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Legislation Review Committee

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

Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	i
PART ONE – BILLS	2
1. COASTAL PROTECTION AMENDMENT BILL 2012	2
2. WORKERS COMPENSATION LEGISLATION AMENDMENT (COSTS) BILL 2012*	7
APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	9
APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	10

Membership

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Functions of the Committee

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

8A Functions with respect to Bills

1 The functions of the Committee with respect to Bills are:

to consider any Bill introduced into Parliament, and

to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:

- i trespasses unduly on personal rights and liberties, or
- ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
- iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
- iv inappropriately delegates legislative powers, or
- v insufficiently subjects the exercise of legislative power to parliamentary scrutiny

2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations

1 The functions of the Committee with respect to regulations are:

- (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,

to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:

- i that the regulation trespasses unduly on personal rights and liberties,
- ii that the regulation may have an adverse impact on the business community,
- iii that the regulation may not have been within the general objects of the legislation under which it was made,
- iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- v that the objective of the regulation could have been achieved by alternative and more effective means,
- vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
- vii that the form or intention of the regulation calls for elucidation, or
- viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and

to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

2 Further functions of the Committee are:

- (b) 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
- (c) 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. COASTAL PROTECTION AMENDMENT BILL 2012

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the implementation of this Bill will require certain administrative arrangements to be implemented by the Government and Local Councils. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

2. WORKERS COMPENSATION LEGISLATION AMENDMENT (COSTS) BILL 2012*

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

Part One – Bills

1. Coastal Protection Amendment Bill 2012

Date introduced	12 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Robyn Parker MP
Portfolio	Environment and Heritage

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Coastal Protection Act 1979* (the Principal Act):
 - (a) to make changes to the regulatory scheme governing the placement of certain coastal protection works (such as sandbags) on beaches, or sand dunes adjacent to beaches, to mitigate the effects of wave erosion on land;
 - (b) to reduce the maximum penalties for offences relating to the placement, maintenance and removal of such coastal protection works; and,
 - (c) to remove the regulation-making power from the Principal Act, and repeal existing regulations, relating to the categorisation of certain coastal land by reference to the level of the risk that the land will be adversely affected by coastal hazards (such as beach erosion, shoreline recession and coastal inundation).

BACKGROUND

2. Coastal erosion in New South Wales is managed the NSW Coastal Policy, the *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011*.
3. The NSW Coastal Policy involves local councils, with financial and technical support from the State, undertaking coastal hazard studies and developing coastal zone management plans.
4. Private land owners in specific locations are permitted to place sandbags under strict conditions to prevent coastal erosion and damage to their property during storms. For any other coastal protection works, landowners must lodge a development application.
5. Coastal erosion is currently threatening at least 200 homes in New South Wales according to the Minister for Environment, the Hon. Robyn Parker MP, who also stated in her second reading speech:

Red tape restrictions have prevented landowners from taking immediate action to protect their properties. Local councils have been under severe financial and regulatory constraints with ratepayers on this issue. Local councils have been desperately seeking help from the New South Wales Government....The coastline,

including its low-lying estuaries, needs to be sheltered from extreme weather events and landowners need to be able to protect their properties in the face of those events.

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 on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Coastal Protection Act 1979 No 13

8. Amendments relating to temporary coastal protection works generally Schedule 1 [1], [2], [4] and [12] rename “emergency coastal protection works” as “temporary coastal protection works”.
9. Schedule 1 [6] and [8] provide that a person does not require regulatory approval under the Principal Act or any other law (such as development consent under the Environmental Planning and Assessment Act 1979) for temporary coastal protection works that comply with the requirements for those works set out in the Principal Act. The amendments make it clear that such works on private land are no longer required to be authorised by a pre-existing certificate issued by an emergency works authorised officer. Schedule 1 [7], [10] and [22] make consequential amendments.
10. Schedule 1 [8] also removes current requirements that temporary coastal protection works only be placed:
 - (a) to reduce the impact or likely impact of erosion on a building being lawfully used for residential, commercial or community purposes, and
 - (b) when beach erosion is occurring or imminent or is reasonably foreseeable.
11. Schedule 1 [9] removes the requirement that temporary coastal protection works be removed 12 months after placement. (See proposed section 55VA regarding a maximum period for the placement of temporary coastal protection works on public land).
12. Schedule 1 [11] removes a current restriction that provides that emergency coastal protection works may be placed on private land only once.

Amendments relating to temporary coastal protection works and public land

13. Schedule 1 [13] and [14] make a number of amendments relating to the use and occupation of public land for the placement of temporary coastal protection works.
14. Under proposed section 55T (1)–(2A) and (3A) a person will be able to obtain a certificate to authorise the person to use and occupy public land for the placing and maintaining of temporary coastal protection works (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the public land). Such a certificate must not be issued unless the issuing authority is satisfied that all reasonable measures have been taken and will be taken to avoid using or occupying the public land for the placing and maintaining of the works and to ensure reasonable public access (including access for local and public authorities) to and through the beach concerned is maintained.

15. It will be a condition of such a certificate that the holder of the certificate must take all reasonable measures:
 - (a) to avoid damage to assets and vegetation on the public land, and
 - (b) to minimise risks to the public on the public land, and
 - (c) to minimise disruption of the public use of the beach concerned.
16. Schedule 1 [20] and [26] move and renumber certain provisions of the Principal Act relating to the use and occupation of public land for the placement of temporary coastal protection works (being current sections 55Q and 55Z (3)). Proposed section 55VA provides that the maximum period allowed for temporary coastal protection works on public land is 2 years (rather than the current 12 months) commencing on the placement of the works. Works cease to be temporary coastal protection works for the purposes of the Principal Act if the works remain in place for longer than that maximum period. That period can be extended if at the expiry of that 2-year period, a development application under the Environmental Planning and Assessment Act 1979 for consent to development for the purposes of coastal protection works on the same land (that is, long term works) is pending.
17. Proposed section 55VB continues the operation of current section 55Z (3) to provide that a public authority must not unreasonably refuse a person access to the public authority's public land to enable the person to lawfully place temporary coastal protection works on the public authority's land or on other public or private land.
18. Former section 55Z (2) that relates to the use and occupation of adjacent land (other than public land) for the placing, maintaining and removal of temporary coastal protection works is retained (with minor modification) as substituted section 55Z.
19. Schedule 1 [3], [15]–[19] and [30] make amendments to remove the requirement that authorities responsible for issuing those certificates for the use and occupation of public land for temporary coastal protection works must appoint emergency works authorised officers and delegate functions relating to those certificates to those officers. Under the amended provisions those authorities may (but are not required to) delegate such functions to authorised officers under the Principal Act or persons, or any classes of persons, authorised by the regulations.
20. Schedule 1 [21], [23] and [27]–[29] make consequential amendments.

Amendments reducing maximum penalties for certain offences

21. Schedule 1 [5] reduces the maximum penalty for the offence of carrying out certain unauthorised anti-beach erosion work if:
 - (a) a person commits the offence under section 55K (1) by placing material on a beach, or a sand dune adjacent to a beach, and
 - (b) the material is material of the kind permitted for temporary coastal protection works.

22. Schedule 1 [24] and [25] reduce the maximum penalty for the offence of failing to remove temporary coastal protection works from public land, and to restore that land, before the expiry of the maximum period allowed for those works. The amendments also renumber the section that contains the offence (section 55Y) and move it to a more appropriate location in the Principal Act as the provision now deals only with public land. Schedule 1 [36] and Schedule 2 [2] make consequential amendments.
23. Schedule 1 [31] and [32] reduce the maximum penalty for the offence relating to the failure to comply with certain orders of a Coastal Authority under the Principal Act relating to temporary coastal protection works. The penalty relating to other orders under the Principal Act relating to other materials and structures on beaches remains unchanged.

Amendments repealing the regulation-making power in relation to the categorisation of land

24. Schedule 1 [35] removes section 56B from the Principal Act. That section enables regulations to be made with regard to categorisation of land within the coastal zone into risk categories according to the level of the risk that particular land will be adversely affected by coastal hazards and related matters (including regulations requiring planning certificates issued under section 149 of the Environmental Planning and Assessment Act 1979 to include information regarding such categorisations). See also Schedule 2 [3] for the repeal of existing regulations made under this power.

Miscellaneous amendments

25. Schedule 1 [33] and [34] make consequential amendments to provisions relating to successors in title and temporary coastal protection works.
26. Schedule 1 [37] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 2 Amendment of Coastal Protection Regulation 2011

27. Schedule 2 [1] and [2] make consequential amendments to the Coastal Protection Regulation 2011.
28. Schedule 2 [3] omits Part 4 of that Regulation. That Part provides for a scheme of categorisation of land within the coastal zone into risk categories according to the level of the risk that particular land will be adversely affected by coastal hazards. The scheme also provides for the inclusion in planning certificates issued under section 149 of the Environmental Planning and Assessment Act 1979 of information regarding such categorisations.

Schedule 3 Amendment of other legislation

29. Schedule 3 contains consequential amendments to other legislation.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

30. Clause 2 outlines that the Act commences on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the implementation of this Bill will require certain administrative arrangements to be implemented by the Government and Local Councils. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

2. Workers Compensation Legislation Amendment (Costs) Bill 2012*

Date introduced	13 September 2012
House introduced	Legislative Council
Member responsible	Mr David Shoebridge MLC
	*Private member

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) To repeal an uncommenced amendment to the *Workplace Injury Management and Workers Compensation Act 1998* that, if commenced, would remove the power of the Workers Compensation Commission to make cost orders in compensation claims and would provide that each party is to bear the party's own costs. The effect of the repeal is to restore the existing scheme for costs in compensation claims, under which the Commission may order costs but may not order costs against workers (except in cases of frivolous, vexatious or fraudulent proceedings); and,
 - (b) To restore the existing scheme for costs in compensation claims (whether or not the uncommenced amendment has commenced), but with an amendment that requires any costs order made by the Commission to provide for costs to follow the event (i.e. costs are awarded to the successful party) and that provides that costs are not to be awarded against a worker unless the worker's compensation claim was without arguable merit.

BACKGROUND

2. Recently, changes were made to workers compensation law in New South Wales. One change was to amend workers compensation law to make each party responsible for their own costs in relation to a claim for compensation. The amendment removed the power of the Commission to order the payment of costs or to determine by whom, to whom or to what extent costs are to be paid, including circumstances where a claim is successful. This bill repeals the changes made to workers compensation law in respect of costs.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 repeals Schedule 11 [11] of the *Workers Compensation Legislation Amendment Act 2012* to give effect to paragraph (a) of the Overview.

6. Schedule 1 amends the *Workplace Injury Management and Workers Compensation Act 1998* as described in paragraph (b) of the Overview.

ISSUES CONSIDERED BY COMMITTEE

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

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.
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.