



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 17/55 – 22 May 2012



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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

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Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations

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

- v that the objective of the regulation could have been achieved by alternative and more effective means,
 - vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - vii that the form or intention of the regulation calls for elucidation, or
 - viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

2 Further functions of the Committee are:

- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
- (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

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

Guide to the Digest

COMMENT ON BILLS

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

Ministerial Correspondence – Bills previously considered

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

COMMENT ON REGULATIONS

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

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

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

Conclusions

PART ONE - BILLS

1. HEALTH LEGISLATION AMENDMENT BILL 2012

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

Privacy

The Committee recognises the impacts on privacy that this provision potentially creates are outweighed by the broader public interest. As such, the Committee does not consider this provision to be a trespass on individual rights and liberties.

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

Commencement by Proclamation

Ordinarily, the Committee would comment on acts or parts of acts that are to commence by proclamation. However, the Committee understands that the commencement of this Schedule has been delayed to accommodate the development of guidelines by the NSW Privacy Commissioner. The Committee accepts the reasons for commencement by proclamation as appropriate in the circumstances.

2. INDUSTRIAL RELATIONS AMENDMENT (INDUSTRIAL ORGANISATIONS) BILL 2012

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

Right to silence

The Committee is concerned that provisions that require the production of documentation or the provision of information may adversely affect an officer, employee or former officer or employee's right to silence. The Committee also notes that this clause has been maintained in the now amended section 290C. However, the Committee notes that the unamended sub-section 290E (2) [now sub-section 290C (2)] provides that having a 'reasonable excuse' mitigates the failure to comply with this requirement. The Committee considers that asserting a right to silence in circumstances where an officer or employee might incriminate themselves may constitute a 'reasonable excuse'. As such, the Committee makes no further comment with respect to this issue.

The Committee refers to Parliament whether enabling an investigator to question an officer, employee or former officer or employee constitutes a trespass of an individual's right to silence.

Search and seizure without a warrant

The Committee is concerned that provisions that provide a power to enter premises and seize documents without a warrant may trespass on personal rights and liberties. As this section details the rights of an investigator with respect to employer breaches, the Committee considers it reasonable that workplace documents are subject to seizure powers, and as such does not make any further comment in relation to this issue.

Ongoing responsibilities of officers

The Committee is concerned that officers may continue to be responsible for their conduct, up to five years after leaving an organisation. However, as the relevant conduct relates to acting dishonestly, deceptively or defrauding an organisation, using a position for profit and failing to disclose interests, the Committee considers that an increase in the time for commencement of proceedings is reasonable in the circumstances.

Retrospectivity

The Committee is concerned when any legislation commences retrospectively, particularly provisions relating to offences. Notwithstanding the overriding public interest in ensuring that unions operate to the benefit of members – and the particular circumstances relating to the introduction of this Bill – the Committee refers to Parliament whether the retrospective commencement of these provisions is appropriate.

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

Executive performing a judicial function

The Committee is concerned that the Bill provided the Minister with the capacity to appoint an administrator in circumstances where an investigation into alleged gross misconduct had commenced – but not concluded, and without clarification as to who or what organisation could be undertaking the investigation. However, the Committee notes that this provision was amended and as such does not refer this issue to Parliament for its consideration.

3. NATIONAL PARKS AND WILDLIFE AMENDMENT (ADJUSTMENT OF AREAS) BILL 2012

The Committee has not identified any issues arising under section 8A(1) of the Legislation Review Act 1987.

PART TWO - REGULATIONS

The Committee is not reporting on any Regulations in this Digest.

Part One - Bills

1. Health Legislation Amendment Bill 2012

Date introduced	9 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. This Bill has three primary objectives.
2. The first is to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* for minor administrative improvements to the National Law as it applies to NSW and by way of statute law revision. These amendments include constituting the mandatory notifications of certain types of conduct by medical practitioners as complaints for the purposes of the *Health Care Complaints Act 1993*.
3. The Bill also proposes to amend the *Health Records and Information Privacy Act 2002* to provide for the use and disclosure of genetic information subject to certain conditions.
4. Finally, the Bill proposes to amend the *Poisons and Therapeutic Goods Act 1966* to ensure that the same regulatory controls relating to certain restricted substances apply to registered podiatrists as those that apply to other registered health practitioners.

BACKGROUND

5. This Bill provides for routine amendments to health-related legislation to rectify issues identified with some existing legislation and to take into account changing circumstances and concerns in the health field, in particular the current restrictions on disclosing genetic information.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act (except Schedule 1.2) on the date of assent to the proposed Act. Schedule 1.2 commences on a day to be appointed by proclamation.
8. Schedule 1.1 makes amendments to the Health Practitioner Regulation National Law as set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland and as applied as a law of New South Wales by the *Health Practitioner Regulation (Adoption of National Law) Act 2009 (the National Law (NSW))*.

9. Schedule 1.1 [1] and [3] provide that an Impaired Registrants Panel is not an *adjudication body* for the purposes of the National Law (NSW). This is because an Impaired Registrants Panel can only make recommendations in relation to individual practitioners and may not take any action against them.
10. Schedule 1.1 [2] extends the objectives and guiding principles of the National Law (NSW) to provide that the protection of the public is to be the paramount consideration when exercising functions under a provision that is specific to New South Wales in its application.
11. Schedule 1.1 [4], [6], [11] and [23] make amendments by way of statute law revision.
12. Schedule 1.1 [5], [22] and [27] update references to the Department of Health to reflect changes to Government administrative arrangements.
13. Schedule 1.1 [7] provides that a mandatory notification of certain conduct by a registered health practitioner is taken to be a complaint against the health practitioner for the purposes of the National Law (NSW) and the *Health Care Complaints Act 1993*.
14. Schedule 1.1 [8] clarifies that counselling that a Professional Standards Committee, a health profession council (*a Council*), a health profession tribunal (*a Tribunal*) or an Impaired Registrants Panel may order or recommend a health practitioner or student to undergo includes psychological counselling.
15. Schedule 1.1 [9] amends a provision relating to the delegation of functions of a Council to a group of persons to provide that one person within that group must not be, and must never have been, a registered health practitioner or student in the same health profession for which the Council is established.
16. Schedule 1.1 [10] clarifies that an appeal that a person may make to a Tribunal regarding certain actions taken by a Council is to be dealt with by the Tribunal reconsidering the matter.
17. Schedule 1.1 [12] provides that a Council is the appropriate body to conduct a review of certain decisions made against a health practitioner if the Chairperson of the Tribunal so decides.
18. Schedule 1.1 [13] provides that certain orders of a Council may be the subject of a review under Division 8 of Part 8 of the National Law (NSW).
19. Schedule 1.1 [14] provides that a reinstatement order is an order that a person may be registered in accordance with Part 7 of the National Law (NSW) subject to an application for registration being made and approved under that Part.

20. Schedule 1.1 [15] removes the requirement for the Chairperson or Deputy Chairperson of a Tribunal to give notice of an inquiry or appeal to be conducted by the Tribunal to the Director-General of the Ministry of Health.
21. Schedule 1.1 [16], [18] and [19] amend provisions relating to the composition of a Professional Standards Committee, an Assessment Committee and a Performance Review Panel to provide that those bodies must include one person who is not, and never has been, a registered health practitioner or student in the same profession as the health practitioner who is the subject of the proceedings concerned.
22. Schedule 1.1 [17] removes the requirement for the Chairperson of a Professional Standards Committee to give notice of certain inquiries to be conducted by the Committee into complaints about health practitioners to the Director-General of the Ministry of Health.
23. Schedule 1.1 [20] enables a Council to issue evidentiary certificates that certify the registration status of a health practitioner prior to 1 July 2010. Schedule 1.1 [21] makes a consequential amendment.
24. Schedule 1.1 [24] enables savings and transitional regulations to be made as a consequence of the proposed Act. Schedule 1.1 [25] contains provisions of a savings and transitional nature.
25. Schedule 1.1 [26] clarifies that notice of an intention to enter the practice of a registered health practitioner by a performance assessor may be given by another person on behalf of the performance assessor.
26. Schedule 1.2 [3] enables a person's genetic information to be used for a purpose other than the primary purpose for which it was collected on the condition that it is used in accordance with guidelines issued by the Privacy Commissioner appointed under the *Privacy and Personal Information Protection Act 1998 (the Privacy Commissioner)* and that it is reasonably believed to be necessary to lessen or prevent a serious threat to the life, health or safety of a genetic relative.
27. Schedule 1.2 [1] and [2] make consequential amendments.
28. Schedule 1.2 [4] enables a person's genetic information to be disclosed to their genetic relatives for a purpose other than the primary purpose for which it was collected on the condition that it is disclosed in accordance with guidelines issued by the Privacy Commissioner and that it is reasonably believed to be necessary to lessen or prevent a serious threat to the life, health or safety of a genetic relative.
29. Schedule 1.3 applies the same exemptions and restrictions to registered podiatrists in relation to the possession, use, supply or prescription of certain restricted substances as those applying to other registered health practitioners.

Currently, podiatrists are included in certain provisions of the *Poisons and Therapeutic Goods Act 1966* along with other registered health practitioners, but have inadvertently been omitted from other provisions applying to registered health practitioners.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

30. Clauses [3] and [4] of the proposed amendments to the *Health Records and Information Privacy Act 2002* provide that genetic information can be used, or disclosed to a genetic relative, for a purpose other than the purpose for which it was collected in certain, defined circumstances. This will include where it is reasonably believed by the organisation or medical practitioner that holds the genetic information to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates.
31. The Committee notes that this provision will enable organisations and medical practitioners to disclose sensitive information about an individual, including information about that individual's genetic condition or predisposition to a genetic condition.
32. Ordinarily, this would enliven the Committee's concern about the impacts such a provision would have to the privacy of an individual and the potential breach of confidentiality in the disclosure of sensitive medical information. In particular, the Committee is mindful of the distress such a disclosure may cause to an individual.
33. However, the Committee notes the ethical complexities that concern the disclosure of genetic information. On advice received from the Minister's office, the Committee understands that this provision is designed to shift away from a blanket ban on disclosing genetic information and to allow organisations to make careful decisions about such situations, subject to guidelines to be established by the NSW Privacy Commissioner. An example where such a disclosure may be considered appropriate would be where the disclosure of genetic information would provide a genetic relative with an opportunity to take precautionary medical treatment to delay the onset of, or mitigate the effects against, a genetic condition to which they may have a predisposition.
34. The Committee also understands this amendment would align NSW with the Commonwealth and other jurisdictions, and that precedents are already in place at the Commonwealth level through guidelines established by the Commonwealth Privacy Commissioner and the National Health and Medical Research Council.

The Committee recognises the impacts on privacy that this provision potentially creates are outweighed by the broader public interest. As such, the Committee does not consider this provision to be a trespass on individual rights and liberties.

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

Commencement by Proclamation

35. This Act is to commence on the date of assent, except for Schedule 1.2 which is to commence on a day or day to be appointed by proclamation. Schedule 1.2 relates to the amendments to the *Health Records and Information Privacy Act 2002*.

Ordinarily, the Committee would comment on acts or parts of acts that are to commence by proclamation. However, the Committee understands that the commencement of this Schedule has been delayed to accommodate the development of guidelines by the NSW Privacy Commissioner. The Committee accepts the reasons for commencement by proclamation as appropriate in the circumstances.

2. Industrial Relations Amendment (Industrial Organisations) Bill 2012

Date introduced	8 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Pearce MLC
Portfolio	Minister for Finance and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Industrial Relations Act 1996* as follows:
 - (a) to enable the Minister to appoint an administrator for a State industrial organisation if there is an ongoing investigation into or evidence of gross misconduct by its officers and proper administrative arrangements need to be put in place;
 - (b) to enable the Industrial Relations Commission (the "Commission") to make orders approving schemes to enable a State industrial organisation to work more effectively, hold elections or to do other things if the organisation ceases to function effectively, its officers engage in gross misconduct or an office is vacant and cannot be filled;
 - (c) to enable the Industrial Registrar to arrange for elections for a State industrial organisation where all of its offices are vacant due to action against an associated federal organisation;
 - (d) to require the Industrial Registrar to notify the Director-General of the Department of Finance and Services of instances of misconduct by officers of State industrial organisations;
 - (e) to confer on inspectors powers to investigate misconduct offences by officers of State industrial organisations;
 - (f) to extend to 5 years the limitation period for prosecutions for misconduct offences by officers of State industrial organisations; and
 - (g) to enact other provisions of a consequential or savings or transitional nature.
2. This Bill was passed by both Houses in the week it was introduced. As the Bill was amended in the Legislative Council, this report considers the potential impacts of both the unamended Bill at First Print and the Bill as drafted on assent.

BACKGROUND

3. Under the Industrial Relations framework, it is possible for workers to be represented by their union at a national level, which is regulated by the *Fair Work (Registered*

Organisations) Act 2009 (Cth) and simultaneously at the state level, which is regulated by the *Industrial Relations Act 1996* (NSW). Section 323 of the Commonwealth Act enables the Minister to apply to the Federal Court for an administrator to be appointed to run the union in certain circumstances. There is no equivalent provision in the NSW Act.

4. This Bill has been tabled to remove any ambiguity that may exist with respect to the ability of an administrator to be appointed with respect to the Health Services Union, which is registered under national law and has a branch called the HSU East Branch, which covers New South Wales and Victoria. To remove the ambiguity, this Bill seeks to amend the New South Wales Act to enable an administrator to be appointed to the HSU East Branch in certain circumstances.

OUTLINE OF PROVISIONS

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

Actions in cases of dysfunction, misconduct or vacancy in offices

7. Schedule 1 [3] inserts proposed Division 11 of Part 4 of Chapter 5.
8. Proposed section 290B enables the Minister, by order, to appoint an administrator for a State industrial organisation if the Minister has reason to believe that there is an ongoing investigation into alleged gross misconduct by officers of the organisation, or an investigation has found evidence of such gross misconduct, and that the appointment will enable proper administrative arrangements to be put in place. The administrator will have (subject to the order of appointment) the function of the conduct and management of the affairs of the organisation for a period of up to 6 months. Proposed section 290C confers jurisdiction on the Supreme Court to review an order made by the Minister appointing an administrator.
9. Proposed section 290D enables the Commission, on the application of the Minister, a State industrial organisation or any person having a sufficient interest, to make declarations that an organisation has ceased to exist or function effectively, has officers who are alleged to or have engaged in gross misconduct, or that an office in the organisation is vacant and cannot be effectively filled. On making such a declaration, the Commission may approve a scheme for the organisation (which may include the appointment of an administrator) to enable those matters to be remedied.
10. Proposed section 290E enables an administrator to require officers or employees, or former officers or employees, of State industrial organisations to provide relevant documents to an administrator and to provide other information or assistance that an administrator reasonably requires. It will be an offence to fail, without reasonable excuse, to comply with such a requirement.

11. Proposed section 290F excludes an administrator, the State and the Minister from liability for acts or omissions of an administrator appointed for a State industrial organisation.
12. Proposed section 290G confers power on the Industrial Registrar, on application by the Minister or a person having a sufficient interest, to make arrangements for the election of officers of a State industrial organisation where the officers held office by virtue of appointment as officers of an affiliated federal industrial organisation and those officers' positions are vacant and the State industrial organisation's rules do not provide an effective means to fill them.
13. Proposed section 290H makes it clear that the provisions of the proposed Division will apply to certain State industrial organisations with federal links. It also makes it clear that an administrator appointed under the proposed Division may be an administrator appointed to an associated organisation under Commonwealth legislation.
14. Proposed section 290I validates elections of officers held under the proposed Division that may contravene the rules of the State industrial organisation concerned.
15. Schedule 1 [1] makes an amendment consequential on the insertion of proposed sections 290B, 290D and 290G.
16. Schedule 1 [2] imposes a duty on the Industrial Registrar to notify the Director-General of the Department of Finance and Services of any matter that the Industrial Registrar reasonably suspects concerns conduct that constitutes or may constitute a misconduct offence by an officer of a State industrial organisation.

Investigation and prosecution of offences

17. Schedule 1 [4] enables an inspector who enters premises to investigate possible contraventions of the industrial relations legislation or an industrial instrument by an employer to seize anything that the inspector reasonably considers to be evidence of a contravention.
18. Schedule 1 [5] confers powers on inspectors to enter and inspect premises of State industrial organisations, to require records to be produced and information to be provided and to question officers or employees or former officers or employees of industrial organisations in relation to contraventions of the provisions relating to misconduct by officers of such organisations. Inspectors may also seize anything that is reasonably considered to be evidence of a contravention.
19. Schedule 1 [6] enables an inspector who enters premises under a search warrant to seize anything that the inspector reasonably considers to be evidence of a contravention of the industrial relations legislation or an industrial instrument.
20. Schedule 1 [8] extends the limitation period for prosecution of misconduct offences by officers of State industrial organisations to 5 years.
21. Schedule 1 [7] makes a consequential amendment.

Savings and transitional provisions

22. Schedule 1 [9] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.
23. Schedule 1 [10] inserts provisions enabling actions to be taken under provisions inserted by the proposed Act in relation to matters that occurred before its commencement and applying the new limitation period for offences, and the additional investigation powers of inspectors, to offences committed before the commencement of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right to silence

24. Unamended section 290E provided that an administrator can require an officer, employee or former officer or former employee produce requested documents and provide information as reasonably required.

The Committee is concerned that provisions that require the production of documentation or the provision of information may adversely affect an officer, employee or former officer or employee's right to silence. The Committee also notes that this clause has been maintained in the now amended section 290C. However, the Committee notes that the unamended sub-section 290E (2) [now sub-section 290C (2)] provides that having a 'reasonable excuse' mitigates the failure to comply with this requirement. The Committee considers that asserting a right to silence in circumstances where an officer or employee might incriminate themselves may constitute a 'reasonable excuse'. As such, the Committee makes no further comment with respect to this issue.

25. Clause 5 of Schedule 1 of the Bill provides an inspector with the power to question officers, employees, former officer and former employees. This clause was passed by both Houses unamended.

The Committee refers to Parliament whether enabling an investigator to question an officer, employee or former officer or employee constitutes a trespass of an individual's right to silence.

Search and seizure without a warrant

26. Clause 4 of Schedule 1 of the Bill provides an inspector with a new power, insofar as an inspector who enters premises under section 385 of the Act may seize anything that the inspector reasonably considers to be evidence of a contravention of the industrial relations legislation or an industrial instrument. This clause was passed by both Houses unamended.
27. Clause 5 of Schedule 1 of the Bill provides an inspector with specified powers in relation to misconduct offences. The powers include the inspection of premises, requiring the production of records and the ability to retain such records and the delivery of information. This clause was passed by both Houses unamended.

The Committee is concerned that provisions that provide a power to enter premises and seize documents without a warrant may trespass on personal

rights and liberties. As this section details the rights of an investigator with respect to employer breaches, the Committee considers it reasonable that workplace documents are subject to seizure powers, and as such does not make any further comment in relation to this issue.

Ongoing responsibilities of officers

28. Clause 8 of Schedule 1 outlines that offences with respect to sections 267-269 of the Act may be commenced within five years, rather than twelve months. This clause was passed by both Houses unamended.

The Committee is concerned that officers may continue to be responsible for their conduct, up to five years after leaving an organisation. However, as the relevant conduct relates to acting dishonestly, deceptively or defrauding an organisation, using a position for profit and failing to disclose interests, the Committee considers that an increase in the time for commencement of proceedings is reasonable in the circumstances.

Retrospectivity

29. Clause 10 of Schedule 1 of the Bill provides that action taken under the new Division 11 of Part 4 of Chapter 5 – powers relating to cases of dysfunction, misconduct or vacancy in offices in State organisations – may be taken in relation to an act or omission that occurred before the commencement of that Division. Similarly, sections 385, 388 and 398 as amended – an inspector's powers in relation to employer breaches and misconduct offences, as well as search warrants and the time allowed for instituting proceedings – applies to offences committed before the commencement of the amending Act.

The Committee is concerned when any legislation commences retrospectively, particularly provisions relating to offences. Notwithstanding the overriding public interest in ensuring that unions operate to the benefit of members – and the particular circumstances relating to the introduction of this Bill – the Committee refers to Parliament whether the retrospective commencement of these provisions is appropriate.

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

Executive performing a judicial function

30. Unamended section 290B provided that a Minister may appoint an administrator to conduct the affairs of a State organisation if that Minister believes that there is an ongoing investigation into alleged gross misconduct by a collective body or one or more officers and the appointment of the administrator will enable proper administrative arrangements to be put in place.

The Committee is concerned that the Bill provided the Minister with the capacity to appoint an administrator in circumstances where an investigation into alleged gross misconduct had commenced – but not concluded, and without clarification as to who or what organisation could be undertaking the investigation. However, the Committee notes that this provision was amended and as such does not refer this issue to Parliament for its consideration.

3. National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2012

Date introduced	9 May 2012
House introduced	Legislative Assembly
Minister responsible	Hon Robyn Parker MP
Portfolio	Environment

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the National Parks and Wildlife Act 1974:
 - (a) to change the reservation of part of the Berowra Valley Regional Park to a national park to be known as Berowra Valley National Park, and
 - (b) to revoke the reservation of parts of Broadwater National Park, Kooraban National Park, Yaegl Nature Reserve, Cooperabung Creek Nature Reserve and Bogandyera Nature Reserve and to vest that land in the Minister for the purposes of Part 11 of the Act, and
 - (c) to provide that the Minister must not transfer that land (other than certain land in Bogandyera Nature Reserve) under Part 11 of the Act unless satisfied that appropriate compensation has been provided.

BACKGROUND

2. Regional Parks are land reserved for the purposes of protecting and conserving natural or modified landscapes which are also available for public recreation. Regional parks are distinguishable from National Parks in the types of recreational activities which are permitted, for example dog walking.
3. Bogandyera Nature Reserve, which is dissected by Mannus Creek, conserves a regionally rare example of relatively intact riparian vegetation. In 2001, the then State Government included a quarry in as part of the Bogandyera Nature Reserve which precluded the Tumbarumba Shire Council from accessing the site to obtain materials for source of local road repair materials.
4. The Government is currently upgrading the Pacific Highway and according to the Minister for Environment, the Hon. Robyn Parker, who stated during the Second Reading Speech that this Bill will:

"enable urgent highway upgrades by revoking around 38 hectares of land from reservation under the National Parks and Wildlife Act. This will make it

possible for essential safety upgrades to occur on the Pacific Highway and the Princes Highway."

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of National Parks and Wildlife Act 1974 No 80

7. Schedule 1 [2] revokes the reservation of about 3,876 hectares of land in Berowra Valley Regional Park and reserves that land as Berowra Valley National Park.
8. Schedule 1 [3] revokes the reservation of the following land and vests it in the Minister for the purposes of Part 11 of the Act which enables the Minister to sell, grant leases of, dispose of or otherwise deal with the land:
 - (a) about 17.09 hectares of Broadwater National Park,
 - (b) about 18.28 hectares of Kooraban National Park,
 - (c) about 1.58 hectares of Yaegl Nature Reserve,
 - (d) about 1.2 hectares of Cooperabung Creek Nature Reserve,
 - (e) 2 different areas of Bogandyera Nature Reserve of about 7.7 hectares and 16.83 hectares.
9. The Minister must not transfer any of that land (other than the area of about 7.7 hectares at Bogandyera Nature Reserve) under Part 11 of the Act unless satisfied that appropriate compensation has been provided.
10. Schedule 1 [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
11. Schedule 1 [1] makes an amendment in the nature of statute law revision.

ISSUES CONSIDERED BY COMMITTEE

The Committee has not identified any issues arising under section 8A(1) of the Legislation Review Act 1987.

Part Two - Regulations

The Committee is not reporting on any Regulations in this Digest.

Appendix One – Index of Ministerial Correspondence on Bills

The Committee is not in receipt of Ministerial Correspondence with respect to Bills.

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.