



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

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
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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. CENTRAL COAST WATER CATCHMENTS PROTECTION BILL 2014*

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

2. COURTS AND OTHER LEGISLATION AMENDMENT BILL 2014

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

Privacy

Permitting the disclosure of information subject to a suppression order may impact on an individual's right to privacy depending on the nature of the information disclosed. However, the Committee notes that any disclosures to the Bureau of Crime Statistics and Research can only be for the limited purpose of compiling statistical information and must not result in the information the subject of the order being published. The Committee also notes the public interest in maintaining statistics relating to the criminal justice system and therefore makes no further comment.

3. CRIMES AMENDMENT (FEMALE GENITAL MUTILATION) BILL 2014

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

Excessive penalty increase

The Committee will always comment when there is a substantial penalty increase for criminal offences. The penalty increase in this Bill follows an extensive review process and is designed to bring New South Wales into line with other jurisdictions. Given these circumstances the Committee makes no further comment.

4. CRIMES AMENDMENT (PROVOCATION) BILL 2014*

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

Restriction of Partial Defence

The Committee notes the Bill restricts the circumstances under which an accused person can successfully argue the partial defence of provocation to a murder charge (which would result in a conviction for the lesser offence of manslaughter). For example, the victim's behaviour must be a serious indictable offence to be sufficiently provocative to invoke the defence under the Bill. Nonetheless, the Bill is the result of a thorough consultation process and is drafted to better reflect contemporary community standards and an expectation that people faced with conduct that is merely offensive or insulting should not contemplate homicide or inflicting serious injury in response. In the circumstances 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 upon personal rights and liberties, to commence on a fixed date or on assent.

5. PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) AMENDMENT (FRESH START SUPPORT) BILL 2014

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

PART TWO – REGULATIONS

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

Part One - Bills

1. Central Coast Water Catchments Protection Bill 2014*

Date introduced	6 March 2014
House introduced	Legislative Council
Member responsible	The Hon Jeremy Buckingham MLC
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The object of this Bill is to protect the Central Coast water catchments from mining and mining-related activities. This is achieved by prohibiting the grant, renewal or modification of licences, leases, claims and authorities that allow persons to prospect for, and mine, minerals and petroleum (including coal seam gas) in those catchments. The catchment areas concerned are as follows:
 - (a) the Mangrove Creek Dam catchment area,
 - (b) the Mangrove Creek Weir catchment area,
 - (c) the Mardi Dam catchment area,
 - (d) the Mooney Mooney Dam catchment area,
 - (e) the Ourimbah Creek catchment area,
 - (f) the Porters Creek catchment area,
 - (g) the Wyong River catchment area.

BACKGROUND

2. This Bill prohibits new authorities for mining or exploration in seven drinking water catchments area on the Central Coast.

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 day that is 3 months after the date of assent to the proposed Act, unless commenced sooner by proclamation.

5. Clause 3 provides definitions of terms used in the proposed Act. The clause defines protected catchment area to mean the areas declared by the regulations to be each of the Mangrove Creek Dam catchment area, the Mangrove Creek Weir catchment area, the Mardi Dam catchment area, the Mooney Mooney Dam catchment area, the Ourimbah Creek catchment area, the Porters Creek catchment area and the Wyong River catchment area.
6. Clause 4 provides for the regulations to declare land where surface water drains to any of those dams to be within those catchment areas. The areas declared by the regulations must not be reduced in size, or the regulations repealed, unless authorised by an Act of Parliament. The clause also provides for the keeping of an inventory of land in protected catchment areas and for the resolution of disputes as to whether or not any particular land is land within a protected catchment area.
7. Clause 5 prohibits the grant or renewal of any mining authorisation in relation to land in a protected catchment area or the making of any changes to the conditions to which such an authorisation is subject.
8. Clause 6 prohibits the grant or renewal of any petroleum title in relation to land in a protected catchment area or the making of any changes to the conditions to which such a title is subject.
9. Clause 7 provides that a planning approval is not to be given under the Environmental Planning and Assessment Act 1979 in relation to development for the purposes of prospecting and mining activities on land in a protected catchment area.
10. Clause 8 provides for the making of regulations under the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

2. Courts and Other Legislation Amendment Bill 2014

Date introduced	5 March 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to permit annual reports under the *Anti-Discrimination Act 1977*, *Inspector of Custodial Services Act 2012*, *Professional Standards Act 1994*, *Public Defenders Act 1995* and *Workplace Surveillance Act 2005* to be laid before a House of Parliament when the House is not sitting,
- (b) to provide for the re-appointment and suspension of justices of the peace and to provide that the office of justice of the peace is not a public office under the *State Records Act 1998*,
- (c) to clarify that the former President of the Industrial Relations Commission is not taken to be President when continuing to deal with matters that have been heard, or partly heard,
- (d) to set out the circumstances in which a report about an investigation of a complaint against a judicial officer is to be given to the judicial officer and to the complainant,
- (e) to make provision for an increase in the superannuation guarantee from 9% to 9.25% with respect to the pensions of judges and acting judges,
- (f) to permit oaths, declarations and affidavits to be taken or made before certain employees in Australian overseas posts and for such employees to be able to verify or certify instruments,
- (g) to extend by 2 months the time within which the State Coroner is required to give an annual report on deaths in custody to the Attorney General,
- (h) to permit information to be disclosed to the Bureau of Crime Statistics and Research despite the existence of a suppression order,
- (i) to provide for the qualifications required to be held by commissioners of the Land and Environment Court with respect to matters under the *Aboriginal Land Rights Act 1983*,
- (j) to clarify the application of a provision of the *Supreme Court Act 1970* that stays the execution of sentences.

BACKGROUND

2. The purpose of the Bill is to make miscellaneous amendments to legislation affecting the operation of New South Wales courts and other legislation administered by the Attorney General and Minister for Justice. The Bill is part of the Government's regular legislative review and monitoring program. It amends a number of Acts to improve the efficiency and operation of NSW courts as well as the operation of various agencies within the Department of Attorney General and Justice.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, except for amendments to the *Judges' Pensions Act 1953* which are taken to have commenced on 1 July 2013.

Schedule 1 Amendments relating to annual reports

5. Schedule 1 amends the *Anti-Discrimination Act 1977*, the *Inspector of Custodial Services Act 2012*, the *Professional Standards Act 1994*, the *Public Defenders Act 1995* and the *Workplace Surveillance Act 2005* to permit the annual report that is required to be prepared under each of those Acts to be laid before a House of Parliament when the House is not sitting. This is consistent with the process under the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* which cover a significant number of annual reports required to be prepared by Government departments and statutory bodies.

Schedule 2 Amendments relating to justices of the peace

6. Schedule 2.1 amends the *Justices of the Peace Act 2002* to permit regulations to be made to provide for the extension or shortening of the term of office of particular justices of the peace. It is envisaged that this will be used for the purpose of ensuring that the workload of processing appointments and re-appointments of justices of the peace is more evenly spread (it should be noted that there are currently more than 90,000 justices of the peace in New South Wales). The proposed amendments also provide for the suspension of a person from the office of justice of the peace if the person is charged with certain offences, or if there are circumstances in which the person may be removed from office or in other circumstances prescribed by regulations made under that Act. The proposed amendments also provide for regulations under the *Justices of the Peace Act 2002* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).
7. Schedule 2.2 amends the *State Records Act 1998* to provide that the office of justice of the peace is not a public office for the purposes of that Act and is therefore not subject to the records management responsibilities under that Act.

Schedule 3 Amendments relating to judicial officers

8. Schedule 3.1 amends the *Industrial Relations Act 1996* to clarify that a former President of the Industrial Relations Commission of New South Wales who continues to deal with

matters relating to proceedings that have been heard, or partly heard, cannot exercise the functions of the President and nor is the former President taken to be the President.

9. Schedule 3.2 amends the *Judges' Pensions Act 1953* to take account of the increase in the superannuation guarantee from 9% to 9.25% on 1 July 2013. The proposed amendments allow for future changes to the superannuation guarantee to be taken into account without the need for further amendment to that Act. The proposed amendments also provide for regulations under the *Judges' Pensions Act 1953* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).
10. Schedule 3.3 amends the *Judicial Officers Act 1986* to require the Conduct Division of the Judicial Commission to provide a report to the Judicial Commission of how it has dealt with a complaint about a judicial officer that has been referred to it. The Judicial Commission must give a copy of the report to the judicial officer concerned and may give a copy of the report (or a summary of the report) to the complainant unless the Conduct Division has notified the Judicial Commission that this should not occur. The proposed amendments also provide for regulations under the *Judicial Officers Act 1986* to contain provisions of a savings or transitional nature consequent on the enactment of that Act or any Act that amends that Act (including the proposed Act).

Schedule 4 Amendments relating to consular officers

11. Schedule 4 amends the *Oaths Act 1900*, the *Conveyancing Act 1919* and the *Powers of Attorney Regulation 2011* to expand the class of persons who are to be Australian Consular Officers for the purposes of certain provisions of those Acts and Regulation. Australian Consular Officers now include those employees of the Commonwealth or of the Australian Trade Commission who have been authorised by the Secretary of the Commonwealth Department of Foreign Affairs and Trade. This means that oaths, declarations or affidavits can now be taken or made before any such person for the purposes of the *Oaths Act 1900* and any such person can verify or certify instruments under the *Conveyancing Act 1919* or the *Powers of Attorney Regulation 2011*.

Schedule 5 Other amendments

12. Schedule 5.1 amends the *Coroners Act 2009* to extend, by 2 months, the period within which the State Coroner is in each year to make an annual report to the Attorney General containing a summary of the details of the deaths or suspected deaths that have occurred in custody or as a result of police operations.
13. Schedule 5.2 amends the *Court Suppression and Non-publication Orders Act 2010* to permit the disclosure of information to the Bureau of Crime Statistics and Research despite the existence of a suppression order under that Act.
14. Schedule 5.3 amends the *Land and Environment Court Act 1979* to provide that a Commissioner can hear matters under the *Aboriginal Land Rights Act 1983* if the Commissioner has suitable knowledge of matters concerning land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines. Any such Commissioner who has no other qualification that would permit the person to be appointed as a Commissioner may only exercise functions under the *Land and Environment Court Act 1979* in relation to proceedings under the *Aboriginal Land Rights Act 1983*.

15. Schedule 5.4 amends section 69C (Stay of execution of conviction, order or sentence pending review) of the *Supreme Court Act 1970* to make it clear that section 69C (2) applies to stay the execution of a sentence and to stay the execution of an order. The amendment to that subsection also provides that an apprehended violence order is not stayed. Section 69C is also amended to clarify that a reference in that section to a person who is in custody includes a reference to a person who is the subject of an intensive correction order or home detention order.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

16. Schedule 5.2 of the Bill amends section 15 of the *Court Suppression and Non-publication Orders Act 2010* so that information the subject of a suppression order by a court can be disclosed to the Bureau of Crime Statistics and Research for the purpose of compiling statistical data about crime and criminal justice.

Permitting the disclosure of information subject to a suppression order may impact on an individual's right to privacy depending on the nature of the information disclosed. However, the Committee notes that any disclosures to the Bureau of Crime Statistics and Research can only be for the limited purpose of compiling statistical information and must not result in the information the subject of the order being published. The Committee also notes the public interest in maintaining statistics relating to the criminal justice system and therefore makes no further comment.

3. Crimes Amendment (Female Genital Mutilation) Bill 2014

Date introduced	5 March 2014
House introduced	Legislative Assembly
Minister responsible	The Hon Greg Smith MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to increase (from 7 years imprisonment to 21 years imprisonment) the maximum penalty for the offence of performing an act of female genital mutilation, or aiding, abetting, counselling or procuring a person to perform such an act, and
 - (b) to create a separate offence (with a maximum penalty of 21 years imprisonment) if a person takes, or arranges for the taking of, another person from the State with the intention of having female genital mutilation performed on the other person.

BACKGROUND

2. This bill follows a review by the Commonwealth Government's review of Australia's legislative framework criminalising female genital mutilation. The review made a number of recommendations aimed at ensuring consistent offences and penalties.
3. The review found that the New South Wales provisions differed from other jurisdictions in two areas:
 - the maximum penalty was significantly less than in other jurisdictions, and
 - New South Wales was the only jurisdiction which didn't have a removal offence.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Crimes Act 1900 No 40

6. Schedule 1 [1] inserts proposed section 10F (3) into the Act to provide that the necessary geographical nexus exists between the State and a female genital mutilation offence, if the person against whom the offence is committed is ordinarily resident in

NSW, to enable a prosecution in NSW of those offences even if the offence is committed outside NSW.

7. Schedule 1 [2] amends section 45 (1) of the Act to increase, from 7 years imprisonment to 21 years imprisonment, the maximum penalty for an offence committed against that section.
8. Schedule 1 [3] makes a consequential amendment to section 45 of the Act to omit section 45 (2). Section 45 (2) is re-enacted under proposed section 10F (3).
9. Schedule 1 [4] inserts proposed section 45A into the Act to create a separate offence of taking a person from the State, or arranging for a person to be taken from the State, with the intention of having female genital mutilation performed on the person. The proposed section includes an evidentiary provision in relation to proceedings for the offence to the effect that, in the absence of proof to the contrary, the accused is presumed to have acted with the intention of having female genital mutilation performed on a person if the accused took, or arranged for the taking of, the person from the State and the mutilation was performed on the person while outside the State. The proposed section provides that it is not a defence to a charge under the section that the person taken from the State consented to being so taken.

Schedule 2 Amendment of Child Protection (Working with Children) Act 2012 No 51

10. Schedule 2 amends the Child Protection (Working with Children) Act 2012 to provide that it is a trigger for an assessment requirement under that Act in relation to a person if proceedings have been commenced against the person for an offence against proposed section 45A of the Crimes Act 1900, whatever the outcome of the proceedings.

ISSUES CONSIDERED BY COMMITTEE

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

Excessive penalty increase

11. The bill increases the maximum penalty for the offence of performing an act of female genital mutilation, or aiding, abetting, counselling or procuring a person to perform such an act from 7 years to 21 years.

The Committee will always comment when there is a substantial penalty increase for criminal offences. The penalty increase in this Bill follows an extensive review process and is designed to bring New South Wales into line with other jurisdictions. Given these circumstances the Committee makes no further comment.

4. Crimes Amendment (Provocation) Bill 2014*

Date introduced	5 March 2014
House introduced	Legislative Council
Member responsible	Reverend the Hon. Fred Nile
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The object of this Bill is to reformulate the law of provocation to restrict its operation.
2. Under section 23 of the Crimes Act 1900, provocation is a partial defence to a charge of murder which will result in the accused being acquitted of murder and convicted of manslaughter instead.
3. This Bill repeals section 23 of the Crimes Act 1900 and replaces it with a section that provides a more limited partial defence of extreme provocation.
4. The existing section makes the partial defence available if the accused loses self-control because of the words or other conduct of the deceased and that conduct could have caused an ordinary person in the position of the accused to have lost self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased.
5. The substituted section provides that an accused acts in response to extreme provocation only if the provocative conduct of the deceased:
 - (a) was a serious indictable offence (that is, an offence punishable by imprisonment for life or for 5 years or more), and
 - (b) caused the accused to lose self-control (a subjective test), and
 - (c) could have caused an ordinary person to lose self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased (an objective test).
6. The substituted section specifically excludes certain conduct from being provocative conduct (namely, non-violent sexual advances and conduct incited by the accused to provide an excuse to use violence against the deceased). It also excludes evidence of self-induced intoxication from being taken into account in determining whether the accused acted in response to extreme provocation. As with the existing section, the substituted section provides that the killing of the deceased need not occur immediately after the provocative conduct.

BACKGROUND

7. In his Second Reading Speech, Reverend the Hon. Fred Nile told Parliament that the Bill makes significant amendments to the law of provocation, a partial defence to murder, set out in section 23 of the *Crimes Act 1900*, thereby restricting its operation.
8. The Bill represents the Government response to the recommendations made by the Legislative Council's Select Committee on the Partial Defence of Provocation, following community concern at the result in the homicide case of *R v Singh* [2012] NSWSC 637. The Select Committee made 11 recommendations to which the Government gave its in-principle support.
9. The Government was then assisted by a working group made up of the most senior criminal law experts in the State to formulate an exposure draft of the Bill which was released for public consultation. The Select Committee was then consulted on the final draft of the Bill.

OUTLINE OF PROVISIONS

10. Clause 1 sets out the name (also called the short title) of the proposed Act.
11. Clause 2 provides for the commencement of the proposed Act on a day to be proclaimed.
12. Schedule 1 amends the Crimes Act 1900 in the manner described in the above 'Purpose and Description' section.

ISSUES CONSIDERED BY COMMITTEE

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

Restriction of Partial Defence

13. Schedule 1 of the Bill restricts the circumstances under which an accused person can successfully argue the partial defence of provocation to a murder charge which would result in the accused person being found guilty of the lesser offence of manslaughter.
14. For example, the partial defence is currently available if the accused loses self-control because of the conduct of the deceased, *including grossly insulting words or gestures*, and that conduct could have caused an ordinary person in the position of the accused to have lost self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased. In contrast, for the defence to be available under the Bill, the deceased's conduct must be *a serious indictable offence* i.e. one punishable by imprisonment for life or for 5 years or more. In addition, the Bill specifically excludes certain behaviour from qualifying as provocation i.e. non-violent sexual advances.

The Committee notes the Bill restricts the circumstances under which an accused person can successfully argue the partial defence of provocation to a murder charge (which would result in a conviction for the lesser offence of manslaughter). For example, the victim's behaviour must be a serious indictable offence to be sufficiently provocative to invoke the defence under the Bill. Nonetheless, the Bill is the result of a thorough consultation process and is drafted to better reflect contemporary community standards and an expectation that people faced with conduct that is merely offensive or insulting

should not contemplate homicide or inflicting serious injury in response. In the circumstances the Committee makes no further comment.

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

Commencement by Proclamation

15. Clause 2 of the Bill provides for the Act to commence on a day to be appointed by proclamation.

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

5. Payroll Tax Rebate Scheme (Jobs Action Plan) Amendment (Fresh Start Support) Bill 2014

Date introduced	6 March 2014
House introduced	Legislative Assembly
Minister responsible	The Hon Mike Baird MP
Portfolio	Treasurer

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 to implement the Government's proposed support scheme to provide for an additional payroll tax rebate in respect of the employment of persons whose employment with particular employers has been terminated because of redundancy. The additional rebate amount of \$1,000 is to apply in relation to the first year of eligible employment under the Act of a person who has been made redundant.

BACKGROUND

2. As part of the Jobs Action Plan Rebate Scheme, this Bill adds a new initiative called the Jobs Action Plan Rebate Scheme - Fresh Start Support. The Fresh Start Support rebate is a one off amount of \$1000 which can be claimed at the anniversary of an eligible employee's start date.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

5. Schedule 1 [1] inserts a reference to the definitions of designated employer and fresh start employee for the purposes of the proposed support scheme.
6. Schedule 1 [2] provides that the Minister may, by notice published in the Gazette, designate an employer as a designated employer, and must have regard to the matters prescribed by the regulations in making a designation. This amendment further provides that the designation of an employer may have retrospective effect, for the purposes of the proposed support scheme, to a day not earlier than 1 January 2014.

7. Schedule 1 [3] provides that the annual rebate amount for the first year of eligible employment in respect of fresh start employees under the proposed support scheme is \$3,000. This amount is \$1,000 more than the rebate amount otherwise applying in relation to a person's first year of eligible employment under the Act.
8. Schedule 1 [4] defines fresh start employee and prescribed redundancy for the purposes of the proposed support scheme.
9. Schedule 1 [5] provides that a regulation may prescribe a date to extend the scheme closure date in respect of the employment of any employees or any class of employees. An extension of the scheme closure date in respect of the employment of particular employees would extend the application of the rebate scheme to those employees beyond the current scheme closure date under the Act (30 June 2015). The proposed amendment also states how particular provisions of the Act would apply in relation to such employees, and provides that a regulation may apply provisions of the Act, with any necessary modifications, in relation to an extension of the rebate scheme.
10. Schedule 1 [6] provides that an application under section 20 of the Act for registration as a claimant in respect of a fresh start employee may be made within 30 days after the day the notice designating the employee's former employer as a designated employer is published.

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.

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.