amount due to the Crown before the holder can transfer it to another person,
- (j) a local council that is appointed as a Crown land manager of dedicated or reserved Crown land will be able to manage the land in accordance with the provisions of the *Local Government Act 1993* applicable to community land (subject to certain exceptions and modifications),
- (k) the Minister will be able to transfer Crown land to local councils if the land is of local (and not State) significance,
- (l) special provisions will be introduced to protect native title rights and interests (including when Crown land is managed by or vested in local councils),
- (m) the current land assessment programme established by the *Crown Lands Act 1989* will be discontinued,
- (n) more flexible arrangements will be introduced for the sale, use and leasing of Crown land in the Western Division (including enabling certain additional leaseholders to purchase the freehold in their leased lands),
- (o) modern and robust provisions will be introduced for investigating compliance with, and enforcing, the proposed Act and holdings granted under it (including provisions based, in part, on those of the *Protection of the Environment Operations Act 1997*),
- (p) the Minister will be required to approve 10-year State strategic plans for Crown land based on draft plans prepared and submitted for approval by the Secretary of the Department of Industry, Skills and Regional Development (the Secretary).

***Repeal of existing Crown land legislation and related legislation***

13. The proposed Act will repeal the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989*, the *Western Lands Act 1901* and certain other legislation.

## BACKGROUND

14. In 2012, the Government commissioned a review of Crown land in New South Wales led by an independent chair, Mr Michael Carapiet. As stated in the Second Reading Speech, the aim of the Crown Land Management Review was to:

...determine how to improve the management of Crown land and therefore increase the economic, social, environmental and cultural heritage benefits and returns from Crown land to the community.

15. The Review made 36 recommendations with a key recommendation being that a new consolidated Act be established that incorporates all the provisions from the numerous Acts which manage the ownership and use of Crown land in New South Wales.
16. In response to the Review, in 2014 the Government released the Crown Lands Legislation White Paper which outlined the proposed legislative changes. The White Paper received over 600 submissions.
17. In addition to the Crown Lands Management Review and the White Paper, in September 2016 the Audit Office of New South Wales completed a report into the sale and leasing of Crown land. In October 2016, the Legislative Council General Purpose Standing Committee No. 6 tabled its report titled *Crown land in New South Wales*. In the Second Reading Speech, the Minister, the Hon. Niall Blair MLC stated that these two processes were taken into consideration during the development of the Bill:

The bill responds to and incorporates key findings from these processes. Both the review and the parliamentary inquiry have given this Government the opportunity to listen closely to the people of New South Wales.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Property*

18. Proposed Division 4.2 enables the Minister to vest certain Crown land in local councils. The vesting is limited to Crown land which has been determined to be suitable for local use, and is *transferable Crown land*. The Division defines *transferable Crown land* as dedicated or reserved Crown land or any other Crown land, but does not include:
- (a) land dedicated or reserved under the *National Parks and Wildlife Act 1974* or declared to be a wildlife refuge under that Act, or
  - (b) land that an Act (except the *National Parks and Wildlife Act 1974* or this Act) provides is:
    - i to be used for a purpose referred to in that other Act, or
    - ii not to be used for any purpose except a purpose referred to in that other Act.
19. Under the Division, a vesting of Crown land to a local council takes effect subject to any native title rights and interests existing immediately before the vesting. In addition, the rights of local Aboriginal Land Councils are protected by ensuring written consent for the vesting of land where a land claim has already been lodged under the ALRA.

20. Once the Crown land has been vested in a local council, the land ceases to be Crown land. The Committee notes that under section 36(1) of the *Aboriginal Land Rights Act 1983* (NSW), only land which is vested in Her Majesty is available for claim under that Act.
21. Similarly, proposed Division 4.3 enables the Minister to vest certain Crown land in government agencies. Like Division 4.2 the vesting is limited to *transferable Crown land*.
22. The Minister may vest transferable Crown land in a government agency if the Minister is satisfied that:
  - it is in the public interest to do so; and
  - that the agency would be the most appropriate owner and manager of the land.
23. As with Division 4.2, if a claim has been made under the *Aboriginal Land Rights Act 1983* for the land seeking to be vested, written consent for the vesting of the land has to be given by either the Local Aboriginal Land Council or the New South Wales Aboriginal Land Council.
24. Also similar to Division 4.2, once the Crown land has been vested in a government agency the land ceases to be Crown land.
25. The Committee notes that Division 5.3 provides for community engagement strategies for dealings or other actions affecting Crown land use. The community engagement strategy will provide that community engagement will be required on all proposed vestings where this will affect the community's ability to use and enjoy the land. The Committee understands this will include engagement with Aboriginal Land Councils.

**The Committee notes the provisions in the Bill which enable the Minister to vest certain Crown land in local councils and government agencies. Once the land has been vested in a local council or a government agency it ceases to be Crown land and may impact on the ability to make any future Aboriginal land claims under the *Aboriginal Land Rights Act 1983* (the ALRA).**

**The Committee notes the provisions which require the written consent from either the Local Aboriginal Land Council or the New South Wales Aboriginal Land Council for the vesting of land where a claim has already been lodged under the ALRA. The Committee also notes the requirement to adhere to a community engagement strategy for any dealings, including the vesting of Crown land in local councils and government agencies. The Committee makes no further comment.**

#### *Reversal of onus of proof and right to be presumed innocent*

26. The Bill provides that a person responsible for a vehicle, stock or a structure at the time of an offence is taken to be guilty of the offence as if they were the actual offender. A 'responsible person' could include various individuals such as someone with a legal right to possession of a vehicle, the owner of stock, or a person who erected a structure, among other scenarios listed in the Bill.

27. The Bill outlines six defences available to an individual. For example, the person can provide a nomination document to the relevant enforcement authority nominating the actual offender or satisfy the authority that they took all reasonable steps to prevent the offence from being committed (see proposed section 11.8 of the Bill).
28. The new provision revises existing provisions in the Crown Lands Act 1989, for example, section 161. However, the new provision applies not just to vehicles but also to stock and structures.

**The Committee notes that proposed section 11.8 of the Bill reverses the onus of proof so that a person who is responsible for a vehicle, stock or a structure is taken to be guilty of a related offence as if they were the actual offender. The Bill provides for several different scenarios in which a person could be deemed to be a 'responsible person'. The Committee notes that the intention of the provision is to allow for action to be taken against someone such as the owner of stock where there is damage to Crown Land but the actual offender is not known. The Committee acknowledges that some defences are available to an affected individual. For these reasons, the Committee makes no further comments.**

#### *Orders applying to trivial offences*

29. Division 11.3 of the Bill sets out a scheme of orders that a court can make where it finds an offence proved. These orders are in addition to any penalty that may be imposed for the offence. Orders may be made regardless of whether any penalty is imposed, or other action taken, in relation to the offence.
30. The court is empowered to make a large range of orders including in relation to restoration and prevention; costs, expenses and compensation; and payment of monetary benefits acquired by the offender. The court can also make various other kinds of orders such as to require an offender to publicise the offence, including the circumstances of the offence, the consequences of the offence and any other orders made against the person.
31. An individual who refuses or fails to comply with most, but not all, of the orders under Division 11.3 will be guilty of an offence with a maximum penalty for an individual of \$110,000 and a further penalty of \$11,000 for each day the offence continues.
32. This scheme will extend to situations where the court makes an order against an offender under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. The court may utilise section 10 of that Act to find a person guilty of an offence but dismiss the charge, resulting in no conviction being recorded against the individual. In making such an order, the court considers various matters, including the trivial nature of the offence.
33. Additional rights are afforded to individuals whose charge is dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. For example, the majority of less serious offences in NSW are capable of becoming 'spent convictions' under the *Criminal Records Act 1991*. When a person has a spent conviction, in most instances, it will not show up on a criminal records check for employment purposes, except in relation to a limited number of professions, for example employment as a judge or police officer. Where a charge is dismissed under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, and

the charge is one that is capable of becoming spent, the conviction will become spent immediately.

**Division 11.3 of the Bill empowers the court to make a number of orders where the court finds an offence proved. These orders are in addition to any penalty that may be imposed for the offence and can apply to situations where the court also makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* to dismiss a charge.**

**The Committee notes that some of the orders under Division 11.3 may be appropriate for persons who have been dealt with under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, particularly to address harm caused to Crown Land as a result of the offence. However, in the Committee's view, other orders, such as requiring an offender to publicise their offence, appear to contradict the intention of the scheme established under section 10. This scheme is normally reserved for more trivial offences and convictions are not recorded. Such individuals have additional rights under existing NSW laws, such as the *Criminal Records Act 1991*.**

**The Committee refers Division 11.3 of the Bill to Parliament for further consideration as to whether the extension of that Division to offences subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999* unfairly conflicts with existing rights.**

### *Denial of compensation*

34. The Bill provides that compensation is not payable by or on behalf of the State because of:
  - (a) the enactment or operation of the Act, or associated consequences, or
  - (b) any statement or conduct relating to the enactment or operation of the Act.
35. 'Conduct' is taken to include acts and omissions, whether or not they are unconscionable, misleading or deceptive.
36. 'Statement' includes a representation of any kind, whether or not it is negligent, false, misleading or otherwise (see proposed section 12.32 of the Bill).

**The Bill provides that the State is not liable for compensation for the enactment or operation of the Act or related statements or conduct. The Committee notes that it is reasonably common to see provisions of this kind in NSW legislation. However, the Bill establishes a new scheme for the management of Crown Land and the Committee has highlighted some potential rights and liberties issues. The Committee therefore refers to Parliament for consideration whether the State should be protected from liability to pay compensation in circumstances where there has been a negligent, false or misleading statement or conduct which may be unconscionable, misleading or deceptive.**



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

### *Ill-defined and wide powers*

37. Proposed Division 4.3 enables the Minister to vest certain Crown land in government agencies. The Division provides that the Minister may vest land in government agencies if it is in the public interest to do so and the agency's function would make it an appropriate owner and manager of the land.
38. Once the land has been vested in a government agency it ceases to be Crown land.
39. Division 5.3 provides for community engagement strategies for dealings or other actions affecting Crown land use. This extends to any vesting of land in government agencies.

**The Committee notes the provision which enables the Minister to vest certain Crown land in a government agency if it is in the public interest to do so. The Committee notes the wide discretion available to the Minister to vest land under this provision. However, the Committee also notes that any vesting must be to an agency who is an appropriate owner of the land and any vesting is subject to a community engagement strategy. The Committee makes no further comment.**

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

### *Commencement by proclamation*

40. Clause 1.2 of the Bill provides that the majority of the Act will commence on a day or days to be appointed by proclamation. This delegates to the Executive the power to commence the Act on a day or days of its choosing.

**The Committee generally prefers legislation to commence on assent or a fixed date. However, as outlined in the explanatory note to this Bill, this Bill is the first stage in a process of creating a new legislative regime for Crown land in New South Wales. The second stage will be further legislation introduced in 2017 which will make consequential amendments and further repeals if necessary. Given the staged approach to the new legislative regime, the Committee considers flexibility as to the commencement date for this Bill is desirable. The Committee makes no further comment.**

### 3. Land Acquisition (Just Terms Compensation) Amendment Bill 2016

|                      |                                |
|----------------------|--------------------------------|
| Date introduced      | 20 October 2016                |
| House introduced     | Legislative Council            |
| Minister responsible | The Hon. Duncan Gay MLC        |
| Portfolio            | Finance, Services and Property |

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Land Acquisition (Just Terms Compensation) Act 1991* to improve the procedure for the acquisition of land on just terms by authorities of the State as a consequence of reviews of the operation of that Act.

#### BACKGROUND

2. In 2012, Mr David Russell SC, was commissioned to review the *Land Acquisition (Just Terms Compensation) Act 1991*. The review was completed in 2014 and contained 20 recommendations for reform of the land acquisition system.
3. This year, Customer Service Commissioner, Mr Michael Pratt AM, was also asked to review the land acquisition framework. The review by Mr Pratt made 20 reform recommendations based on a citizen-centric approach.
4. In October 2016, the NSW Government released its response to both reviews and this Bill implements the government's response. In the Second Reading Speech, the Hon. Duncan Gay MLC stated that the full Government response 'strikes the right balance between the needs of the public for high-quality public infrastructure and those of the landowners.'
5. Some of the amendments contained in this Bill include:
  - increasing the amount of compensation for the disadvantage resulting from relocation from \$50 000 to \$75 000;
  - introducing a fixed six-month negotiation period before compulsory acquisition can commence; and
  - a new merits review process which allows hardship applications to be reviewed by an independent person.

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Commencement by proclamation*

6. Schedule 2 of the Bill provides that the Act will commence on a day or days to be appointed by proclamation.

**The Committee generally prefers legislation to commence on a fixed date, or on assent, so the Executive does not have unfettered control over the commencement date. However, the Committee acknowledges that this Bill makes key changes to the land acquisition system and considers some flexibility may be desirable with respect to the commencement date. The Committee makes no further comment.**

## 4. Mining Amendment (Climate Protection – No New Coal Mines) Bill 2016\*

|                    |                          |
|--------------------|--------------------------|
| Date introduced    | 20 October 2016          |
| House introduced   | Legislative Council      |
| Member responsible | Mr Jeremy Buckingham MLC |
|                    | *Private Member's Bill   |

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit the grant of new authorisations to prospect for or mine coal under the *Mining Act 1992*.

### BACKGROUND

2. In the Second Reading Speech to the Bill, Mr Jeremy Buckingham MLC, commented that since 1976 the world has been warming and at an increasing rate. August 2016 was the sixteenth consecutive month of record warmth for the globe and the longest streak in the 137 year period since recording keeping began.
3. Mr Buckingham further stated that the cause of climate change is greenhouse gas emissions with the burning of coal being the biggest source of manmade greenhouse gas emissions. Thus, this Bill seeks to protect the environment by prohibiting new coal mine licences and the expansion of existing ones.
4. Mr Buckingham stated:

This Bill will not cancel the 175 existing coal exploration licences or 333 existing coalmining licences, but it will stop two assessment lease application, five exploration licence applications, and 57 mining licence applications from ever being approved.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Denial of compensation*

5. The proposed amendments to the *Mining Act 1992* provide that compensation is not payable by or on behalf of the State because of the prohibition on granting new authorisations to prospect or mine coal.
6. This provision applies to applications or tenders for authorisation made but not finally determined before the commencement of the proposed section.

**The Committee notes that the denial of compensation due to the enactment of this provision may run counter to the rule of law and procedural fairness. In some circumstances, the Committee may regard this as an undue trespass on**

**personal rights and liberties. However, the Committee also notes that individuals are unlikely to be affected parties under this legislation. The Committee makes no further comment.**

## 5. Plastic Shopping Bags (Prohibition on Supply by Retailers) Bill 2016\*

|                    |                           |
|--------------------|---------------------------|
| Date introduced    | 20 October 2016           |
| House introduced   | Legislative Council       |
| Member responsible | The Hon. Penny Sharpe MLC |
|                    | *Private Member's Bill    |

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to prohibit retailers from supplying certain plastic shopping bags to their customers.

### BACKGROUND

2. In the Second Reading Speech to the Bill, the Hon Penny Sharpe MLC commented that in New South Wales up to 61 million single-use plastic bags are littered annually. These plastic bags end up in rivers and oceans, polluting marine ecosystems and placing wildlife at risk.
3. Ms Sharpe further added that the Australian Capital Territory, South Australia and the Northern Territory have all banned single-use plastic bags. A review of the plastic bag scheme in the ACT saw a 36 per cent decrease in the amount of plastic bag waste sent to land fill in the first two years.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Strict liability*

4. This Bill seeks to prohibit retailers from supplying certain plastic shopping bags to their customers. Clause 3 of the Bill provides that a person who sells goods must not supply a plastic bag that is not biodegradable to a person for the purpose of carrying goods sold or to be sold. The maximum penalty for not complying with the provision is 50 penalty units (\$5 500).
5. The Bill has not provided exceptions or defences for failure to comply. However, the Committee notes that these types of provisions are not uncommon in regulatory settings.

**The Committee notes that while the Bill introduces an offence of strict liability, it also accepts that this provision is aimed at ensuring retailers comply with the new provisions and the objects of the Act. The Committee makes no further comment.**

## 6. Regulatory and other Legislation (Amendments and Repeals) Bill 2016

|                      |                                  |
|----------------------|----------------------------------|
| Date introduced      | 19 October 2016                  |
| House introduced     | Legislative Council              |
| Minister responsible | The Hon. Victor Dominello MP     |
| Portfolio            | Innovation and Better Regulation |

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to amend the *Property, Stock and Business Agents Act 2002* (Schedule 1):
  - i to ensure that certain controls applying to property, stock and business agents who are employers and to their employees also apply to agents who engage staff under non-traditional employment arrangements and to those staff (including independent contractors), and
  - ii to strengthen obligations for persons exercising functions as property, stock and business agents to be licensed or hold a certificate of registration under that Act by ensuring that persons carrying on business as property, stock and business agents may only engage staff who are licensed or hold a certificate of registration, and
  - iii to strengthen obligations for property, stock and business agents to ensure that their staff are properly supervised and that those staff comply with requirements under that Act,
- (b) to enable licences under the *Conveyancers Licensing Act 2003* and *Pawnbrokers and Second-hand Dealers Act 1996* to have effect for up to 3 years, rather than only 1 year, as at present (Schedule 2.1 and 2.5),
- (c) to amend the *Fair Trading Act 1987* to extend the scheme for the publication of standard retail prices of fuels available for fuelling of motor vehicles at service stations to hydrogen and electricity (Schedule 2.3),
- (d) to amend the *Funeral Funds Act 1979* (Schedule 2.4) to ensure the following:
  - i that a friendly society (within the meaning of the *Life Insurance Act 1995* of the Commonwealth) is not required to be registered under the *Funeral Funds Act 1979* to carry on contributory funeral benefit business,
  - ii that friendly societies and Crown cemetery trusts are not required to be registered under the *Funeral Funds Act 1979* to act as trustees of trust funds under pre-paid contracts for the supply of funeral services,

- iii that a Crown cemetery trust can both enter into a pre-paid contract for the supply of funeral services and act as trustee of the money paid in advance for that supply (rather than the money having to be paid to a separate trustee who is registered under the *Funeral Funds Act 1979*),
- (e) to encourage the use of the online rental bond service established under the *Residential Tenancies Act 2010* by ensuring that a landlord or agent cannot require or receive a rental bond from a tenant unless the landlord or agent is registered as a user of the online service and has invited the tenant to use the online service to deposit the rental bond (Schedule 2.7),
- (f) to repeal provisions of certain Acts that, for policy reasons, are no longer required (clause 1 of Schedule 3),
- (g) to repeal certain other Acts and instruments for the purpose of statute law revision (clauses 2 and 3 of Schedule 3),
- (h) to make amendments to various other Acts and instruments consequent on or related to the proposed repeals, including amendments relating to the abolition of the *Compensation Court in 2004* (Schedule 4).

## BACKGROUND

2. As stated in the Second Reading Speech the *Regulatory and Other Legislation (Amendments and Repeals) Bill 2016* continues the Government's commitment 'to repealing legislation, reducing the regulatory burden, and removing barriers to digitisation within government.'

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by proclamation*

3. The Bill provides for parts of the Act to commence on assent and others to commence by proclamation. Commencement by proclamation provides the Executive with the power to commence the provisions on a day or days of its choosing.

**The Committee prefers legislation to commence on assent or a fixed date. However, in the present case the Committee notes that the provisions commencing by proclamation concern changes to regulatory schemes and flexibility as to when they commence may be desirable. The Committee makes no further comment.**



# Appendix One – Functions of the Committee

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

## **8A Functions with respect to Bills**

- 1 The functions of the Committee with respect to Bills are:
  - (a) to consider any Bill introduced into Parliament, and
  - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
    - i trespasses unduly on personal rights and liberties, or
    - ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
    - iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
    - iv inappropriately delegates legislative powers, or
    - v insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- 2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

## **9 Functions with respect to Regulations**

- 1 The functions of the Committee with respect to regulations are:
  - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
  - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
    - i that the regulation trespasses unduly on personal rights and liberties,
    - ii that the regulation may have an adverse impact on the business community,
    - iii that the regulation may not have been within the general objects of the legislation under which it was made,
    - iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

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- v that the objective of the regulation could have been achieved by alternative and more effective means,
  - vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
  - vii that the form or intention of the regulation calls for elucidation, or
  - viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- 2 Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
  - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

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