PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

LEGISLATION REVIEW DIGEST

No. 63/55 – 21 October 2014

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

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2014, 97p 30 cm

Chair: Mr Stephen Bromhead MP

21 October 2014

ISSN 1448-6954

1. Legislation Review Committee – New South Wales
2. Legislation Review Digest No. 63 of 55
I Title.
II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 63 of 55

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

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Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Glenn Brookes MP, Member for East Hills Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon. Shaoquett Moselmane MLC The Hon. Dr Peter Phelps MLC Mr David Shoebridge MLC
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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. BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF SEX) 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. EDUCATION AMENDMENT (NOT-FOR-PROFIT NON-GOVERNMENT SCHOOL FUNDING) BILL 2014

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

Retrospectivity

The committee generally comments when provisions are drafted to have retrospective effect. This is because retrospective provisions are contrary to the rule of law which allows individuals to order their affairs according to what the law is at the time. However, the Committee makes no further comment.

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

Henry VIII Clause

The committee is concerned when a Henry VIII clause is introduced in legislation, and notes that this amendment enables the subordinate legislation (the regulation) to take precedence over the primary regulation (the Act). Amendments to and suspension of principal legislation should be effected by Parliament, not by the Executive amending a regulation. This may be inappropriately delegating legislative power. However, the Committee makes no further comment.

Matter which should be set by Parliament

The Committee notes that the regulations may set out the reasons why a school is a non-compliant school within the meaning of the proposed Act. The Committee prefers matters such as these, which may affect rights, to be included in legislation and not delegated to subordinate legislation. However, regulations are subject to disallowance under section 41 of the *Interpretation Act* 1987. Given this safeguard, the Committee makes no further comment.

3. ELECTION FUNDING, EXPENDITURE AND DISCLOSURES AMENDMENT BILL 2014

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

Freedom of Speech

The Committee notes the public policy reasons behind this Bill in providing further integrity to the electoral process. The Committee makes no further comment.

Excessive Penalties

The Committee is concerned that the doubling or quadrupling of 11 separate penalty provisions, together with the introduction of custodial sentences in five offences, may constitute excessive penalties that are disproportionate to the offences committed. The Committee refers this matter to Parliament for its further consideration.

Statute of Limitations

The Committee notes that the extension of the statute of limitations may compromise the ability of individuals charged under the Act to mount a successful defence as – in the intervening years – crucial evidence and other material may be lost.

However, the Committee also notes that Schedule 2[20] provides that the extension of the period within which summary proceedings for offences may be commenced applies only to offences after the commencement of this Bill. As such, all parties concerned will be made aware of the criminal proceedings that may take place within ten years should they breach the Act or regulations. The Committee makes no further comment.

4. ELECTRICITY SUPPLY AMENDMENT (BUSH FIRE HAZARD REDUCTION) BILL 2014

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

Right of entry to private property, right of modification to private property

The Committee notes that the Bill allows electricity network operators to enter premises to carry out bush fire risk mitigation work where the network operator is of the opinion that the recipient of the order has failed to do so. There is no requirement for the network operator to obtain a warrant from any third party before doing so. The land in question could include residential premises in circumstances where that land has been identified as bushfire-prone as identified by the *Environmental Planning and Assessment Act 1979*. However, given the aims of the Bill in relation to minimise the risk from bushfires to human life and property, the Committee makes no further comment on this issue.

The Committee notes that the Bill empowers network operators to require private land owners and occupiers to undertake work in relation to vegetation and/or electricity infrastructure on that private land. Whilst this may constitute a trespass on private property, given the aims of the Bill in relation to minimise the risk from bushfires to human life and property, the Committee considers this trespass to be reasonable in circumstances where there is an appeal right to the Energy and Water Ombudsman and hardship provisions have been included. The Committee makes no further comment on this issue.

5. HEALTH PRACTITIONER REGULATION LEGISLATION AMENDMENT BILL 2014

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

Retrospectivity

The Committee notes the retrospective application of this provision so that health practitioners whose registrations were cancelled or who were disqualified from being health practitioners must apply for a reinstatement order before registering as a health practitioner again. The Committee makes no further comment.

Privacy

The Committee notes that a Council's duty to provide the outcome of a complaint made against a health practitioner to the complainant may compromise the privacy of that health

practitioner concerned. In particular, the disclosure may include material of a sensitive nature. The Committee is concerned about potential impacts on privacy as an interference with individual rights and liberties. As such, the Committee refers this matter to Parliament for its further consideration.

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

Commencement by Proclamation

The Committee prefers that legislation of this kind, which may impact on rights and liberties, commences in its entirety on a fixed date or on assent, not by proclamation.

6. LIQUOR LEGISLATION AMENDMENT (STATUTORY REVIEW) BILL 2014

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

7. LOCAL GOVERNMENT AMENDMENT (RED TAPE REDUCTION) BILL 2014

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

8. MARINE ESTATE MANAGEMENT BILL 2014

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

Property Rights

The Committee notes that the declaration or variation of a marine park or aquatic reserve without the consent of the owner of land concerned may be an adverse impact on the property rights of that owner. However, given the 'diligent inquiry' that is required before a declaration or variation can be made, the Committee makes no further comment.

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

Offences and Penalties set by Notification

The Committee notes that the ability for a Minister to make a notification that can set offences with a penalty of 200 penalty units or six months imprisonment or both, may be an inappropriately delegated legislative power. Further, because it does not appear that section 41 of the *Interpretation Act 1987* applies, it is likely that notifications will escape parliamentary scrutiny and possible disallowance. The Committee refers this matter to Parliament for its further consideration as an inappropriate delegation of legislative power.

Commencement by Proclamation

The Committee prefers that legislation of this kind, which may impact on rights and liberties, commences on a fixed date or an assent, not by proclamation.

9. MENTAL HEALTH TRIBUNAL (STATUTORY REVIEW) BILL 2014

Electro convulsive therapy

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

Wrongful Detention

By allowing a medical practitioner to examine a person via audio visual link to determine whether they are a mentally ill or disordered person who should be detained, there may be an increased risk of wrongful detention. This is particularly the case if there is no requirement for the medical practitioner to be a psychiatrist. Nonetheless, a medical practitioner must not carry out the examination via audio visual link unless he or she is satisfied that it can be carried out with sufficient skill and care to form the required opinion. Similarly, under section 27 of the Act, two medical practitioners must be of the opinion that the person is mentally ill or mentally disordered before ongoing detention is possible – if not, the person must be examined by a psychiatrist. Owing to these safeguards the Committee makes no further comment.

Wrongful Detention II

By providing that the Tribunal may defer operation of its own order to discharge an involuntary patient of a mental health facility for 14 days if it is in the best interests of the involuntary patient, without providing further guidance about the factors the Tribunal should take into account in making such a decision, the Bill may give rise to wrongful detention. The Committee would prefer the factors to be taken into account to be listed in the legislation. The Committee makes no further comment.

Access to Justice

By providing that a person under 16 years must have legal representation in the Tribunal unless the Tribunal itself decides it is not in that person's best interests, the Bill may affect that person's right of access to justice. No guidance is provided in the Bill about the factors the Tribunal should take into account in making such a decision. The Committee would prefer the factors to be taken into account to be listed in the legislation particularly as this provision relates to young, vulnerable people. The Committee refers the matter to Parliament for further consideration.

Parliament's Right to Obtain Information

By removing the requirement for the Tribunal's annual report to include the number of persons detained as involuntary patients in a mental health facility for 3 months or less, the Bill removes Parliament's automatic right to obtain this information thereby reducing transparency and accountability. Following this amendment, a Member of Parliament would have to specifically ask a Question on Notice in Parliament or lodge an application under the *Government Information (Public Access) Act 2009* to obtain this information. The Committee refers this matter to Parliament for further consideration.

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

Commencement by Proclamation

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

10. MULTICULTURAL NSW LEGISLATION AMENDMENT BILL 2014

Schedule 2 Amendment of other Acts and instruments

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

11. NEWCASTLE INNER-CITY RAIL CORRIDOR PRESERVATION BILL 2014

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

12. REGIONAL RELOCATION GRANTS AMENDMENT BILL 2014

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

Retrospectivity

The Committee is generally concerned when Bills include provisions with retrospective effect. This is because retrospectivity is contrary to the rule of law which allows people knowledge of what the law is at any given time. However, in this case the relevant provision does not retrospectively introduce new offences or penalties it merely continues operation of a grants scheme. In the circumstances, the Committee makes no further comment.

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

Henry VIII Clause

The committee is concerned when a Henry VIII clause is included in legislation, and notes that this amendment enables a Ministerial order to take precedence over primary legislation (the proposed Act). This may be an inappropriate delegation of legislative power as amendments to provisions in primary legislation should be made by Parliament, not by the Executive through a Ministerial order. This is of particular concern as, unlike regulations, Ministerial orders cannot be disallowed by Parliament under section 41 of the *Acts Interpretation Act 1987* and parliamentary oversight is circumvented. The Committee refers the matter to Parliament for further consideration.

13. WATER NSW BILL 2014

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

Employment rights

The Committee notes that the transfer of an individual's employment status from public servant to employee of a statutory corporation may trespass on that individual's liberty to choose their employer. Given the safeguards outlined in Schedule 2 with respect to workers' entitlements, the Committee makes no further comment on this issue.

Right to silence / Right against self-incrimination

The Committee notes that requiring an individual to answer questions and provide information and records impacts on their right to silence and their right against self-incrimination. The Committee notes that the provisions provides safeguards and statutory defences and refers defences and therefore is not unreasonable in the circumstances.

Right to private property

The Committee notes that providing Water NSW with ownership of items on land it does not own may impact on the rights of the land owners. The Committee also notes that providing for the acquisition of land by compulsory processes also impacts on the rights of land owners. The Committee notes that the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* apply and as such, the Committee makes no further comment.

The Committee notes that enabling officers to enter private land without notice impacts on the right to private property. However, given the aim of this section relates to ensuring timely

meter reading and completion of public works, the Committee makes no further comment on this issue.

The Committee notes that providing for the demolition or removal of structures on private land interferes with private property rights. However, given the public importance of efficient water management works, the Committee makes no further comment on this issue.

The Committee notes that providing authorised officers with the authority to enter private property interferes with the landowners' rights. However, given that this may only occur under section 68 with either the consent of the landowner or with a warrant, the Committee makes no further comment in relation to this issue.

The Committee notes that the Regulatory Authority's proposed powers in Part 6 of the Bill impact private property rights in so far as those powers enable the Authority to compel landowners to undertake corrective, or preventative, actions to ensure water quality and catchment health. The Committee makes no further comment.

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

Executive decision making

The Committee notes that section 13 and 19 of the Bill empower the Governor to amend a commercial contract. The Committee makes no further comment.

14. WORK HEALTH AND SAFETY (MINES) AMENDMENT BILL 2014

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

Retrospectivity

The Committee notes that the amendments made by the Bill extend to the conduct of any investigation and the gathering of evidence and the commencement, maintenance and conclusion of criminal proceedings, before the commencement of the amendments. The Committee is generally concerned where provisions are drafted to have retrospective effect. The Committee makes no further comment.

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

Commencement by Proclamation Text

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Regulations amending principal legislation

The Committee will seek to comment in circumstances where regulations are empowered to amend principal legislation. However, as this is limited to savings and transitional provisions the Committee makes no further comment on this issue.

Matters in regulations that ought to be in principal legislation

The Committee considers the specification of powers and functions that may be exercised by the WorkCover Authority to be matters that are more properly included in principal legislation rather than in the regulations. The Committee refers this matter to Parliament for its consideration.

PART TWO – REGULATIONS

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

Part One - Bills

1. Births, Deaths and Marriages Registration Amendment (Change of Sex) Bill 2014*

Date introduced	16 October 2014
House introduced	Legislative Council
Members responsible	Dr Mehreen Faruqi MLC Mr Alex Greenwich MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Births, Deaths and Marriages Registration Act 1995 to allow a married person who has undergone a sex affirmation procedure to apply for alteration of the record of the person's sex, or for registration of the person's sex, and to allow the Registrar to make changes to the Register of Births, Deaths and Marriages accordingly.

BACKGROUND

2. Currently, if a person who has undergone a sex affirmation procedure wishes to have their sex registered, or to alter the record of their sex, they must be unmarried. If they are married they must choose between divorcing their spouse or living with the incorrect sex recorded on their birth certificate.

3. In her Second Reading speech to Parliament, Dr Mehreen Faruqi MLC stated that these provisions primarily affect married transgender people who have undergone procedures to change their sex to align with their gender identity, and that they add to the societal stigmatisation experienced by trans people and unnecessarily complicate the traumatic process of transition from one sex to another.

4. Dr Faruqi further advised Parliament that people can and do change their sex if they are married and because of this there is already a small but significant number of same sex couples who are married in NSW. The Bill seeks to enable government records to correctly reflect changes of sex.

5. This Bill has been introduced by Dr Mehreen Faruqi in the Legislative Council and by Mr Alex Greenwich in the Legislative Assembly. Although introduced as separate Bills, they are identical and have therefore been considered in one report.

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 the date of assent to the proposed Act.

8. Clause 3 (2) gives effect to the object described in the above Overview by removing from the Births, Deaths and Marriages Registration Act 1995 provisions that prevent a married person from applying to the Registrar of Births, Deaths and Marriages for alteration of the record of the person's sex, or for registration of the person's sex, and that prevent the Registrar from making the relevant changes to the Register of Births, Deaths and Marriages. Clause 3 (1) makes consequential amendments.

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. Education Amendment (Not-for-profit Non-Government School Funding) Bill 2014

Date introduced	15 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Adrian Piccoli MP
Portfolio	Minister for Education

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to make further provision for preventing financial assistance being provided to or for the benefit of non-government schools that operate for profit and to provide for the recovery of any amounts paid to a non-government school that operates for profit. For that purpose, the Bill:

(a) restates the prohibition on financial assistance being provided by the Minister for Education (the Minister) to or for the benefit of non-government schools that operate for profit, and

(b) sets out when a non-government school operates for profit, and

(c) provides for the appointment, composition and functions of a Non-Government Schools Not-for-profit Advisory Committee (the Advisory Committee), and

(d) empowers the Minister to conduct an investigation of, or to give directions to, non-government schools and proprietors of those schools in connection with financial assistance, and

(e) authorises the Minister to suspend, reduce or impose conditions on financial assistance to a non-government school that is a non-compliant school because it has not assisted in any such investigation or complied with any such direction or has operated for profit, and

(f) permits the Minister, on the recommendation of the Advisory Committee, to make a conclusive declaration that a non-government school is operating or has operated for profit or is a non-compliant school, and

(g) provides for an administrative review by the NSW Civil and Administrative Tribunal (NCAT) of any such recommendation of the Advisory Committee, and

(h) enables the Minister to recover financial assistance provided to a non-government school that operates for profit or to a non-compliant school, and

(i) authorises the Minister to publish guidelines in relation to the above matters.

BACKGROUND

2. The Bill was introduced to provide greater regulation, context and clarity of the financial assistance arrangements of non-government schools in New South Wales. It also provides compliance provisions in order for schools to comply with not-for-profit conditions, and addresses practices which may cause them to be in breach of the compliance rules.

3. The Bill also provides for the appointment of an Advisory Committee which will advise the Minister on issues of compliance. The Advisory Committee will also provide a report to the Minister on any unintended consequences of the legislation within three years of its commencement.

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 Education Act 1990 No 8

6. Schedule 1 [14] inserts a proposed Division 3 (Financial assistance to non-government schools) into Part 7 of the Act and Schedule 1 [3]–[13], [15] and [16] make consequential amendments (including the re-arrangement of provisions of the Act in connection with the transfer of provisions relating to financial assistance to non-government school children being transferred to the proposed Division). The proposed Division contains the following proposed sections:

7. Proposed section 83A sets out a number of definitions of terms used in the proposed Division (including that *school* means a non-government school).

8. Proposed section 83B is current section 21 (which authorises financial and other assistance to be provided in respect of non-government school children and which is renumbered and transferred to the proposed Division).

9. Proposed section 83C restates the prohibition (currently contained in section 21A) on the Minister providing financial assistance to or for the benefit of a school that operates for profit. The proposed section provides that a school operates for profit if any part of the assets of the proprietor of the school (in so far as they relate to the school) or income (in so far as it arises from the operation of the school) is used for a purpose other than for the operation of the school. The proposed section also sets out some circumstances in which certain payments are taken not to be for the operation of a school (including more stringent requirements in relation to payments to related entities for the provision of goods and services). The proposed section also removes the current provision that allows payments to be made to the members of the governing body of the school.

10. Proposed section 83D enables the Minister, on the recommendation of the Advisory Committee, to declare that a non-government school operates, or has operated, for profit (a *for profit declaration*). The making of a for profit declaration in respect of a school is conclusive evidence that the school is or has operated for profit. The

declaration may be revoked and is required to be revoked if the Advisory Committee advises that the school has ceased to operate for profit.

11. Proposed section 83E authorises the Minister to suspend, reduce or impose conditions on financial assistance to a non-compliant school. A non-government school is a non-compliant school if the Minister is satisfied that the school or the proprietor of the school has failed to provide reasonable assistance in relation to an investigation conducted by the Minister under the proposed Division or has failed to comply with a direction of the Minister under the proposed Division. A school that operates for profit, or has operated for profit is also a non-compliant school if the Minister is satisfied that termination of financial assistance to the school is not justified because of the minor nature of the relevant conduct or that it is more appropriate to suspend, reduce or impose conditions on financial assistance to the school.

12. Proposed section 83F enables the Minister, on the recommendation of the Advisory Committee, to declare that a non-government school is a non-compliant school (a *non-compliance declaration*). The making of a non-compliance declaration in respect of a school is conclusive evidence that the Minister has grounds to suspend, reduce or impose conditions on financial assistance to the school. The declaration may be revoked and is required to be revoked if the Advisory Committee advises that the school is no longer a non-compliant school.

13. Proposed section 83G requires the Minister to give notice to a school and the proprietor of the school before making a for profit declaration or a non-compliance declaration in respect of the school. The notice must set out the relevant recommendation of the Advisory Committee. The Minister cannot make the declaration until the school or the proprietor of the school has had an opportunity to seek a review of the Advisory Committee's recommendation by NCAT.

14. Proposed section 83H empowers the Minister to carry out an investigation into a non-government school or the proprietor of the school if the Minister suspects that the school may be operating for profit or may be a non-compliant school. The Minister may defer financial assistance to the school during an investigation. The Minister is to consult with the Advisory Committee before conducting any investigation. The Advisory Committee is to have an overarching advisory role in relation to investigations. Responsibility for the day to day management of an investigation is intended to be delegated by the Minister to the Office of Education in the Department of Education and Communities.

15. Proposed section 83I permits the Minister to give directions to a non-government school or the proprietor of a school that require the school or proprietor to undergo a financial audit, to provide information or to cease specified conduct that is in breach of the not-for-profit obligations of the proposed Division. The regulations may prescribe additional directions that may be given.

16. Proposed section 83J provides for the recovery of financial assistance by the Minister from a school that is or was operating for profit or a non-compliant school.

17. Proposed section 83K provides for the appointment, composition and functions of the Advisory Committee. The members of the Advisory Committee are to be appointed by the Minister and are to be made up of an independent chair, one representative each

for the Association of Independent Schools, the Catholic Education Commission, the Board of Studies, Teaching and Educational Standards and the Department of Education and Communities and any other persons who, in the opinion of the Minister, will be of assistance to the Advisory Committee in the exercise of its functions. The functions of the Advisory Committee are to advise the Minister on compliance with the proposed Division and to make recommendations on whether the Minister should make a for profit declaration or a non-compliance declaration.

18. Proposed section 83L authorises the Minister, with the advice of the Advisory Committee, to publish guidelines relating to the exercise of functions under the proposed Division, including to assist schools and proprietors of schools to comply with the proposed Division.

19. Schedule 1 [1] and [2] update references in the Act as a consequence of the Director-General of the Department of Education and Communities being renamed the Secretary of the Department.

20. Schedule 1 [17]–[19] give a right to a non-government school and its proprietor to seek administrative review by NCAT of a recommendation of the Advisory Committee that the Minister make a for profit declaration or a non-compliance declaration.

21. Schedule 1 [20] permits certificates signed by the Minister and stating certain matters to be used as prima facie evidence of those matters in proceedings under the Act.

22. Schedule 1 [21] includes a number of savings, transitional and other provisions consequential on the enactment of the proposed Act. Those provisions permit investigations to be carried out and the directions to be given under proposed Division 3 of Part 7 to determine whether a non-government school operated for profit before the commencement of that Division. The provisions also permit payments made before that commencement to be recovered. The provisions also give schools a transition period of 3 months to comply with revised arrangements on what constitutes operating a school for profit. The provisions also provide that a for profit declaration is taken to have been made in respect of a particular non-government school (the Malek Fahd Islamic School at Greenacre) being a declaration that the school operated for profit from 1 January 2010 until 31 July 2012.

Schedule 2 Amendment of Government Information (Public Access) Regulation 2009

23. Schedule 2 amends the *Government Information (Public Access) Regulation 2009* to provide that the Advisory Committee is taken to be part of the Department of Education and Communities for the purposes of the *Government Information (Public Access) Act 2009*.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

24. Section 107 of the Bill introduces an amendment to recover payments made to non-government schools before the commencement of the amending Act.

The committee generally comments when provisions are drafted to have retrospective effect. This is because retrospective provisions are contrary to the rule of law which allows individuals to order their affairs according to what the law is at the time. However, the Committee makes no further comment.

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

Henry VIII Clause

25. The Committee notes that Section 83(C) (3) of the Bill introduces a Henry VIII Clause by stating that the regulations may specify whether or not a school operates for profit because of any particular use of assets, any particular payment in relation to the other school or any other matter, and that any such regulation has effect despite anything to the contrary in subsection (2).

The committee is concerned when a Henry VIII clause is introduced in legislation, and notes that this amendment enables the subordinate legislation (the regulation) to take precedence over the primary regulation (the Act). Amendments to and suspension of principal legislation should be effected by Parliament, not by the Executive amending a regulation. This may be inappropriately delegating legislative power. However, the Committee makes no further comment.

Matter which should be set by Parliament

26. The Committee notes that Section 83E (2) details that a school is non-compliant when the Minister is satisfied that the school or the proprietor of the school has not provided reasonable assistance in the conduct of an investigation of the school, or when it has failed to comply with a direction of the Minister given under the Division. However, 83E (2) (c) also states that a school is a non-compliant school because of any other circumstances set out in the regulations.

The Committee notes that the regulations may set out the reasons why a school is a non-compliant school within the meaning of the proposed Act. The Committee prefers matters such as these, which may affect rights, to be included in legislation and not delegated to subordinate legislation. However, regulations are subject to disallowance under section 41 of the *Interpretation Act* 1987. Given this safeguard, the Committee makes no further comment.

3. Election Funding, Expenditure and Disclosures Amendment Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Election Funding, Expenditure and Disclosures Act 1981* (the Act) to make special provisions in relation to the 2015 State general election and to make other provisions in relation to that and other elections.

2. In relation to the 2015 State general election only, the Bill:

   (a) requires a one-off disclosure of political donations received by parties, elected members, candidates or third-party campaigners during the period from 1 July 2014 to 1 February 2015 that is to be lodged and made publicly available about 4 weeks before the general election is held, and

   (b) reduces the caps on political donations, and the caps on electoral campaign expenditure, to the levels that applied to the 2011 State general election before their annual indexation for inflation, and

   (c) further reduces the electoral campaign expenditure caps for third-party campaigners from $1,050,000 to $250,000 (for registered campaigners and from $525,000 to $125,000 (for non-registered campaigners) from $20,000 to $15,000 (for expenditure in each Assembly electorate within the overall cap), and

   (d) retains the eligibility for public campaign funding for parties having candidates elected or receiving at least 4% of the overall first preference votes in contested seats in the Assembly election or in the Council election, and retains eligibility for that funding of independent candidates who are elected or receive at least 4% of the first preference votes in the Assembly or Council election, but removes eligibility for that funding of party endorsed candidates, and

   (e) replaces the existing scheme for public funding of election campaigns of parties and candidates based on a sliding scale of actual expenditure with a scheme under which parties and independent candidates are funded (within the limits of their actual capped expenditure) at the rate of:

      (i) in the case of a party—$4 for each first preference vote received by party candidates in the Assembly election and $3 for each first preference vote received by party candidates in the Council election, or

(ii) in the case of a party that does not have any candidates elected in the Assembly election—$4.50 for each first preference vote received by party candidates in the Council election, or

(iii) in the case of an independent candidate in an Assembly election—$4 for each first preference vote received by the candidate, or

(iv) in the case of an independent candidate in a Council election—$4.50 for each first preference vote received by the candidate.

3. In relation to the 2015 State general election and other elections, the Bill:

(a) makes it a separate indictable offence (with a maximum penalty of imprisonment for 10 years) to enter into or carry out a scheme for the purpose of circumventing political donations or electoral expenditure prohibitions or requirements, and

(b) increases the maximum penalty for existing summary offences under the principal Act relating to political donations and electoral expenditure, and

(c) extends the limitation period for commencing proceedings for summary offences under the principal Act from 3 years to 10 years, and

(d) makes expenditure associated with campaign research or travel costs electoral communication expenditure that is to be taken into account in determining expenditure caps and public campaign funding, and

(f) increases the amount of annual public funding from the Administration Fund for parties with more than 3 elected members from the current rate of $86,800 per member to $100,000 per member, and

(g) doubles the amount of annual public funding from the Policy Development Fund for parties without elected members (and therefore without an entitlement to funding from the Administration Fund).

BACKGROUND

4. Following community concern with respect to illegal political donations in the lead up to the 2011 State general election, the Government established an expert panel to consider and report back on options for reform on election finance, political donations and campaign expenditure laws.

5. The expert panel is due to deliver its final report at the end of the year. However, following recent stakeholder consultations, the panel has released an interim report indicating its in principle support for some reforms.

6. The reforms provided for in this Bill align closely with the expert panel's interim recommendations, and also include some additional measures. Provisional reforms have also been implemented with specific reference to the 2015 State general election.

OUTLINE OF PROVISIONS

7. Clause 1 sets out the name (also called the short title) of the proposed Act.

8. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

9. The Schedule amends the principal Act to give effect to the amendments outlined above relating to the 2015 State general election only.

10. The Schedule amends the principal Act to give effect to the amendments outlined above relating to the 2015 State general election and other elections.

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of Speech

1. Proposed section 103G of this Bill will remove the indexation on the cap of electoral campaign monies that can be expended during an election period, thereby reproducing the campaign expenditure caps that were in place ahead of the 2011 State general election.

2. Further, proposed section 103H will reduce the electoral communication expenditure caps for third-party campaigners by more than three quarters. This is a reduction from the current $1,050,000 to $250,000 for registered campaigners, and from the current $525,000 to $125,000 for non-registered campaigners. The Committee notes that laws that impose limits on election campaign expenditure may be regarded as burdening the freedom of speech and freedom of political communication of those participating in the electoral process.

3. The Committee also notes the public policy reasons behind this Bill. In particular, the Committee recognises the Bill's likely effect in ensuring some balance is provided in electoral contests to ensure a more level playing field. The Committee also recognises the legislative intent on reducing the capacity for corruption, and in restoring community confidence in the electoral process.

> **The Committee notes the public policy reasons behind this Bill in providing further integrity to the electoral process. The Committee makes no further comment.**

Excessive Penalties

11. Schedule 2 of the Bill provides for an increase in the penalties for a range of 11 separate offences under the Act. The offences generally relate to the making of false statements, disclosing information that may be false or misleading, knowingly breaching caps on donation and campaign expenditure, or obstructing an authorised inspector in the exercise of their duties. The increase in penalties is generally doubled (for example, either from 100 penalty units to 200 penalty units, or one year imprisonment to two years imprisonment), and in one instance quadrupled (from 100 penalty units to 400 penalty units at Schedule 2[13]).

12. For four offences, custodial sentences are introduced for the first time in addition to the increase of existing penalty units. This is for offences with respect to failing to keep a record relating to a reportable political donation, and for making a false statement with respect to payments out of the administrative and policy development funds.

13. A new offence is also created for a fifth matter at Schedule 2[8] relating to schemes to circumvent the donation or expenditure prohibitions or restrictions. The maximum penalty for this offence is 10 years imprisonment.

14. The Committee recognises the seriousness of the offences with which these penalties have been increased or introduced, and appreciates the community concern that strong deterrence measures are put in place to protect against breaches of electoral laws.

15. However, it is also incumbent on the Committee to identify penalty provisions which may be excessive, and disproportionate to the offence committed. The doubling or quadrupling of penalty provisions constitutes a significant increase. Similarly, the introduction of new offences that carry a custodial sentence, in some cases up to 10 years, is also a substantial toughening of the sentencing provisions.

> **The Committee is concerned that the doubling or quadrupling of 11 separate penalty provisions, together with the introduction of custodial sentences in five offences, may constitute excessive penalties that are disproportionate to the offences committed. The Committee refers this matter to Parliament for its further consideration.**

Statute of Limitations

16. Schedule 2[17] provides that for proceedings in respect of an offence against this Act or the regulations may be commenced within ten years after the offence was committed and no longer. This will extend the statute of limitations from the current three years.

> **The Committee notes that the extension of the statute of limitations may compromise the ability of individuals charged under the Act to mount a successful defence as – in the intervening years – crucial evidence and other material may be lost.**
>
> **However, the Committee also notes that Schedule 2[20] provides that the extension of the period within which summary proceedings for offences may be commenced applies only to offences after the commencement of this Bill. As such, all parties concerned will be made aware of the criminal proceedings that may take place within ten years should they breach the Act or regulations. The Committee makes no further comment.**

4. Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

(a) to give electricity network operators additional powers to direct the owners of premises on bush fire prone land that is private land to do bush fire risk mitigation work involving removing vegetation or rectifying defective private electricity assets on their land, and

(b) to authorise network operators to enter private land (without further notice) to carry out that bush fire risk mitigation work if the owner fails to complete the work within the required period (unless the owner requests disconnection of premises from the distribution system), and

(c) to provide that, generally, the landowner is responsible for the cost of bush fire risk mitigation work done under such a direction, including work done by a network operator (with provision for a hardship policy that takes account of the landowner's financial situation).

2. The new powers will operate in addition to existing powers that electricity network operators have to require the trimming or removal of trees that may interfere with electricity infrastructure or pose a bush fire risk. Those existing powers will continue to apply to all land.

BACKGROUND

3. Bushfire risk is managed through a variety of instruments. These include hazard reduction processes, offence provisions and provisions to protect emergency service workers. Legislative changes have been previously introduced to enable landowners to undertake vegetation clearing works to protect their properties from the threat of bushfire, whilst balancing environmental objectives.

4. Electricity network operators maintain the powerlines and poles that they own, taking steps to ensure that potential threats are identified and managed. Private electricity infrastructure starts at and includes the first low-voltage pole on a land-owner's property. All the wires, poles, fittings and attachments beyond this are generally considered private and part of the property's electrical infrastructure. Property owners have a legal obligation to maintain their electrical infrastructure. This may include

deteriorated or overloaded wires, damaged poles and fittings or trees too close to powerlines.

5. At the beginning of each bushfire season, operators place bushfire safety brochures in the letterboxes of thousands of residents across New South Wales. Network operators' staff and contractors often identify defects and vegetation risks on private powerlines and poles during their own bushfire mitigation work. They then notify owners or occupiers that the hazards need to be removed and or repaired.

6. At present, other than the disconnection of electricity supply, nothing in the *Electricity Supply Act* allows network operators to take any action where they can see that private electricity infrastructure poses a bushfire threat.

7. This Bill seeks to clarify the rights of a network operator to step in and undertake the required work in circumstances where an owner has not undertaken identified hazard reduction.

OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.

9. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

10. Schedule 1 [1] inserts a new Division in Part 5 (Powers and duties of network operators and retailers) of the Act that creates special powers for bush fire prevention on bush fire prone land. The Division comprises the following provisions:

(a) Proposed section 53A defines terms used in the new Division, including *bush fire prone land,* which is defined to mean land that is bush fire prone land under the *Environmental Planning and Assessment Act 1979* in any area of the State (that is, land recorded for the time being as bush fire prone land on a bush fire prone land map for the area certified by the Commissioner of the NSW Rural Fire Service).

(b) Proposed section 53B provides that the proposed Division applies only to bush fire prone land, but that the proposed Division does not prevent the taking of action under section 48 of the Act (interference with electricity works by trees) in relation to premises on bush fire prone land.

(c) Proposed section 53C provides for a network operator to give a written notice to the owner or occupier of any premises on bush fire prone land that is private land directing the owner to do bush fire risk mitigation work on vegetation or aerial consumers mains on the premises (which may involve the trimming or removal of vegetation or the repair of a fault or defect in aerial consumers mains) if the network operator has determined that:

i the vegetation could make the network operator's electricity works become a potential cause of bush fire, or

ii the vegetation fails to satisfy the requirements of any standard as to required clearances between vegetation and electricity works or aerial consumers mains, or

iii the vegetation could make aerial consumers mains on the premises become a potential cause of bush fire, or

iv a fault or defect in the aerial consumers mains could make them become a potential cause of bush fire.

(d) Proposed section 53D specifies who has the responsibility for the cost of bush fire risk mitigation work under direction. Generally, the owner of premises is responsible unless the work was done because the vegetation could make the network operator's electricity works become a potential cause of bush fire, or because the vegetation fails to satisfy the requirements of any standard as to required clearances between vegetation and electricity works, in which case the network operator is responsible.

(e) Proposed section 53E provides for what directions to do bush fire risk mitigation work must specify (including what work is required, the time limit, who is responsible for the cost and what may happen if the work is not done on time).

(f) Proposed section 53F provides that, to comply with a direction, the owner of the premises must, within 30 days, notify the network operator that the work will be done, or request the network operator to disconnect the supply of electricity to the premises. If the work is to be done, the owner has 60 days to do the work. The proposed section also provides that, if the owner does not comply with the direction, the network operator may do the required work and recover the reasonable cost of doing the work from the owner.

(g) Proposed section 53G provides that no compensation is payable by a network operator for or in connection with the exercise in good faith and without negligence of a function under the proposed Division.

(h) Proposed section 53H provides that an environmental planning instrument cannot prohibit, require development consent for or otherwise restrict the doing on any land of work required under the proposed Division, that the environmental assessment provisions of the *Environmental Planning and Assessment Act 1979* do not apply to such work and that such work can be done despite any requirement for an approval, consent or other authorisation made by any other law, including those about native vegetation, threatened species conservation and national parks.

(i) Proposed section 53I requires a network operator to have and implement a hardship policy (approved by the Australian Energy Regulator) for assisting persons who are experiencing difficulties due to hardship in connection with payment of the cost of works done by the network operator when the person fails to comply with a direction under the proposed Division.

11. Schedule 1 [2] makes it clear that existing powers of entry that support the exercise of certain functions of network operators extend to functions under existing section 48 (which empowers a network operator to require the trimming or removal of trees) and functions under proposed Division 2A of Part 5 to be inserted by the Bill.

12. Schedule 1 [3] provides that a network operator exercising a power of entry is not required to give notice of entry if entry is for the purpose of doing work in the exercise of a function under proposed Division 2A of Part 5 to be inserted by the Bill.

13. Schedule 1 [4] provides that a network operator is not liable to pay compensation to the owner or occupier of land for loss or damage arising from the exercise of a power of entry in connection with the exercise of a function under proposed Division 2A of Part 5 to be inserted by the Bill.

14. Schedule 1 [5] makes a minor change to regulation-making powers.

Schedule 2 Amendment of Electricity Supply (General) Regulation 2014

15. Schedule 2 makes a minor amendment to a provision of the Regulation dealing with the manner in which notices and other documents under the Regulation are to be given to extend the provision to notices and other documents given under the Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right of entry to private property, right of modification to private property

16. The Committee notes that under schedule 1 [2] of the Bill, an authorised officer of a network operator may enter any premises for the purpose of exercising any function conferred or imposed on a network operator by or under the *Electricity Supply Act 1995* or any other Act. These functions include the removal of identified bushfire risks. There is no requirement to obtain a warrant from a judicial officer to obtain entry.

> **The Committee notes that the Bill allows electricity network operators to enter premises to carry out bush fire risk mitigation work where the network operator is of the opinion that the recipient of the order has failed to do so. There is no requirement for the network operator to obtain a warrant from any third party before doing so. The land in question could include residential premises in circumstances where that land has been identified as bushfire-prone as identified by the *Environmental Planning and Assessment Act 1979*. However, given the aims of the Bill in relation to minimise the risk from bushfires to human life and property, the Committee makes no further comment on this issue.**

17. The Committee also notes that under schedule 1[1] network operators are empowered to require an owner or occupier of any premises on bush fire prone land to do bush fire risk mitigation work.

> **The Committee notes that the Bill empowers network operators to require private land owners and occupiers to undertake work in relation to vegetation and/or electricity infrastructure on that private land. Whilst this may constitute a trespass on private property, given the aims of the Bill in relation to minimise the risk from bushfires to human life and property, the Committee considers this trespass to be reasonable in circumstances where there is an appeal right to the Energy and Water Ombudsman and hardship provisions have been included. The Committee makes no further comment on this issue.**

5. Health Practitioner Regulation Legislation Amendment Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

(a) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* so as to modify the *Health Practitioner Regulation National Law (NSW)*:

(i) to require the Council for a health profession to notify a complainant who makes a complaint against a health practitioner or student of certain outcomes resulting from action taken by the Council in respect of the complaint, and

(ii) to enable the Civil and Administrative Tribunal to make prohibition orders against former registered health practitioners, and

(iii) to make it clear that a person whose registration as a health practitioner has been cancelled, or who has been disqualified from being so registered, by the Civil and Administrative Tribunal cannot apply for registration as a health practitioner unless the Tribunal makes a reinstatement order in respect of the person, and

(iv) to enable the Council for a health profession to order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Health Care Complaints Commission to be dealt with as a complaint against the practitioner, and

(v) to require the Council for a health profession to notify the employer or accreditor of a registered health practitioner of the imposition of conditions (or the alteration or removal of conditions) on the practitioner, and

(vi) to make certain other amendments in the nature of statute law revision, and

(b) to amend the *Health Services act 1997* to permit public health organisations to share and exchange certain information about the appointments of health practitioners with licencees of private health facilities, and

(c) to amend the *Private Health Facilities act 2007* to permit licensees of private health facilities to share and exchange certain information about the appointments of

health practitioners with other licensees of private health facilities and public health organisations.

BACKGROUND

2. Until 2010, the regulation of health professionals – both accreditation, and registration and management of complaints – was conducted at the State level. In 2010, the National Regulation and Accreditation Scheme [NRAS] came into effect through the Health Practitioner Regulation National Law. This law was initially passed in Queensland then adopted by each State Parliament, sometimes with variations.

3. New South Wales joined NRAS as a co-regulatory jurisdiction so that while it adopted the accreditation and registration parts of the National Law, it did not adopt the National Law provisions for complaints and performance. As such, this has required NSW to periodically review and update those parts of the legislation that pertain exclusively to NSW.

4. This Bill introduces minor amendments to the health regulation architecture as a result of potential gaps and defects in the current arrangements.

5. The Bill was developed in consultation with the Health Care Complaints Commission and the Health Professional Councils Authority. There were also discussions with the Australian Medical Association, the NSW Nurses and Midwives Association, the Australian Salaried Medical officers Federation, the Health Services Union, and the Australian Private Hospitals Association.

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.

8. Schedule 1 [1] requires the Council for a health profession to notify a complainant who makes a complaint against a health practitioner or student of outcomes resulting from action taken by the Council under section 145B (Courses of action available to Council on complaint [NSW]) of the Health Practitioner Regulation National Law (NSW) in respect of the complaint.

9. Schedule 1 [3] enables the Civil and Administrative Tribunal to make a prohibition order against a former registered health practitioner under section 149C of the Health Practitioner Regulation National Law (NSW) if the Tribunal would have made an order suspending or cancelling the practitioner's registration if he or she had been registered. A prohibition order is an order that prohibits a person from providing specified health services or imposes conditions on the provision of specified health services by a person.

10. Schedule 1 [4] makes it clear that a person whose registration as a health practitioner has been cancelled, or who has been disqualified from being so registered, by the Civil and Administrative Tribunal cannot apply for registration as a health practitioner unless the Tribunal makes a reinstatement order in respect of the person. The amendment seeks to remove uncertainty arising from observations made by the Court of Appeal in Health Care Complaints Commission v Do [2014] NSWCA 307 at [45]–[48]. Schedule 1 [7] provides for savings and transitional matters in connection with this amendment.

11. Schedule 1 [5] enables the Council for a health profession to order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Health Care Complaints Commission to be dealt with as a complaint against the practitioner. These kinds of conditions will be known as critical impairment conditions.

12. Schedule 1 [6] requires the Council for a health profession to notify the employer and accreditors of a registered health practitioner of the imposition of conditions (or the alteration or removal of conditions) on the practitioner's registration concerning the health, conduct or performance of the practitioner. It also permits a Council to notify subsequent employers or accreditors of the practitioner. If information is disclosed in a notice to an employer or accreditor about a registered health practitioner's impairment, the employer or accreditor will be under a duty to ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of:

    (a) the supervision or oversight of the practitioner during the course of the practitioner's work, or

    (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner's work.

    A failure to comply with this duty will be an offence.

13. Schedule 1 [2] corrects an incorrect cross-reference.

14. Schedule 1 [8] ensures that, in calculating the maximum consecutive terms of office that a member of a Council for a health profession may serve, a period in office resulting from the operation of a certain transitional provision is not counted.

15. Schedule 2.1 amends the Health Services Act 1997 to enable a public health organisation to share or exchange appointment information about a health practitioner with a private health facility licensee if the public health organisation:

    (a) reasonably believes that the health practitioner practises at the private health facility, and

    (b) reasonably considers that the disclosure of that information to the licensee is necessary because it raises serious concerns about the safety of patients.

16. Information is appointment information about a health practitioner if:

    (a) the health practitioner practises (or formerly practised) at a hospital or other health institution of the public health organisation (whether under a service contract or otherwise), and

    (b) the information relates to the variation, suspension or termination by the public health organisation of clinical privileges of the health practitioner.

17. Schedule 2.2 amends the Private Health Facilities Act 2007 to enable a licensee of a private health facility to share or exchange appointment information about a health practitioner with another licensee or a public health organisation if the licensee:

(a) reasonably believes that the health practitioner practises at the private health facility of the other licensee or at a hospital or health institution of the public health organisation, and

(b) reasonably considers that the disclosure of that information to the other licensee or the public health organisation is necessary because it raises serious concerns about the safety of patients.

Appointment information about a health practitioner is defined in a manner consistent with the comparable provision to be inserted in the Health Services Act 1997 by the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

18. Schedule 1[25], Schedule 5A provides that proposed section 149E of this Bill is to extend to persons whose registrations as health practitioners were cancelled, or who were disqualified from being registered as health practitioners, before the commencement of that section. Section 149E will require that the Tribunal must make a reinstatement order before the person concerned, having had their registration cancelled or being disqualified from registering, can apply for registration as a health practitioner. In this respect, the provisions will place further conditions or restrictions on persons for matters that have previously occurred and already been dealt with.

19. However, Schedule 1[25], Schedule 5A also provides that these requirements will not affect any application for registration that was made and granted before the commencement of section 149E.

> **The Committee notes the retrospective application of this provision so that health practitioners whose registrations were cancelled or who were disqualified from being health practitioners must apply for a reinstatement order before registering as a health practitioner again. The Committee makes no further comment.**

Privacy

20. Proposed section 145B(2) of the *Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86a* provides that the Council must give a complainant notice in writing of a notifiable outcome within 30 days after the outcome of a complaint that the complainant made against a health practitioner. Further, a proposed new section at 145B(3) provides that the Council may include such other information in the notice in addition to indicating the outcome as it considers appropriate.

> **The Committee notes that a Council's duty to provide the outcome of a complaint made against a health practitioner to the complainant may compromise the privacy of that health practitioner concerned. In particular, the disclosure may include material of a sensitive nature. The Committee is**

concerned about potential impacts on privacy as an interference with individual rights and liberties. As such, the Committee refers this matter to Parliament for its further consideration.

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

Commencement by Proclamation

21. Section 2 provides that the Act is to commence on a day or days to be appointed by proclamation, except as provided by subsection (2). Subsection (2) provides that two Schedules that pertain to the effect of cancellation and disqualification decisions of the tribunal in NSW, and the application of an amendment concerning requirements for reinstatement orders before registration, are to commence on assent.

The Committee prefers that legislation of this kind, which may impact on rights and liberties, commences in its entirety on a fixed date or on assent, not by proclamation.

6. Liquor Legislation Amendment (Statutory Review) Bill 2014

Date introduced	15 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Troy Grant MP
Portfolio	Minister for Hospitality, Gaming and Racing

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend various legislation to give effect to certain recommendations arising out of the statutory review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007* and to implement certain other reforms. In particular, the Bill:

(a) modifies the grounds on which the Independent Liquor and Gaming Authority (the *Authority*) can issue long-term banning orders prohibiting persons from entering licensed premises in the Kings Cross or Sydney CBD precincts, and

(b) provides for an escalating regime of sanctions (including automatic licence suspension or cancellation) for selling liquor to minors on licensed premises, and

(c) provides that liquor may be supplied on unlicensed premises to a minor by a parent of the minor, or by a person authorised by a parent of the minor, only if the supply is consistent with the responsible supervision of the minor, and

(d) provides that liquor may be sold or supplied without a licence at a fundraising function held by or on behalf of a non-proprietary association but only if certain requirements are complied with (including supervision and responsible service of alcohol requirements), and

(e) enables beer and spirits producers to sell their products for consumption on their licensed premises or at industry shows, and

(f) makes it clear that an authorisation granted to the holder of an on-premises licence to sell liquor otherwise than with, or ancillary to, the primary product or service provided on the licensed premises is subject to the requirement that the primary product or service must be available at all times when liquor is being sold under the authorisation, and

(g) provides for a new type of extended trading authorisation that enables licensed premises to trade late outside of the standard trading period (but no later than 3 am) on up to 12 occasions over a 12-month period, and

(h) enables the Minister to exempt venues in the Kings Cross and Sydney CBD precincts from the patron ID scanning requirements in certain circumstances, and

(i) requires certain decisions by the Authority or the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services (the *Secretary*) under the liquor legislation, and the reasons for such decisions, to be published on the Authority's or Department's website, and

(j) enables the Authority to suspend or revoke a person's RSA certification, or to disqualify a person from holding RSA certification for a specified period, if the person has contravened the person's obligations in relation to the responsible service of alcohol, and

(k) provides an alternative process for the transfer of a licence in cases where the ownership of the business carried on under the licence remains unchanged, and

(l) inserts objects into the *Gaming and Liquor Administration Act 2007*, and

(m) makes a number of other amendments of an administrative or minor nature.

BACKGROUND

2. The Bill has been introduced to reduce alcohol-related violence and the social harms caused from excessive alcohol consumption. The Bill introduces reforms identified in the Government's response to the 2013 statutory review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007. The review examined the policy objectives of the Act and whether they remained valid.

3. The Government's response to the Liquor Act review supported 84 out of the 91 recommendations made by the review either in full or in principle, while five recommendations were noted for further consideration. The overarching principles established in the Bill ensure that regulators and licensees must adhere to harm minimisation, responsible consumption, and safe sale and supply.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.

5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Liquor Act 2007 90

6. Schedule 1 [1] and [2] update provisions that contain references to the Director-General (these references are required by an administrative arrangements order under the *Constitution Act 1902* to be construed as references to the Secretary).

7. Schedule 1 [3] provides that the sale or supply of liquor at a fundraising function held by or on behalf of a non-proprietary association will be exempt from the licensing requirements under the Act if certain requirements are complied with. Only 6 such exempted functions can be held in any 12-month period and a non-proprietary association will not be eligible for the exemption if a limited licence is already held on its behalf or if the Secretary has declared that the association is not eligible for the exemption. The Secretary may also give directions to an association relating to the conduct of a function held in accordance with the proposed exemption.

8. Schedule 1 [4] omits a note that is no longer necessary.

9. Schedule 1 [5], [6] and [26] provide that any requirements prescribed by the regulations relating to the availability of food on licensed premises (including small bars) are to relate to the nature of the food but not to quality.

10. Schedule 1 [7] and [8] ensure that the primary purpose of the business or activity carried out on the licensed premises to which an on-premises licence applies must not at any time be the sale or supply of liquor and that any authorisation to sell liquor otherwise than with, or ancillary to, the primary product or service provided on the licensed premises is subject to the requirement that the primary product or service must be available at all times when liquor is being sold under the authorisation.

11. Schedule 1 [9]–[22] authorise beer and spirits producers to sell their products at producers' markets or fairs or at industry shows, or in accordance with a drink-on-premises authorisation, in the same manner as currently applies to wine producers. Schedule 1 [33] is a consequential amendment.

12. Schedule 1 [23] provides that the approval by the Authority of the functions that are held under a limited licence is no longer required. Schedule 1 [24] and [25] modify certain requirements relating to limited licences.

13. Schedule 1 [27], [45] and [47] make it clear that the fit and proper person test in relation to licence and other similar applications extends to the relevant person's competency to carry on the business under the licence or, in the case of a person who is applying for approval as manager of licensed premises, to the person's competency to manage licensed premises.

14. Schedule 1 [28] enables a licensee to apply to the Authority for the licence to be voluntarily suspended for a specified period.

15. Schedule 1 [29]–[32] provide for the granting by the Authority of a new kind of extended trading authorisation (a "multi-occasion" extended trading authorisation) that will allow venues to trade until 3 am on up to 12 occasions over a 12-month period. An application for a multi-occasion ETA will not need to be accompanied by a community impact statement if the venue is already authorised to trade late on a regular basis.

16. Schedule 1 [34] provides that the Secretary, rather than the Authority, is to approve the form of the incident registers required to be maintained by late trading venues or those venues that are subject to the special licence conditions under Schedule 4 to the Act. Schedule 1 [35] and [75] provide that any such incident register must be made available for inspection by police officers and inspectors and that any information in an incident register must be retained for at least 3 years. Schedule 1 [76] is a consequential amendment.

17. Schedule 1 [36] provides that the Secretary, rather than the Authority, is to approve the courses of training or instruction required to be completed by licence applicants and persons applying for approval as manager of licensed premises.

18. Schedule 1 [37] provides that the regulations may require licensees and their employees to undertake and complete courses of training or instruction approved by the Secretary. At present the Authority may require such courses to be undertaken and completed.

19. Schedule 1 [38] provides that if a licence has been suspended because the periodic licence fee for the licence has not been paid within the required time, the suspension may be lifted if a late payment fee is paid. Schedule 1 [39] provides that non-payment of the late payment fee will result in the cancellation of the suspended licence.

20. Schedule 1 [40] is a minor amendment to ensure consistency of terminology in the Act.

21. Schedule 1 [41] provides an alternative process for licences to be transferred, without the need to apply to the Authority for approval, if there is no change in the ownership of the business carried on under the licence. However such a transfer does not have effect until the licence is endorsed by the Authority to the effect that is held by the transferee.

22. Schedule 1 [42] and [43] provide that the owner of licensed premises, or the owner of the business carried on under a licence, may apply to the Authority for the transfer of the licence to another person if the licensee is not complying (or is unable to comply) with the requirement to be responsible at all times for the personal supervision and management of the business of the licensed premises.

23. Schedule 1 [44] and [46] provide that if an application for the transfer of a licence under section 61 of the Act, or for an endorsement of a licence under section 62 of the Act, is not made within the required time or is refused by the Authority, the licence is suspended until such time as it is transferred to some other person.

24. Schedule 1 [48]–[50] provide that a licensee is taken not to have permitted intoxication on the licensed premises if the licensee complies with the Secretary's guidelines relating to the prevention of intoxication on licensed premises.

25. Schedule 1 [51] provides that a person who has been refused entry to, or turned out of, licensed premises for any reason (and not just because the person was intoxicated, violent, quarrelsome or disorderly) is prohibited from re-entering or remaining in the vicinity of the premises.

26. Schedule 1 [52] removes the requirement that the Secretary cannot restrict or prohibit the sale or supply of certain liquor products unless the Secretary is satisfied that the premises are situated in an area where there are significant concerns regarding intoxication or underage or irresponsible drinking.

27. Schedule 1 [53] and [57] enable the Minister, after considering a recommendation by the Secretary, to exempt licensed premises in the Kings Cross or Sydney CBD precincts from the patron ID scanning requirements that are designed to prevent persons subject to banning orders from entering licensed premises in those precincts.

28. Schedule 1 [54]–[56] and [58]–[60] enable the Authority to impose a long-term banning order on a person (which has the effect of prohibiting the person from entering licensed premises in the Kings Cross or Sydney CBD precinct for up to 12 months) if the person has been charged with or found guilty of a serious indictable offence involving violence that was committed in any public place, or on licensed premises, declared premises under the *Restricted Premises Act 1943* or premises used for the activities of a criminal group, while the person or any victim of the offence was affected by alcohol. Such a banning order may also be imposed if the serious indictable offence was committed on or in the vicinity of licensed premises by the licensee or manager of the premises or by any person working or performing services on the premises.

29. Schedule 1 [61] recasts the offence of supplying liquor to a minor on premises other than licensed premises so that the supply must be consistent with the responsible supervision of the minor. The amendment includes matters that are considered to be relevant for the purposes of determining whether the supply of liquor to a minor is consistent with the responsible supervision of the minor.

30. Schedule 1 [62] provides additional sanctions for the offence of selling liquor to minors on licensed premises. Under the proposed scheme, escalating sanctions will apply. For a first offence, the Secretary may suspend the licence for a period of up to 28 days. For a second offence committed at least 28 days after the first offence, the licence is automatically suspended for 28 days. For a third offence within 12 months of the previous 2 offences, the licence is automatically cancelled.

31. Schedule 1 [63]–[67] modify provisions relating to local liquor accords. Such accords will no longer need to be approved by the Secretary but will be required to be registered by the Secretary.

32. Schedule 1 [68]–[70] provide that the disciplinary action that may be taken by the Authority in relation to complaints will include a wider range of disqualifications of persons from certain activities or roles.

33. Schedule 1 [71] and [72] provide for allegations of certain matters in proceedings for offences under the Act to be evidence of the truth of the matter unless the contrary is proven.

34. Schedule 1 [73] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

35. Schedule 1 [74] and [78] provide that the Secretary may extend the restricted trading period that applies to premises subject to special licence conditions in Schedule 4 to the Act for up to 2 hours before midnight if alcohol-related violence has occurred on the premises during that period.

36. Schedule 1 [77] omits a redundant provision.

Schedule 2 Amendment of Gaming and Liquor Administration Act 2007 No 91

37. Schedule 2 [1] inserts objects in the Act which will include promoting fair and transparent decision making under the gaming and liquor legislation.

38. Schedule 2 [2]–[5], [9]–[11], [13]–[19] and [23]–[26] make amendments that are consequential on recent administrative changes, including the enactment of the *Government Sector Employment Act 2013* which replaced the *Public Sector Employment and Management Act 2002*. The amendments also create a distinction between the members of staff of the Authority (being those Public Service employees who are employed to enable the Authority to exercise its functions) and other Public Service employees who are engaged in the administration of the gaming and liquor legislation. The Authority will continue to have responsibility for ensuring that designated members of staff of the Authority, including inspectors who exercise additional functions in relation to the casino, have the highest standard of integrity and for determining which members of staff are key officials for the purposes of the gaming and liquor legislation.

The Secretary will have a similar responsibility in relation to other Public Service employees who are engaged in the administration of the gaming and liquor legislation.

39. Schedule 2 [8] ensures that the provisions of the *Gaming Machine Tax Act 2001* which relate to the ClubGRANTS scheme and which are currently administered by the Minister for Hospitality, Gaming and Racing (ie Part 4 and Schedule 1) are subject to the investigation and enforcement powers under the *Gaming and Liquor Administration Act 2007*. Schedule 2 [6] and [7] are consequential amendments.

40. Schedule 2 [12] enables the Authority to delegate any of its functions to a member of the Authority and to Public Service employees.

41. Schedule 2 [20] and [21] provide that decisions by the Secretary under section 102A of the *Liquor Act 2007* to restrict or prohibit activities by licensees that encourage misuse or abuse of liquor, and decisions by the Secretary under section 136E of that Act to impose licence conditions requiring licensees to participate in precinct or community event liquor accords, are subject to review by the Authority.

42. Schedule 2 [22] requires notice of certain decisions by the Authority and the Secretary to be published on the respective websites of the Authority and the Department. The notice is to include a statement of reasons for any such decision and details of any penalty or sanction imposed or any remedial action taken.

43. Schedule 2 [27] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 3 Amendment of other legislation

Schedule 3.1 amends the *Gaming and Liquor Administration Regulation 2008* as follows:

44. to specify the decisions by the Authority or the Secretary that are required to be notified in accordance with the requirement under proposed section 36C of the *Gaming and Liquor Administration Act 2007* (to be inserted by Schedule 2 [22]),

45. to provide that certain offences under the Act (namely, failing to comply with a requirement to provide information and records and to answer questions in connection with an investigation, and impersonating an inspector) may be dealt with by way of a penalty notice,

46. to update various references as a consequence of recent administrative changes.

Schedule 3.2 amends the Liquor Regulation 2008 as follows:

47. to enable the Authority to suspend or revoke a person's RSA certification, or to disqualify a person from holding RSA certification for a specified period of up to 12 months, if the person has contravened the person's obligations in relation to the responsible service of alcohol and to enable any such person to apply to the Civil and Administrative Tribunal for a review of any such decision by the Authority,

48. to specify additional circumstances in which an application for a multi-occasion extended trading authorisation is not required to be accompanied by a community impact statement,

49. to make a number of other amendments that are consequential on the amendments made by Schedule 1 to the proposed Act (including the addition of various application and other related fees, and penalty notice amounts, arising from those amendments),

50. to update various references as a consequence of recent administrative changes.

51. Schedule 3.3 amends the *Registered Clubs Act 1976* to make it clear that those club premises which have preserved unrestricted trading hours (and accordingly are subject to the late trading risk loading element under the periodic licence fee system) forfeit the unrestricted trading entitlement if the club chooses to only trade late under a multi-occasion extended trading authorisation granted under the *Liquor Act 2007*. Clubs may also, in order to avoid the late trading risk loading element, request the Secretary to impose a licence condition to restrict the trading hours to the standard trading period, but if that condition is subsequently revoked at the club's request the premises will revert to the previously preserved unrestricted trading hours.

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.

7. Local Government Amendment (Red Tape Reduction) Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Local Government Act 1993* (the Act)*:*

(i) to enable a local council to delegate its function of accepting tenders that the local council is required under the Act to invite; and

(ii) to enable a local council to enter a contract for the purchase of goods or services with a disability employment organisation without first having to invite tenders; and

(iii) to clarify that an exemption from the requirement to invite tenders that applies in relation to certain contracts involving orders against standing offers applies whether or not a rate is specified for the contracts; and

(iv) to reduce the frequency with which local councils are required to adopt a policy concerning expenses and facilities.

(b) to amend the Act and the *Local Government (General) Regulation 2005* (the Regulation)

(i) to exempt prescribed local councils from the requirement to invite tenders for contracts involving an amount of less than $250,000 (rather than less than $150,000, as for other local councils), and

(ii) to replace requirements for local councils and election managers to publish notices and advertisements in newspapers with requirements to publish them on their websites and in such other manner as they consider appropriate.

BACKGROUND

2. The proposals in the Bill comprise the early amendments to the Act and Regulation foreshadowed by the Government in its response to the recommendations of the Local Government Acts Taskforce.

3. The Local Government Acts Taskforce was a four-member panel asked to conduct a comprehensive review of the Act and the *City of Sydney Act 1988.* The Taskforce completed its work in 2013 and released its final report for public comment in early 2014.

4. The reforms under this Bill are the first of many legislative changes to be made to create Fit for the Future local government, an initiative of the Government announced on 10 September 2014.

5. According to the Minister responsible, the Hon. Paul Toole MP:

> The Fit for Future program includes a commitment to introduce a new, enabling principles-based Local Government Act that will seek to prescribe outcomes rather than processes… [The] Act will be designed to enshrine integrated planning and reporting principles as its central framework; reduce unnecessary red tape and prescription; enhance community engagement; embed the principle of fiscal responsibility; improve financial and asset planning; and strengthen representation and leadership.

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 Schedules 1 [3] and 2 [8] to the proposed Act on a day to be appointed by proclamation and the remainder of the proposed Act on the date of assent to the proposed Act.

8. Schedule 1 [8] removes a prohibition on a local council delegating a local council's function of accepting tenders that are required to be invited by a local council.

9. Schedule 1 [4] exempts a local council from the requirement to invite tenders in relation to contracts for the purchase of goods or services made with a person or body approved as a disability employment organisation under the Public Works and Procurement Act 1912.

10. Schedule 1 [2] clarifies that current exemptions from the requirement to invite tenders that apply in relation to certain 'standing offer' contracts (involving orders for goods and services against standing offers established by the NSW Procurement Board and other entities) apply whether or not a rate is specified for the contract. Currently, local councils are exempt from the requirement to invite tenders in relation to contracts involving an estimated expenditure or receipt of an amount of less than $150,000.

11. Schedule 1 [3] increases the threshold amount to $250,000 for local councils (if any) specified in the Regulation for the purposes of the exemption and retains the $150,000 threshold amount (currently prescribed in the Regulation) for local councils not so specified.

12. Schedule 1 [5] reduces the frequency with which a local council is required to adopt a policy for the payment of expenses incurred by, and provision of facilities to, its councillors (an expenses and facilities policy), from once each year to once in each term of the local council (within the first 12 months of the term).

13. Schedule 1 [6] removes a requirement for a local council to report to the Chief Executive of the Office of Local Government in relation to the adoption or amendment of an expenses and facilities policy. The item also makes an amendment consequential on that made by Schedule 1 [5].

14. Schedule 1 [17] inserts consequential provisions of a savings or transitional nature.

15. Schedule 1 [7], [9], [10] and [14]–[16] replace requirements for a local council to publish certain notices, advertisements or other matter in newspapers, with requirements for the local council to publish them on its website and either in a local or metropolitan newspaper (or both), or in some other manner, as determined by the local council with the object of bringing them to the attention of as many interested persons as possible.

16. Schedule 1 [1] and [11]–[13] make consequential amendments.

17. Schedule 2 [1]–[7], [10]–[18] and [20]–[23] make amendments to replace requirements for a local council or election manager to publish certain notices, advertisements or other matter in newspapers with requirements to publish them on its website and either in a local or metropolitan newspaper (or both), or in some other manner, as determined by the local council or election manager with the object of bringing them to the attention of as many interested persons as possible.

18. Schedule 2 [9] and [19] make consequential amendments.

19. Schedule 2 [8] makes an amendment consequential on Schedule 1 [3].

ISSUES CONSIDERED BY COMMITTEE

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

8. Marine Estate Management Bill 2014

Date introduced	16 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

   (a) To provide for the management of the marine estate of New South Wales consistent with the principles of ecologically sustainable development in a manner that:

      (i) promotes a biologically diverse, healthy and productive marine estate, and

      (ii) facilitates:

         - economic opportunities for the people of New South Wales, including opportunities for regional communities, and
         - the cultural, social and recreational use of the marine estate, and
         - the maintenance of ecosystem integrity, and
         - the use of the marine estate for scientific research and education,

   (b) to promote the co-ordination of the exercise, by public authorities, of functions in relation to the marine estate,

   (c) to provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves.

BACKGROUND

2. The purpose of this Bill is to make provision for the management of the New South Wales marine estate. Stretching north to south for approximately 1,250 kilometres, the New South Wales marine estate is an area of about one million hectares of estuary and ocean. Almost six million residents live within 50 kilometres of the New South Wales coastline.

3. In June 2011, the Government commissioned an independent scientific audit of marine parks in New South Wales. The audit found that management of the marine estate in New South Wales was fragmented and deficient. In February 2013, the Government released its response to the audit, which announced a comprehensive new approach to the management of the marine estate. This Bill gives effects to the recommended approach.

4. The Bill provides for effective and integrated management of the whole marine estate for the first time in New South Wales. The new Act will be jointly administered by the Minister for Primary Industries and the Minister for the Environment.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.Page 2

6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

7. Clause 3 states the objects of the proposed Act.

8. Clause 4 defines certain words and expressions used in the proposed Act, including a definition of the principles of ecologically sustainable development that requires the effective integration of economic, social and environmental considerations in decision-making processes.

9. Clause 5 provides that a reference in the proposed Act to "relevant Ministers" is a reference to the Minister for the Environment and the Minister for Primary Industries acting together.

10. Clause 6 defines the term marine estate for the purposes of the proposed Act.

11. Clause 7 establishes an advisory committee to be called the Marine Estate Management Authority. The Authority consists of:

    (a) a person appointed by the relevant Ministers who is to be the Chairperson of the Authority, and

    (b) the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services, and

    (c) the Chief Executive of the Office of Environment and Heritage, and

    (d) the Secretary of the Department of Planning and Environment, and

    (e) the Secretary of the Department of Transport, and

    (f) a person appointed by the relevant Ministers to chair the Marine Estate Expert Knowledge Panel (if the Panel has been established).

12. Clause 8 sets out the functions of the Authority, which include the following:

    (a) to advise the relevant Ministers on the management of the marine estate and in relation to any matter referred to it by the relevant Ministers,

    (b) to undertake assessments of threats and risks to the marine estate,

    (c) to prepare a draft marine estate management strategy for submission to the relevant Ministers in consultation with the relevant public service agencies,

(d) without limiting paragraph (a), to advise the relevant Ministers on the implementation of the marine estate management strategy by public authorities,

(e) to promote collaboration and co-ordination between public authorities in their exercise of functions relating to the management of the marine estate,

(f) to foster consultation with the community in relation to the management of the marine estate and the preparation of the marine estate management strategy.

13. Clause 9 enables the relevant Ministers to establish a Marine Estate Expert Knowledge Panel. The Marine Estate Expert Knowledge Panel may provide advice to the Authority on any matter referred to it by the Authority. A Marine Estate Expert Knowledge Panel is not subject to the control and direction of the relevant Ministers or the Authority in respect of any advice it provides to the Authority. Regulations under the proposed Act may make provision for the constitution and procedures of the Marine Estate Expert Knowledge Panel. However, in establishing any such Panel the relevant Ministers must seek to include on the Panel persons with expertise in the fields of the ecological, economic or social sciences.

14. Clause 10 states the purpose of a marine estate management strategy, being to set the over-arching strategy for the State government to co-ordinate the management of the marine estate with a focus on achieving the objects of the proposed Act.

15. Clause 11 provides that the Authority is to prepare a draft marine estate management strategy and submit the draft strategy to the relevant Ministers for approval.

16. Clause 12 sets out the contents of a draft marine estate management strategy. Such a strategy must:

(a) state the vision and priorities for management of the marine estate, and

(b) include any other matters that the relevant Ministers may direct to be included in the strategy or that may be prescribed by the regulations.

17. Clause 13 deals with consultation on a draft marine estate management strategy.

18. Clause 14 provides that the Authority is to submit a copy of the draft marine estate management strategy to the relevant Ministers for approval.

19. Clause 15 deals with the approval of the marine estate management strategy. The relevant Ministers may approve a draft marine estate management strategy:

(a) without alteration, or

(b) with such alteration as the relevant Ministers think fit.

20. Clause 16 deals with the publication of a marine estate management strategy.

21. Clause 17 deals with the amendment, replacement or revocation of a marine estate management strategy.

22. Clause 18 provides for the periodic review of the marine estate management strategy. The relevant Ministers may cause a review of the marine estate management strategy to

be undertaken at any time, but must ensure a review is commenced as soon as possible after:

(a) in the case of the first review—the period of 10 years has elapsed since the date that the strategy was approved, and

(b) in any other case—the period of 10 years has elapsed since the conclusion of the previous review.

23. A review under the proposed section is to be carried out by an independent person, body or panel appointed by the relevant Ministers. The relevant Ministers may set the terms of reference for such reviews. The person, body or panel conducting the review is to prepare a report on the review and submit it to the Authority. The Authority is to consider that report and submit it, and any advice the Authority has regarding the review, to the relevant Ministers.

24. Clause 19 deals with the implementation of the marine estate management strategy. The relevant Ministers are to have regard to the marine estate management strategy in the exercise of the relevant Ministers' functions under the proposed Act. Public authorities are to have regard to the marine estate management strategy to the extent that the strategy is relevant to the exercise of their functions.

25. Clause 20 provides that the Authority must ensure that an assessment of threats and risks to the marine estate is periodically carried out. The purpose of the threat and risk assessment is:

(a) to identify threats to the environmental, economic and social values of the marine estate, and

(b) to assess the risks associated with those identified threats, and

(c) to inform marine estate management decisions by prioritising those threats and risks according to the level of impact on the values derived from the marine estate.

26. A threat and risk assessment under the proposed section is to be commenced:

(a) as soon as possible after:

(i) in the case of the first assessment—the commencement of the proposed section, and

(ii) in any other case—the period of 10 years has elapsed since the previous assessment, and

(b) at any other time determined by the relevant Ministers.

27. Clause 21 provides that the Authority must prepare a report summarising each threat and risk assessment. The threat and risk assessment report is to be provided to the relevant Ministers. However, before the threat and risk assessment report is provided to the relevant Ministers, the Authority must consult on a draft of the report by giving such public notice that a draft report has been prepared and undertaking such public exhibition of the draft report as is required by the regulations under the proposed Act.

28. Clause 22 sets out the purposes of marine parks. The primary purpose of a marine park is to conserve the biological diversity, and maintain ecosystem integrity and ecosystem function, of bioregions in the marine estate. The secondary purposes of a marine park are, where consistent with the primary purpose:

    (a) to provide for the management and use of resources in the marine park in a manner that is consistent with the principles of ecologically sustainable development, and

    (b) to enable the marine park to be used for scientific research and education, and

    (c) to provide opportunities for public appreciation and enjoyment of the marine park, and

    (d) to support Aboriginal cultural uses of the marine park.

29. Clause 23 enables the Governor to proclaim as marine parks areas of waters of the sea or subject to tidal influence, areas of water land adjacent to such waters and areas of land within such waters or covered from time to time by such waters.

30. Clause 24 enables the Governor, by proclamation, to assign a name to, or alter the name of, a marine park.

31. Clause 25 prevents the declaration of a marine park being revoked except by an Act of Parliament.

32. Clause 26 enables the area of a marine park to be varied by proclamation. A variation proclamation is disallowable by Parliament.

33. Clause 27 provides that the declaration of an area as a marine park revokes any declaration of the area as an aquatic reserve under the Fisheries Management Act 1994.

34. Clause 28 provides that land reserved or dedicated for a public purpose (including reserved or dedicated under the National Parks and Wildlife Act 1974 or any other Act) may be declared as a marine park and may continue to be used for that public purpose so long as the use is not inconsistent with the proposed Act or the regulations under the proposed Act.

35. Clause 29 provides that the declaration of an area as a marine park does not affect any existing aquaculture permit or aquaculture lease under the Fisheries Management Act 1994. However, such leases cannot be renewed unless aquaculture is permitted in the relevant area by the regulations under the proposed Act.

36. Clause 30 requires the Minister administering the Crown Lands Act 1989 to consult with the relevant Ministers before approving of any change of use, or the conversion, sale or disposal of lands leased under that Act and situated within a marine park.

37. Clause 31 requires a copy of any proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 that relates to land within a marine park to be served on the relevant Ministers.

38. Clause 32 provides that if an owner of land whose consent is required to the making of a proclamation declaring an area to be a marine park or adding an area to a marine park cannot, after diligent inquiry, be found or identified, the proclamation may be made without the consent of that owner. (Diligent inquiry is defined in clause 79).

39. Clause 33 sets out the purposes of aquatic reserves. The primary purpose of an aquatic reserve is to conserve biological diversity, or particular components of biological diversity (such as specific ecosystems, communities or species), in a specified area of the marine estate. The secondary purposes of an aquatic reserve are, where consistent with the primary purpose:

(a) to provide for the management and use of resources in the aquatic reserve in a manner that is consistent with the principles of ecologically sustainable development, and

(b) to enable the aquatic reserve to be used for scientific research and education, and

(c) to provide opportunities for public appreciation and enjoyment of the aquatic reserve, and

(d) to support Aboriginal cultural uses of the aquatic reserve.

40. Clause 34 enables the relevant Ministers, by notice published in the Gazette, to declare an area (or areas) specified in the notice to be an aquatic reserve.

41. Clause 35 provides that the relevant Ministers are required to obtain the appropriate consent before declaring an area to be an aquatic reserve.

42. Clause 36 provides that if an owner of land whose consent is required to the declaration of an area as an aquatic reserve cannot, after diligent inquiry, be found or identified, the declaration may be made without the consent of that owner. (Diligent inquiry is defined in clause 79).

43. Clause 37 provides that a declaration of an aquatic reserve in relation to an area is not affected by an existing interest in respect of land in the area or a change of ownership of land in the area.

44. Clause 38 enables the relevant Ministers, subject to the proposed section, to revoke or vary the declaration of an aquatic reserve by notice published in the Gazette. Such a revocation or variation is disallowable by Parliament.

45. Clause 39 enables regulations to be made that make provision for or with respect to the management, protection and conservation of marine parks and aquatic reserves.

46. Clause 40 enables other regulations to be made regulating or prohibiting activities within marine parks and aquatic reserves.

47. Clause 41 provides that a person is guilty of an offence if the person contravenes a provision of the regulations referred to in this proposed Division or proposed Division 4, being a contravention that is designated by the regulations as a serious offence. The offence carries a maximum penalty of 1,000 penalty units (in the case of a corporation) or 500 penalty units (in any other case).

48. Clause 42 enables regulations to be made that make provision for or with respect to the use and management of a marine park or an aquatic reserve by means of management rules set out in the regulations. The management rules for a marine park or an aquatic reserve may include provisions for or with respect to the following:

(a) the classification of areas within that marine park or an aquatic reserve into zones,

(b) the purpose of any such zone, Page 6

(c) the uses that are permitted or prohibited within any such zone,

(d) the management of any such zone.

49. Clause 43 deals with the making of management rules for marine parks and aquatic reserves (including public notice of draft management rules).

50. Clause 44 provides for the review of management rules for marine parks and aquatic reserves. The relevant Ministers are to conduct a review of the management rules for each marine park and aquatic reserve every 10 years to determine whether the management rules remain appropriate for securing the purposes of marine parks or aquatic reserves (as appropriate). The relevant Ministers may conduct such a review at such other times as the relevant Ministers consider necessary.

51. Clause 45 deals with amending or replacing management rules for marine parks and aquatic reserves.

52. Clause 46 provides that if an area within a marine park or an aquatic reserve is subject to a plan of management under the National Parks and Wildlife Act 1974 or the Crown Lands Act 1989, the management rules for the marine park or aquatic reserve prevail over the plan of management to the extent of any inconsistency.

53. Clause 47 provides that the relevant Ministers:

(a) must cause a management plan to be prepared and adopted for each marine park, and

(b) may cause a management plan to be prepared and adopted for an aquatic reserve.

54. Clause 48 requires a management plan:

(a) to state the environmental, economic and social values to be conserved by the marine park or aquatic reserve, and

(b) to identify threats to those values, and

(c) to state the management objectives of the marine park or aquatic reserve in relation to those values and threats, and

(d) to specify actions to achieve those management objectives, based on a consideration of risks, and

(e) to set out the programs to be implemented for managing the marine park or aquatic reserve, and

(f) to include any other matters that the relevant Ministers consider necessary to be included in the management plan or that the regulations require to be included.

55. Clause 49 deals with the preparation of management plans for marine parks and aquatic reserves.

56. Clause 50 deals with the publication of management plans for marine parks and aquatic reserves.

57. Clause 51 deals with the alteration or replacement of management plans for marine parks and aquatic reserves.

58. Clause 52 requires the relevant Ministers to periodically review each management plan to determine whether the plan remains appropriate for securing the objects of the proposed Act and the purposes of the marine park or aquatic reserve. A review under the proposed section is to be commenced as soon as possible after:

(a) in the case of the first review—the period of 10 years has elapsed since the date that the management plan was adopted, and

(b) in any other case—the period of 10 years has elapsed since the conclusion of the previous review.

59. Clause 53 requires functions of the relevant Ministers or any authorised officers in relation to a marine park or an aquatic reserve to be exercised in accordance with the management plan for the marine park or aquatic reserve. However, the exercise of those functions is not invalid because of a contravention of any such plan.

60. Clause 54 makes it unlawful to prospect or mine for minerals in a marine park or an aquatic reserve. The provision does not apply to or in respect of certain existing licences, permits, authorisations or leases. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted except as expressly authorised by an Act of Parliament.

61. Clause 55 places obligations on consent authorities and determining authorities (within the meaning of the Environmental Planning and Assessment Act 1979) in relation to proposed development or activities within a marine park or an aquatic reserve.

62. Clause 56 places obligations on consent authorities and determining authorities (within the meaning of the Environmental Planning and Assessment Act 1979) in relation to proposed development or activities in the locality of a marine park or an aquatic reserve.

63. Clause 57 provides that the relevant Ministers may, by notification published in the Gazette, prohibit the carrying out of any specified activity (including the taking of fish):

(a) in a marine park or part of a marine park (a marine park notification), or

(b) in an aquatic reserve or part of an aquatic reserve (an aquatic reserve notification).

64. Clause 58 deals with the publication of marine park and aquatic reserve notifications.

65. Clause 59 contains other machinery provisions dealing with marine park and aquatic reserve notifications.

66. Clause 60 deals with amendments to and revocations of marine park and aquatic reserve notifications.

67. Clause 61 provides that the regulations may make provision for or with respect to giving effect to marine park and aquatic reserve notifications or to any other matter relating to such notifications.

68. Clause 62 contains certain offences relating to contraventions of marine park and aquatic reserve notifications.

69. Clause 63 deals with the removal of wrecked vessels and other property from marine parks and aquatic reserves.

70. Clause 64 enables the relevant Ministers to recover the administrative costs of preparing and giving notices under proposed section 63.

71. Clause 65 provides that any requirement made by or under the proposed Part is in addition to any requirement under any other Act or statutory instrument.

72. Clause 66 sets out the persons who are authorised officers for the purposes of the proposed Act, being:

    (a) a person appointed as an authorised officer, or

    (b) a person in the Public Service appointed as a fisheries officer under the Fisheries Management Act 1994 (subject to any conditions, limitations or restrictions contained in the officer's instrument of authority under that Act), or

    (c) a police officer.

    The provision also deals with the appointment, and revocation of appointment, of authorised officers.

73. Clause 67 applies certain provisions of the Fisheries Management Act 1994 relating to powers of entry, search and seizure for the purposes of enforcing provisions of the proposed Act.

74. Clause 68 requires persons to state their name and address or give other information to authorised officers in certain circumstances.

75. Clause 69 deals with the liability of vehicle owners for certain parking offences.

76. Clause 70 enables penalty notices to be issued for offences under the proposed Act or the regulations under the proposed Act.

77. Clause 71 deals with proceedings for an offence against the proposed Act or the regulations under the proposed Act.

78. Clause 72 provides for the time in which proceedings for offences under the proposed Act or the regulations under the proposed Act are to be commenced.

79. Clause 73 makes directors and other persons concerned in the management of a corporation liable for offences committed by the corporation under the proposed Act or the regulations if the person knowingly authorised or permitted the contravention of the provision of the proposed Act or the regulations.

80. Clause 74 establishes a Marine Protected Areas Fund for the purposes of the proposed Act.

81. Clause 75 provides that the proposed Act binds the Crown.

82. Clause 76 enables the relevant Ministers to delegate to the Authority or any person a function conferred by or under the proposed Act on the relevant Ministers (other than the power of delegation).

83. Clause 77 deals with the service of documents generally.

84. Clause 78 deals with the service of documents on native title holders.

85. Clause 79 defines the term diligent inquiry for the purposes of the proposed Act.

86. Clause 80 deals with the resolution of disputes.

87. Clause 81 authorises arrangements with the Commonwealth for the purposes of exercising functions under the proposed Act over waters subject to the control of the Commonwealth.

88. Clause 82 deals with the liability of the relevant Ministers, the Authority, a member of the Authority, an authorised officer or a person acting under the direction of the relevant Ministers or the Authority for matters or things done or omitted to be done in good faith for the purpose of executing the proposed or any other Act.

89. Clause 83 enables regulations to be made for the purposes of the proposed Act.

90. Clause 84 requires the relevant Ministers to review the operation of the proposed Act after 5 years from the commencement of the proposed Act.

91. Schedule 1 contains provisions relating to the constitution and procedure of the Marine Estate Management Authority.

92. Schedule 2 enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

93. Schedule 3 repeals the Marine Parks Act 1997 and provisions of the Fisheries Management Act 1994 relating to aquatic reserves.

94. Schedule 4 amends the Acts specified in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Property Rights

95. Sections 32 and 36 of the Bill provide that if an owner of land whose consent is required for the declaration or variation of a marine park or aquatic reserve, but after 'diligent inquiry' the owner cannot be found or identified, then the declaration can be made without the consent of that owner.

96. The Committee notes that the declaration of a marine park or aquatic reserve without the consent of the owner of the land concerned may be an adverse impact on the property rights of that owner.

97. However, the Committee notes the definition of 'diligent inquiry' under section 79 of the Bill includes a search of relevant land and title registers, notices placed on the land at a conspicuous place or at the entrance, and the publication of a notice in a newspaper circulating locally. The Committee recognises the reasonableness of the steps that must first be taken before a declaration is made.

> **The Committee notes that the declaration or variation of a marine park or aquatic reserve without the consent of the owner of land concerned may be an adverse impact on the property rights of that owner. However, given the 'diligent inquiry' that is required before a declaration or variation can be made, the Committee makes no further comment.**

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

Offences and Penalties set by Notification

98. Section 62 of the Bill provides that a person who carries out any activity in contravention of a notification is guilty of an offence which, for individuals, can carry an offence of 200 penalty units or imprisonment for six months or both. A notification may include matters relating to a person who is in possession of any animal, plant, rock, sand or other thing taken in contravention of the notification in which the penalty is 100 penalty units or imprisonment for three months or both.

99. Section 59 of the Bill provides that notification takes effect on the publication of the notification or on a later date specified in the notification. Notifications may be amended periodically or revoked by a further notification from the relevant Minister.

100. In general, statutory rules – such as regulations, by-laws, rules, or ordinances – are able to be disallowed by Parliament within fifteen sitting days after publication or gazettal under section 41 of the *Interpretation Act 1987*. This affords Parliament the opportunity to scrutinise the statutory rules that have been made.

101. However, the Committee notes that notifications are made solely by Ministers in which offences and their respective penalties can be decreed. The Bill does not provide scope for any legislative scrutiny or power to disallow. Despite an express provision at section 59(3) of the Bill that other sections of the *Interpretation Act 1987* are to apply to notifications in the same way as they apply to statutory rules, the Bill is silent on the applicability of section 41 which pertains to parliamentary oversight and disallowance.

The Committee notes that the ability for a Minister to make a notification that can set offences with a penalty of 200 penalty units or six months imprisonment or both, may be an inappropriately delegated legislative power. Further, because it does not appear that section 41 of the *Interpretation Act 1987* applies, it is likely that notifications will escape parliamentary scrutiny and possible disallowance. The Committee refers this matter to Parliament for its further consideration as an inappropriate delegation of legislative power.

Commencement by Proclamation

102. Section 2 of the Bill provides that the Act is to commence on a day or days to be appointed by proclamation.

The Committee prefers that legislation of this kind, which may impact on rights and liberties, commences on a fixed date or an assent, not by proclamation.

9. Mental Health Tribunal (Statutory Review) Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	Hon. Jai Rowell MP
Portfolio	Minister for Mental Health and Assistant Minister for Health

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to amend the Mental Health Act 2007 (the Principal Act) as follows:

   (a) to include in the principles for the care and treatment of people with a mental illness or mental disorder a requirement to consider the views and expressed wishes of those people in developing treatment and recovery plans and a requirement relating to obtaining consent, where reasonably practicable, to such plans,

   (b) to extend the reach of existing requirements to consult with and inform carers of persons with a mental illness or mental disorder by enabling a person to nominate more than one carer for that purpose and recognising a category of individuals who are principal care providers,

   (c) to enable a voluntary patient to be detained in a mental health facility for up to 2 hours for the purpose of a review by a medical officer to ascertain whether the patient should be detained in the facility for assessment,

   (d) to provide for alternatives to personal examination or observation of a person by a medical practitioner where such examination or observation is not possible for the purpose of determining whether to detain the person in a mental health facility for assessment or to hold a mental health inquiry,

   (e) to enable community treatment orders to be made in additional proceedings and to make further provision about consultation on and notice of community treatment orders,

   (f) to tighten the requirements to be met for administering electro convulsive therapy (ECT) to persons under the age of 16 years,

   (g) to amend provisions relating to non-psychiatric treatments to remove provision for voluntary patients and for greater consistency with similar provisions in other legislation,

   (h) to require persons under the age of 16 years to have legal or other representation in any proceedings before the Mental Health Review Tribunal (the Tribunal),

2. to make other minor amendments, to update references and expressions and to enact provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

BACKGROUND

3. In his Second Reading Speech to Parliament, the Hon Jai Rowell MP, Minister for Mental Health and Assistant Minister for Health stated that the Government has reviewed the *Mental Health Act 2007* and consulted extensively with consumers, families and carers, health professionals, service providers, carer networks, emergency services, academics and government agencies. Mr Rowell indicated that the review and consultation were undertaken to ensure that the Act is fit for purpose and that it offers adequate protections to the rights of those with mental illness in NSW whilst providing adequate protections to such persons in the community from potential serious harms caused by mental illness.

4. Mr Rowell further advised Parliament that during the consultation process, the community expressed its key concerns including the need for an increased acknowledgement of recovery focused treatment as a key objective of the Act, greater access to emergency mental health care particularly in regional and rural areas, and improved assistance for consumers and carers to navigate the mental health system. The Bill aims to make these changes as well as reflect contemporary language, improve operational clarity and oversight arrangements, and to align with best practice in mental health.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.

6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

7. Schedule 1 [2] includes in the objects of the Principal Act the object of promoting the recovery of persons who are mentally ill or mentally disordered.

8. Schedule 1 [3] amends the objects of the Principal Act to remove references to control of patients so as to reflect a focus on the care and treatment of patients.

9. Schedule 1 [4] amends the objects of the Principal Act to recognise the provision of treatment for the purpose of protecting a patient or other persons from harm.

10. Schedule 1 [34] inserts a requirement to support people with a mental illness or mental disorder to pursue their own recovery in the principles set out for care and treatment.

11. Schedule 1 [35] adds to the principles for the care and treatment of people with a mental illness or mental disorder the principles that people under the age of 18 years should receive developmentally appropriate services and that the cultural and spiritual beliefs and practices of people who are Aboriginal persons or Torres Strait Islanders should be recognised. The amendment also provides for special needs related to disability or sexuality to be recognised in care and treatment.

12. Schedule 1 [36] updates a reference to treatment plans.

13. Schedule 1 [37] adds to the principles for the care and treatment of persons with a mental illness or mental disorder a new principle requiring that every reasonably practicable effort should be made to obtain the consent of people with a mental illness or mental disorder to treatment plans and recovery plans, to monitor their capacity to consent and to support persons who lack the capacity to consent to understand those plans.

14. Schedule 1 [38] inserts a right for carers to be kept informed and involved, and to have information provided by them considered, in the principles relating to the care and treatment of persons with a mental illness or mental disorder.

15. Schedule 1 [6] inserts definitions of designated carer and principal care provider.

16. Schedule 1 [11] and [14] enable the principal care provider of a person to make a written request that the person be detained in a mental health facility and also update references to primary carers so that they refer to designated carers.

17. Schedule 1 [12] prohibits a mental health certificate from being given for a person if the medical practitioner or accredited person giving the certificate is the principal care provider of the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

18. Schedule 1 [83] makes a consequential amendment.

19. Schedule 1 [19] enables a person who has been brought to a mental health facility by a police officer and who is not to be further detained to be discharged into the care of the person's principal care provider. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

20. Schedule 1 [21] enables the principal care provider of an assessable person to appear at a mental health inquiry and also updates a reference to a primary carer so that it refers to a designated carer.

21. Schedule 1 [20] makes a consequential amendment.

22. Schedule 1 [25] enables the principal care provider of an involuntary patient or person detained in a mental health facility to apply for the discharge of the patient or person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

23. Schedule 1 [33], [39], [40], [67] and [69] update references.

24. Schedule 1 [41] makes it clear that only individuals are included in the class of carers who may be designated carers.

25. Schedule 1 [42] includes the extended family and kin of a patient who is an Aboriginal person or a Torres Strait Islander in the category of persons who may be included as relatives for the purposes of determining the designated carer of a patient.

26. Schedule 1 [43] enables a person to nominate up to 2 designated carers.

27. Schedule 1 [44] specifies that the principal care provider of a person is the individual who is primarily responsible for providing support or care to the person. An authorised medical officer of a mental health facility or a director of community treatment may determine who is the principal care provider of a person for the purposes of complying with requirements to give notice and other requirements. Requirements relating to principal care providers need not be complied with if to do so may put the principal care provider or the person being cared for at risk of serious harm.

28. Schedule 1 [45] extends to the principal care provider of a person who is a patient or a person detained in a mental health facility the right to receive information about medication administered to the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

29. Schedule 1 [47] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of a person within 24 hours after the person is detained in the facility. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

30. Schedule 1 [48] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of an assessable person of a proposed mental health inquiry. The amendment also updates a reference to a primary carer so that it refers to a designated carer. Schedule 1 [49] makes a consequential amendment.

31. Schedule 1 [50] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of a patient or person detained in the facility of certain events relating to the patient or person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

32. Schedule 1 [51] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to ensure that the principal care provider of a person is consulted in relation to the person's discharge and subsequent treatment or actions. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

33. Schedule 1 [52] requires an authorised medical officer of a mental health facility, while planning the discharge of a person, to take all reasonably practicable steps to consult with agencies providing relevant services to the person and the principal care provider. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

34. Schedule 1 [53] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to ensure that the person and the principal care provider of a person who is discharged from the facility are provided with appropriate information as to follow-up care. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

35. Schedule 1 [71] extends the advocacy role of official visitors to matters raised by the principal care provider of a patient. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

36. Schedule 1 [72] enables the principal care provider of a patient or other person treated at a mental health facility to request that an official visitor visit the facility. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

37. Schedule 1 [73]–[75] enable the principal care provider of a patient or person detained in a mental health facility or of an affected person under a community treatment order to notify the medical superintendent of the facility or the director of community treatment that the principal care provider wishes to see an official visitor and requires an official visitor to be informed of that wish within 2 days. The amendments also update references to a primary carer so that they refer to a designated carer.

38. Schedule 1 [80] prevents a disclosure of information obtained in connection with mental health legislation to a principal care provider of a person from being a prohibited disclosure if it relates to the care or treatment of the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

39. Schedule 1 [86], [91], [93] and [94] update the mental health certificate form and the statement of rights for persons detained in mental health facilities to reflect the amendments made by the proposed Act to the rights and responsibilities of designated carers and principal care providers.

40. Schedule 1 [7] requires voluntary patients in mental health facilities to be reviewed by the Tribunal at least once every 12 months if they have been a patient (either voluntary or involuntary) in the mental health facility for a continuous period of more than 12 months.

41. Schedule 1 [8] requires the Tribunal to consider whether a voluntary patient is likely to benefit from further care or treatment as a voluntary patient when it reviews the patient.

42. Schedule 1 [9] enables a voluntary patient in a mental health facility to be detained for up to 2 hours to enable an authorised medical officer to determine whether to take action to detain the person in the mental health facility.

43. Schedule 1 [13] enables a medical practitioner or accredited person to examine or observe a person by using an audio visual link for the purpose of completing a mental health certificate, if it is not reasonably practicable for the person to be personally examined or observed by a medical practitioner or accredited person. Schedule 1 [81] makes a consequential amendment.

44. Schedule 1 [15] enables a medical practitioner to examine or observe a person by using an audio visual link, or an accredited person to personally examine a person, for the purpose of determining whether the person is a mentally ill person or mentally disordered person who should be detained in a mental health facility, if it is not reasonably practicable for the person to be personally examined or observed by an authorised medical officer or other medical practitioner.

45. Schedule 1 [16], [17], [85] and [87] make consequential amendments.

46. Schedule 1 [18] extends from one hour to 2 hours the period for which a person who has been brought to a mental health facility by a police officer, and who is not to be

further detained, may be kept at the facility pending the person's apprehension by a police officer.

47. Schedule 1 [22] provides, in addition to other actions that may already be taken after a mental health inquiry, that a person may be discharged into the care of a designated carer or the principal care provider of the person.

48. Schedule 1 [23] provides, in addition to other actions that may already be taken by the Tribunal after a review of an involuntary patient, that the patient may be discharged into the care of a designated carer or the principal care provider of the patient.

49. Schedule 1 [26] provides that the Tribunal may defer the discharge of a person on a successful appeal against a refusal to discharge the person for a period of up to 14 days.

50. Schedule 1 [44] requires an authorised medical officer, other medical practitioner or accredited person to consider (if reasonably practicable) information provided by a designated carer, principal care provider, relative, friend, treating health professional or person who has brought someone to a mental health facility when determining whether a person is a mentally ill person or a mentally disordered person or should be discharged.

51. Schedule 1 [27] makes it clear that an application for a community treatment order may be made in proceedings for an appeal against a refusal of an application to discharge an involuntary patient or person detained in a mental health facility.

52. Schedule l [28] removes the requirement for 14 days notice of an application for a community treatment order for a person who is not detained in a mental health facility, if the person is already the subject of a community treatment order or the Tribunal decides that it is in the best interests of the patient that the application be heard earlier.

53. Schedule 1 [29] enables the Tribunal to defer for up to 14 days the discharge from a mental health facility of a person who is made subject to a community treatment order. Schedule 1 [24] makes a consequential amendment.

54. Schedule 1 [30] extends to the principal care provider of a person who is subject to a community treatment order the right to request information about medication administered to the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

55. Schedule 1 [31] requires the director of community treatment of a declared mental health facility to consult the affected person, any designated carer or principal care provider of a person subject to a community treatment order before revoking the order and to notify the Tribunal of a revocation or if no further application for an order will be made.

56. Schedule 1 [32] requires the director of community treatment of a declared mental health facility to notify any designated carer or principal care provider of a person subject to a community treatment order of the order and if the order is varied or revoked or an application is made for a further order.

Electro convulsive therapy

57. Schedule 1 [55] excludes persons under the age of 16 years from the category of persons who can receive ECT on the basis of giving informed consent and a medical certificate.

58. Schedule 1 [56] requires that an ECT determination be given by the Tribunal after it holds an ECT inquiry before a person under the age of 16 years can receive ECT.

59. Schedule 1 [57] provides that ECT may be administered to a person under the age of 16 years in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry.

60. Schedule 1 [59] provides that at least one of the 2 medical certificates required before an authorised medical officer may apply for an ECT administration inquiry about a person under the

61. age of 16 years is to be a certificate given by a psychiatrist with expertise in the treatment of children or adolescents. Schedule 1 [58] makes a consequential amendment.

62. Schedule 1 [61] provides that the Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to a person under the age of 16 years. Schedule 1 [60] makes a consequential amendment.

63. Schedule 1 [64] sets out the elements of an ECT determination for a person under the age of 16 years. Schedule 1 [62] and [63] make consequential amendments.

64. Schedule 1 [65] requires the Tribunal to consider the views (if known) of any designated carer, principal care provider or parent of a person who is under the age of 16 years when holding an inquiry into ECT treatment for the person.

65. Schedule 1 [66] enables the President of the Tribunal to inspect at any time the register kept by a mental health facility relating to ECT treatments.

66. Schedule 1 [68] removes the ability of the Secretary of the Ministry of Health to consent to the performance of a surgical operation on an involuntary patient in circumstances where the patients capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent. It also removes voluntary patients from the categories of persons who are incapable of consenting and in respect of whom consent may be given to a surgical procedure by the Secretary. The Guardianship Act 1987 will instead apply in such a case.

67. Schedule 1 [70] removes the ability of the Tribunal to consent to the performance of a surgical operation on a voluntary patient in circumstances where the patient is incapable of giving consent. The Guardianship Act 1987 will instead apply in such a case.

68. Schedule 1 [1] and [5] update references to the Director-General of the Department of Health and the Department of Health.

69. Schedule 1 [10], [78] and [84] update references to developmental disability of mind.

70. Schedule 1 [46] requires voluntary patients to be given an oral explanation and a written statement of their legal rights and other entitlements as soon as practicable after becoming voluntary patients. Schedule 1 [95] sets out the form of the written statement.

71. Schedule 1 [54] updates references to electrodes for the purposes of the definition of psychosurgery in relation to prohibited treatments.

72. Schedule 1 [76] enables a mentally ill person or mentally disordered person who is in a health facility other than a mental health facility because the person requires treatment for another illness or condition to request to see an official visitor. The Principal official visitor is to arrange for the visit to be made as soon as practicable.

73. Schedule 1 [77] removes the requirement for the annual report of the Tribunal to report on the number of persons detained as involuntary patients for 3 months or less.

74. Schedule 1 [79] requires a person who is under the age of 16 years to be represented before the Tribunal by an Australian legal practitioner or another representative chosen by the person and approved by the Tribunal.

75. Schedule 1 [82] revises a provision of the mental health certificate to better reflect the provisions of the Principal Act.

76. Schedule 1 [88] updates a heading as a result of the insertion of a statement of rights for voluntary patients.

77. Schedule 1 [89] inserts information about appeal and discharge rights into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

78. Schedule 1 [90] inserts information about operations into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

79. Schedule 1 [92] inserts information about the right to see an official visitor into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

80. Schedule 1 [96] extends the maximum period for which a person may be appointed as an official visitor from 3 years to 4 years.

81. Schedule 1 [97] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Wrongful Detention

82. Schedule 1 items 13 and 15 of the Bill allow a medical practitioner or accredited person to carry out an examination or observation of a person via an audio visual link to determine whether they are a mentally ill or mentally disordered person who should be detained. Similarly, under item 15, while a medical practitioner who is not a psychiatrist must seek the advice of a psychiatrist before making a decision about ongoing

detention, the psychiatrist is not required to examine or observe the person himself or herself.

By allowing a medical practitioner to examine a person via audio visual link to determine whether they are a mentally ill or disordered person who should be detained, there may be an increased risk of wrongful detention. This is particularly the case if there is no requirement for the medical practitioner to be a psychiatrist. Nonetheless, a medical practitioner must not carry out the examination via audio visual link unless he or she is satisfied that it can be carried out with sufficient skill and care to form the required opinion. Similarly, under section 27 of the Act, two medical practitioners must be of the opinion that the person is mentally ill or mentally disordered before ongoing detention is possible – if not, the person must be examined by a psychiatrist. Owing to these safeguards the Committee makes no further comment.

Wrongful Detention II

83. Schedule 1, item 26 of the Bill provides that the Mental Health Review Tribunal may defer operation of its own order to discharge an involuntary patient of a mental health facility for 14 days if the Tribunal decides it is in the best interests of the person to do so. No further guidance is provided in the Bill concerning the factors the Tribunal should take into account in making such a decision.

By providing that the Tribunal may defer operation of its own order to discharge an involuntary patient of a mental health facility for 14 days if it is in the best interests of the involuntary patient, without providing further guidance about the factors the Tribunal should take into account in making such a decision, the Bill may give rise to wrongful detention. The Committee would prefer the factors to be taken into account to be listed in the legislation. The Committee makes no further comment.

Access to Justice

84. Schedule 1, item 79 of the Bill provides that a person under the age of 16 years who has a matter before the Mental Health Review Tribunal must be represented by an Australian legal practitioner unless the Tribunal decides that it is in the best interests of the person to proceed without the person being so represented.

By providing that a person under 16 years must have legal representation in the Tribunal unless the Tribunal itself decides it is not in that person's best interests, the Bill may affect that person's right of access to justice. No guidance is provided in the Bill about the factors the Tribunal should take into account in making such a decision. The Committee would prefer the factors to be taken into account to be listed in the legislation particularly as this provision relates to young, vulnerable people. The Committee refers the matter to Parliament for further consideration.

Parliament's Right to Obtain Information

85. Schedule 1, item 77 removes the requirement for the annual report of the Mental Health Review Tribunal to include the number of persons detained as involuntary patients in a mental health facility for 3 months or less.

By removing the requirement for the Tribunal's annual report to include the number of persons detained as involuntary patients in a mental health facility for 3 months or less, the Bill removes Parliament's automatic right to obtain this information thereby reducing transparency and accountability. Following this amendment, a Member of Parliament would have to specifically ask a Question on Notice in Parliament or lodge an application under the *Government Information (Public Access) Act 2009* to obtain this information. The Committee refers this matter to Parliament for further consideration.

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

Commencement by Proclamation

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

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

10. Multicultural NSW Legislation Amendment Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Minister for Citizenship and Communities

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Community Relations Commission and Principles of Multiculturalism Act 2000 (the Principal Act) as follows:

(a) to rename that Act,

(b) to rename the principles of multiculturalism as the multicultural principles and to update those principles,

(c) to update other terms used in that Act,

(d) to rename the Community Relations Commission of New South Wales as Multicultural NSW and to change the structure of that body so that it is no longer a commission constituted by commissioners and to confer management of its affairs on the Chief Executive Officer,

(e) to constitute and confer functions on the Advisory Board of Multicultural NSW (the Advisory Board),

(f) to include as objectives of Multicultural NSW objectives relating to promoting the rights and responsibilities of citizenship and commitment to Australia,

(g) to revise the functions of Multicultural NSW to reflect its current functions and activities,

(h) to require the report on the state of community relations to be prepared for a financial year rather than a calendar year,

(i) to make other minor and consequential amendments and amendments of a savings and transitional nature consequent on the enactment of the proposed Act.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon Victor Dominello MP, Minister for Citizenship and Communities stated that in 2014 it is timely to re-examine the *Community Relations Commission and Principles of Multiculturalism Act 2000* to ensure that it 'accurately reflects who we are and who we want to be'.

3. Mr Dominello further stated that 'we should continue to celebrate the unique cultures, traditions and languages of our ancestors but we need to do more to promote initiatives that bring people from diverse backgrounds together as Australians'. Therefore, Mr Dominello advised Parliament that the Bill gives greater emphasis to the need for all citizens of NSW, regardless of nationality, cultural origin or religious affiliation, to have a collective responsibility to work together for our common welfare and future as Australians.

4. In addition, Mr Dominello indicated that the Bill is the result of consultation with multicultural communities over the last three and a half years as well as management and staff at the Community Relations Commission of NSW.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.

6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

7. Schedule 1 [5] substitutes the principles of multiculturalism (now renamed as the multicultural principles). The principles are substantially the same but have been re-ordered and references to "racial and ethnic" have been replaced by the word "ancestral". This change has also been made elsewhere in every case where the terms appear. Schedule 1 [1], [6], [10], [24] and [34] make consequential amendments.

8. Schedule 1 [12] renames the Community Relations Commission of New South Wales as

9. Multicultural NSW. Schedule 1 [2], [11], [13], [16]–[21], [25], [27], [29]–[32] and [35] make consequential amendments.

10. Schedule 1 [14] provides that the functions of Multicultural NSW are exercisable by the Chief Executive Officer.

11. Schedule 1 [15] provides that the Chief Executive Officer is the person employed in the Public Service as the Chief Executive Officer.

12. Schedule 1 [22] adds to the objectives of Multicultural NSW the objectives of promoting the equal rights and responsibilities of citizenship and of promoting the unity and strong commitment to Australia of all people in a cohesive and harmonious multicultural society. The amendment also adds to the functions of Multicultural NSW the function of supporting community initiatives that support women and girls and other groups of diverse backgrounds.

13. Schedule 1 [23] changes the period for which Multicultural NSW is to provide its report on the state of community relations from the calendar year to the financial year.

14. Schedule 1 [26] requires the report on the state of community relations to be furnished to the Minister not later than the end of February in the year following the end of the financial year to which the report relates.

15. Schedule 1 [28] re-enacts the provision for delegation of functions by Multicultural NSW to provide for delegation to a member of the staff of Multicultural NSW and others.

16. Schedule 1 [15] constitutes the Advisory Board, which is to consist of not more than 15 part-time members and the Chief Executive Officer, including 2 persons who are between 18 and 24 years old. In recommending an appointment, the Minister is to have regard to the desirability of having members of diverse backgrounds, different occupational backgrounds and who reside in different parts of the State.

17. Schedule 1 [22] confers on the Advisory Board the functions of advising Multicultural NSW or the Minister on any issue relating to the objectives or strategic directions of Multicultural NSW it considers appropriate or that is referred to it by them and to review and provide advice to Multicultural NSW on the state of community relations in New South Wales.

18. Schedule 1 [37] provides for provisions relating to members of the Advisory Board, including provisions enabling the Chairperson to be removed by the Governor, the appointment of deputies for members and establishing 3-year membership terms for members.

19. Schedule 1 [38]–[46] apply existing provisions relating to remuneration, vacancy in office, disclosure of pecuniary interests, filling of vacancies and the effect of being the holder of another office to members of the Advisory Board.

20. Schedule 1 [47] and [49]–[55] apply existing provisions relating to procedure in meetings to the Advisory Board and make other consequential amendments.

21. Schedule 1 [3] amends the preamble to the Principal Act to re-order its elements so as to give prominence to a commitment to New South Wales and Australia as being part of a cohesive and multicultural society.

22. Schedule 1 [4] renames the Act as the Multicultural NSW Act 2000.

23. Schedule 1 [7] defines a commitment to Australia to include a commitment to the common values and things that bind Australians together.

24. Schedule 1 [8] and [9] make changes to definitions consequent on other amendments made by the proposed Act.

25. Schedule 1 [33] re-enacts the provision relating to personal liability to provide for the Advisory Board and its members and to insert updated references to Multicultural NSW and the Chief Executive Officer.

26. Schedule 1 [36] and [48] omit an outdated reference.

27. Schedule 1 [56] enables regulations containing savings and transitional provisions to be made as a consequence of amendments to the Principal Act.

28. Schedule 1 [57] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts and instruments

29. Schedule 2 contains amendments to other Acts and instruments for the following purposes:

(a) to insert updated references to Multicultural NSW and the multicultural principles,

(b) to confer functions on the Chief Executive Officer of Multicultural NSW instead of the Chairperson of the Community Relations Commission.

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.

11. Newcastle Inner-City Rail Corridor Preservation Bill 2014

Date introduced	16 October 2014
House introduced	Legislative Assembly
Member responsible	Mr Gregory Piper MP
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The object of this Bill is to preserve the Newcastle inner-city rail corridor for the purposes of public open space, passive recreational activities or public transport after the heavy rail line that currently occupies the corridor is removed.

BACKGROUND

2. On 14 December 2012, the State Government announced that the rail line into the Newcastle central business district would be cut at Wickham, approximately 2.5 kilometres west of the current terminus and that the section to be removed would be replaced by a light rail service into the city. In May 2014, the Government announced its chosen route for the new light rail service which travels partly along the existing rail corridor before deviating.

3. In his Second Reading Speech to Parliament, Mr Greg Piper MP indicated that there has since been much conjecture in the community about the prospect for future development of the land that is currently part of the rail corridor but will no longer be when the new light rail service is established.

4. Mr Piper further stated that there is strong community support for the corridor to be quarantined from high-rise or medium-density development and instead be dedicated for open space and recreational use. Therefore, the Bill seeks to ensure that the rail corridor is preserved for open space and passive recreational use, prevents high-rise or medium density development, and provides that if there is a change of heart now or in the future about removing the heavy rail line or making the light rail deviate from it, the land can continue to be used for public transport.

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.

7. Clause 3 defines certain words and expressions used in the proposed Act.

8. Clause 4 allows development to be carried out with the consent of Newcastle City Council for the purposes of public open space, recreation areas that are used for passive

recreation only, kiosks, cafes and amenities related or ancillary to public open space and passive recreational activities and public transport.

9. Clause 5 specifies the development that is prohibited in the Newcastle inner-city rail corridor, including residential accommodation and commercial sports centres or gymnasiums.

10. Clause 6 provides that proposed sections 4 and 5 operate as provisions of an environmental planning instrument under the Environmental Planning and Assessment Act 1979 and prevail to the extent of any inconsistency with any other environmental planning instrument.

11. Clause 7 makes it clear that the proposed Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

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.

12. Regional Relocation Grants Amendment Bill 2014

Date introduced	16 October 2014
House introduced	Legislative Assembly
Minister responsible	Hon Andrew Stoner MP
Portfolio	Minister for Regional Infrastructure and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Regional Relocation Grants Act 2011 (the Principal Act) to:

   (a) confirm the closure of the regional relocation home buyers grant on 30 September 2014 following the closure of the scheme on that date by the Regional Relocation Grants (Closure of Scheme) Order 2014 made in accordance with section 57 of the Principal Act, and

   (b) ensure a period of continued operation of the skilled regional relocation incentive from 30 September 2014 following the closure of the scheme on that date by that Order.

BACKGROUND

2. The Regional Relocation Grants Scheme aims to encourage population and economic growth in the regions of NSW. The Scheme includes two categories of grant: the Regional Relocation Home Buyers Grant and the Skilled Regional Relocation Incentive. The Skills Incentive has been successful in meeting its target audience of a younger, economically active demographic and in helping to attract skills and businesses to the regions. However, the home buyers grant has been less successful in meeting the Government's objective of driving economic growth in regional NSW.

3. The Scheme's budget for 2014-15 had reached its capacity in August 2014. The Act does not provide for partial closure of the Scheme and both the home buyers grant and skills incentives were closed by legislative order effective from 30 September 2014.

4. The Government has agreed to deliver additional funding to continue the successful part of the Scheme, the Skills Incentive. Therefore, the Bill retrospectively allows the Skilled Regional Relocation Incentive to operate from 30 September 2014 through to 31 March 2015, and confirms closure of the Regional Relocation Home Buyers Grant as of 30 September 2014.

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 30 September 2014, with the exception of Schedule 1 [1] and [9] and Schedule 2, which are to commence on the date of assent to the proposed Act.

7. Schedule 1 [3] gives effect to the amendment in paragraph (a) of the 'Purpose and Description' section.

8. Schedule 1 [5] and [7] give effect to the amendment in paragraph (b) of the 'Purpose and Description' section by requiring an applicant for the skilled regional relocation incentive to have commenced employment or self-employment before the incentive scheme closure date. Schedule 1 [11] provides for the incentive scheme closure date to be 31 March 2015 unless an alternative date is appointed by the Minister by order published on the NSW legislation website.

9. Schedule 1 [9] clarifies the operation of an existing requirement, which applies to applicants for a skilled regional relocation incentive, to reflect the ongoing nature of business advisory programs.

10. Schedule 1 [10] provides that an application for a regional relocation home buyers grant or a skilled regional relocation incentive cannot be made once the relevant scheme has been closed for 6 months.

11. Schedule 1 [1] changes the name of the Principal Act so that it more accurately reflects the nature of the Act's continued operation.

12. Schedule 1 [2], [4], [6], [8] and [11] make further consequential amendments.

13. Schedule 2.1 and 2.2 update references to the Principal Act in an Act and regulation as a consequence of the proposed change of name of the Principal Act.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

14. Schedule 1, items 5 and 7 of the Bill allow the Skilled Regional Relocation Incentive to operate retrospectively from 30 September 2014 (when it was closed by a legislative order) through to 31 March 2015.

> **The Committee is generally concerned when Bills include provisions with retrospective effect. This is because retrospectivity is contrary to the rule of law which allows people knowledge of what the law is at any given time. However, in this case the relevant provision does not retrospectively introduce new offences or penalties it merely continues operation of a grants scheme. In the circumstances, the Committee makes no further comment.**

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

Henry VIII Clause

15. Schedule 1, item 11 of the Bill provides that the Skilled Regional Location Incentive Scheme closure date is 31 March 2015. However, it also provides that the Minister may, by order published on the NSW Legislation website, appoint an alternative date as the incentive scheme closure date.

> **The committee is concerned when a Henry VIII clause is included in legislation, and notes that this amendment enables a Ministerial order to take precedence over primary legislation (the proposed Act). This may be an inappropriate delegation of legislative power as amendments to provisions in primary legislation should be made by Parliament, not by the Executive through a Ministerial order. This is of particular concern as, unlike regulations, Ministerial orders cannot be disallowed by Parliament under section 41 of the *Acts Interpretation Act 1987* and parliamentary oversight is circumvented. The Committee refers the matter to Parliament for further consideration.**

13. Water NSW Bill 2014

Date introduced	16 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Kevin Humphries MP
Portfolio	Minister for Natural Resources, Lands and Water

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

(a) to provide for State Water Corporation to become Water NSW, and

(b) to abolish the Sydney Catchment Authority and transfer its functions to Water NSW, and

(c) to repeal the *Sydney Water Catchment Management Act 1998* and *State Water Corporation Act 2004* and re-enact their provisions (with some modifications) in a consolidated form, and

(d) to provide for certain regulatory functions under the proposed Act to be exercised by a Regulatory Authority, and

(e) to make consequential amendments to certain other legislation.

BACKGROUND

2. State Water Corporation is a statutory State owned corporation constituted by the *State Water Corporation Act 2004*. Its area of operations is the whole of the State other than the areas of operation of the Hunter Water Corporation, the Sydney Water Corporation, the Sydney Catchment Authority and the areas of operations of water supply authorities under the *Water Management Act 2000*. Its functions include capturing, storing and releasing water to persons entitled to take the water and for the purposes of flood management and any other lawful purpose.

3. The Sydney Catchment Authority is a corporation constituted by the *Sydney Water Catchment Management Act 1998* that is a statutory body representing the Crown. Its area of operations is largely limited to the Sydney catchment area (which is referred to in that Act as the catchment area). Its functions include supplying water to the Sydney Water Corporation and various other persons and bodies and the management and protection of the Sydney catchment area. Currently, State Water Corporation and the Sydney Catchment Authority have common directors and chief executives.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.

5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

6. Clause 3 defines certain words and expressions used in the proposed Act.

7. Clause 4 provides for the continuation of State Water Corporation as a statutory State owned corporation with the new corporate name of Water NSW.

8. Clause 5 provides that the foundation charter of Water NSW for the purposes of the *State Owned Corporations Act 1989* is Part 2 of the proposed Act.

9. Clause 6 provides for the objectives for Water NSW.

10. Clause 7 provides for the functions of Water NSW, including the functions that it may only exercise under the authority of one or more operating licences.

11. Clause 8 makes provision for the appointment of the board of directors of Water NSW.

12. Clause 9 makes provision for the appointment of a person to be the chief executive officer of Water NSW.

13. Clause 10 makes provision for the appointment of a person to act in the office of the chief executive officer of Water NSW during the illness or absence of the chief executive officer.

14. Clause 11 permits the Governor, on the recommendation of the portfolio Minister, to grant one or more operating licences to Water NSW to authorise it to carry out certain of its functions. The *portfolio Minister* is the Minister who is the portfolio Minister for Water NSW within the meaning of the *State Owned Corporations Act 1989*.

15. Clause 12 provides that an operating licence is subject to the terms and conditions determined by the Governor, on the recommendation of the portfolio Minister, including certain mandatory terms and conditions. The terms and conditions of an operating licence may confer on Water NSW specified functions of the Minister administering the *Water Management Act 2000* under that Act or the *Water Act 1912* or of the Ministerial Corporation under any Act or law, but only if the Minister administering the *Water Management Act 2000* or the Premier provides his or her concurrence to the conferral of the functions.

16. Clause 13 permits the Governor, on the recommendation of the portfolio Minister, to amend or substitute an operating licence or to impose, amend or revoke conditions of an operating licence.

17. Clause 14 provides for the term of an operating licence and for the renewal of an operating licence by the Governor.

18. Clause 15 provides that the area of operations of Water NSW is the whole of the State. However, the proposed section makes it clear that an operating licence may not authorise Water NSW to carry out functions that are conferred or imposed on the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority without their agreement.

19. Clause 16 provides that if, in the opinion of the portfolio Minister, Water NSW contravenes an operating licence, the portfolio Minister may cause a notice to be served on Water NSW requiring it to rectify the contravention within a specified period and the Governor may direct that Water NSW pay a monetary penalty of an amount to be determined by the Governor whether or not a notice has been served or the contravention rectified.

20. Clause 17 provides that the Independent Pricing and Regulatory Tribunal (*IPART*) may impose a monetary penalty on Water NSW if it contravenes an operating licence. The monetary penalty that IPART may impose under the proposed section must not exceed $10,000 for the first day on which the contravention concerned occurs and a further $1,000 for each subsequent day (not exceeding 30 days) on which the contravention continues. IPART must not take action under the proposed section in respect of a contravention if any action has already been taken under proposed section 16 in respect of the contravention.

21. Clause 18 permits Water NSW to apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision of IPART to take action under proposed section 17 in relation to Water NSW.

22. Clause 19 provides for the circumstances in which the Governor may cancel an operating licence. It also makes provision, in certain circumstances, for the subsequent divesting of assets, rights and liabilities of Water NSW as a consequence of the cancellation of an operating licence.

23. Clause 20 contains a definition of *regulatory agencies*, which include various government agencies and local authorities.

24. Clause 21 requires Water NSW to enter into memoranda of understanding with the Environment Protection Authority and the Secretary of the Ministry of Health and to review, amend or replace such memoranda on a regular basis.

25. Clause 22 enables the Minister to direct Water NSW to enter into memoranda of understanding with other regulatory agencies.

26. Clause 23 requires public consultation to be undertaken in relation to proposed memoranda of understanding and proposed amendments of memoranda of understanding.

27. Clause 24 continues in effect certain arrangements currently in place under section 21A of the *Sydney Water Catchment Management Act 1998* with respect to the control of water in the water storages and pipelines of the Sydney Catchment Authority that will be transferred to Water NSW.

28. Clause 25 requires Water NSW to enter into arrangements with the Sydney Water Corporation regarding the supply of water by Water NSW to the Sydney Water Corporation, and outlines the process of altering such arrangements.

29. Clause 26 requires Water NSW and the Sydney Water Corporation to enter into negotiations with regard to the arrangements, and provides a mechanism for resolving disagreements.

30. Clause 27 provides a role for IPART in relation to the arrangements. IPART is given the oversight of the arrangements and may report to the Minister. The proposed section also contains a provision making it clear that the supply of water can be declared a government monopoly service for the purposes of the *Independent Pricing and Regulatory Tribunal Act 1992*.

31. Clause 28 enables the portfolio Minister, with the concurrence of the voting shareholders of Water NSW, to transfer specified assets, rights and liabilities of the Water Administration Ministerial Corporation (the *Ministerial Corporation*), the State or a public or local authority to Water NSW. The Minister may also direct, with the concurrence of the voting shareholders, that specified assets, rights and liabilities of Water NSW be transferred to the Ministerial Corporation or to another person or body on behalf of the State. The Minister is not to make an order under the proposed section unless the relevant person or body from whom, or to whom, the assets, rights or liabilities are to be transferred has consented to the transfer.

32. Clause 29 provides that Water NSW is the owner of all works installed by Water NSW or vested in or transferred to Water NSW (whether or not the land on which the works are placed is owned by Water NSW). Water NSW may, for purposes consistent with its objectives, build or install works and do other things that are necessary or appropriate to its works (including repairs and maintenance) and otherwise deal with works that it owns.

33. Clause 30 provides that Water NSW may acquire land (or an interest in land) by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of the proposed Act.

34. Clause 31 extends Water NSW's powers with respect to metering equipment to include equipment that Water NSW does not own if an operating licence for Water NSW so provides. It also confers power to test metering equipment and enables regulations to be made limiting the application of Water NSW's powers relating to metering equipment. Such regulations may also provide for the functions to be conferred, or not conferred, exclusively on Water NSW.

35. Clause 32 provides that Water NSW has powers of entry on land for certain purposes in connection with the exercise of its functions.

36. Clause 33 confers on Water NSW the power to open and break up public roads or reserves for the purpose of exercising its functions.

37. Clause 34 confers on Water NSW a power to require a person to alter the position of a conduit if Water NSW needs such an alteration to exercise its functions and the alteration would not permanently damage the conduit or adversely affect its operation. Water NSW may make the alteration if it is not made as required.

38. Clause 35 provides that Water NSW may authorise devices, for generating electricity from water released in the exercise of Water NSW's functions under the proposed Act, to be placed on or in any of its water management works and also install and use such devices to generate and supply electricity.

39. Clause 36 permits Water NSW to demolish or remove any structure or thing placed by a person so as to interfere with Water NSW's water management works and to recover

the cost of doing so, and of repairs to the works, from that person. It also makes it an offence for a person:

(a) to wilfully or negligently destroy, damage or interfere with any water management works of Water NSW, or

(b) to open up ground to expose any pipe or other water management work of Water NSW without reasonable excuse or appropriate notice.

40. Clause 37 provides that Water NSW, in exercising its functions under the Part, is to do as little damage as practicable and is, subject to the Part, to compensate all persons who suffer damage by the exercise of the functions.

41. Clause 38 makes a person who, without the consent of Water NSW, carries out any activity that causes destruction of, damage to or interference with any work owned by Water NSW in circumstances in which the person should have known that the destruction, damage or interference would result from the carrying out of the activity, liable to compensate Water NSW for all loss or damage suffered by Water NSW as a result.

42. Clause 39 provides that Water NSW may (subject to certain exceptions) impose fees and charges on any person to whom Water NSW provides a service in the exercise of its functions.

43. Clause 40 enables the Governor to declare an area of land to be a declared catchment area of Water NSW for the purposes of the proposed Act.

44. Clause 41 provides for a public authority or other person appointed by the Minister to develop and approve catchment health indicators of the catchment health of a declared catchment area against which catchment audits (which are audits of the catchment health of a declared catchment area) are to be conducted. The appointment of such a person for the Sydney catchment area will be mandatory.

45. Clause 42 provides for catchment audits to be conducted by a public authority or other person appointed by the Minister. The appointment of such a person for the Sydney catchment area will be mandatory. An audit must be conducted and reported on having regard to the extent to which the state of the land constituting the declared catchment area conforms to the catchment health indicators of the catchment health of the declared catchment area published by the public authority or other person appointed by the Minister under proposed section 41. The audits for the Sydney catchment area are required to be conducted every 3 years.

46. Clause 43 requires Water NSW to evaluate the findings of a catchment audit and to incorporate those findings in its risk framework and its programs and other activities relating to catchment management.

47. Clause 44 requires Water NSW to report to the Minister on progress against catchment audit findings.

48. Clause 45 makes it clear that nothing in the Division prevents:

(a) an operating licence from including terms and conditions relating to Water NSW's activities or requiring reports on those activities, or

(b) IPART from recommending to the Minister that an operating licence include terms and conditions relating to Water NSW's catchment management functions or requiring reports on those functions.

49. Clause 46 defines certain words and expressions used in the Division.

50. Clause 47 enables the Governor to declare an area of land to be a special area in order to protect the quality of stored waters or maintain the ecological integrity of the land.

51. Clause 48 restricts the transfer or lease of, or other dealings with, land in a special area.

52. Clause 49 restricts the way in which Crown land in a special area is to be dealt with.

53. Clause 50 restricts the exercise by certain public agencies of their functions in relation to land within a special area. This involves the requirement for notice to be given to the Regulatory Authority of the proposed exercise of such functions.

54. Clause 51 provides for the making of regulations regarding special areas.

55. Clause 52 provides for the making of plans of management in connection with special areas, involving joint action by certain Ministers.

56. Clause 53 requires plans of management prepared for special areas to be carried out and given effect.

57. Clause 54 enables the Governor to declare an area of land that is owned by or vested in Water NSW to be a controlled area.

58. Clause 55 provides for the making of regulations regarding controlled areas.

59. Clause 56 sets out the regulatory functions of IPART under the proposed Act.

60. Clause 57 requires IPART to prepare operational audits of Water NSW at the times directed by the portfolio Minister.

61. Clause 58 requires IPART to present the portfolio Minister with a report on each operational audit.

62. Clause 59 requires the portfolio Minister to table (or cause the tabling) of such reports in Parliament.

63. Clause 60 provides that Water NSW is required to pay to the Treasurer the cost (as certified by IPART) involved in and in connection with carrying out the operational audit of Water NSW.

64. Clause 61 provides for the Regulatory Authority for the purposes of the proposed Act. The *Regulatory Authority*, in relation to a function that is conferred or imposed on the Regulatory Authority, is:

(a) the Minister, or

(b) if the Minister appoints a person under the proposed section to exercise that function— that person.

65. Clause 62 enables the Regulatory Authority to exercise concurrence and other roles under environmental planning instruments in connection with declared catchment areas.

66. Clause 63 provides for regulations to confer or impose on the Regulatory Authority certain functions by reference to powers under other legislation relevant to activities carried out in declared catchment areas.

67. Clause 64 enables the Regulatory Authority to approve the carrying out of certain infrastructure activities that are effective for the purposes of the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*.

68. Clause 65 enables the Minister to appoint authorised officers for the purposes of the proposed Act.

69. Clause 66 enables a person to accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under the proposed Act if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

70. Clause 67 makes it an offence for a person to obstruct, hinder or interfere with an authorised officer or to impersonate an authorised officer.

71. Clause 68 enables an authorised officer to enter and occupy land for the purpose of ascertaining whether the provisions of the proposed Act or the regulations are being complied with or have been contravened. However, if the authorised officer wishes to enter premises used for residential purposes, the officer may only do so with the consent of the occupier or under the authority of a search warrant.

72. Clause 69 enables an authorised officer to apply for a search warrant if the officer has reasonable grounds for believing that a provision of the proposed Act or the regulations has been or is being contravened on land.

73. Clause 70 enables an authorised officer to require a person whom the authorised officer reasonably suspects to have knowledge of matters in respect of which information is reasonably required for the purposes of the proposed Act or the regulations to answer questions in relation to those matters. It also makes it an offence to fail or refuse to comply with such a requirement or to give a false or misleading answer.

74. Clause 71 provides for the Regulatory Authority to require a person to furnish information or records (or both) in connection with any matter relating to its responsibilities and functions under the proposed Act. It also makes it an offence to fail to comply with such a requirement or to furnish false or misleading information.

75. Clause 72 makes it clear that a notice can require a person to furnish only records that are in the person's possession or that are within the person's power to obtain lawfully and makes other provisions relating to records.

76. Clause 73 provides for an authorised officer to require a person whom the authorised officer reasonably suspects to be offending against the proposed Act or the regulations to state the person's name and residential address. A person may also be required to provide his or her driver licence in a declared catchment area. It also makes it an offence to fail to comply with either such requirement or to provide a false name or address.

77. Clause 74 provides for the Regulatory Authority or an authorised officer, in certain circumstances, to require the owner of a motor vehicle and others to give certain information.

78. Clause 75 makes provision in relation to requirements to furnish records or information or answer questions. In particular, a person is not guilty of an offence of failing to comply with a requirement under the Division to furnish records or information or to answer a question unless the person was warned on the relevant occasion that a failure to comply is an offence.

79. Clause 76 defines words and expressions used in the Division. In particular, the term *targeted activity* is defined to mean an activity in a special area or controlled area that has, or is likely to have, caused damage to, or detrimentally affected, the quality of any water, or the catchment health of any land, in the area concerned.

80. Clause 77 enables the Regulatory Authority to issue a catchment correction notice to an occupier of land on or from which the Regulatory Authority reasonably suspects that a targeted activity has been or is being carried out (or to a person who is reasonably suspected of carrying out or having carried out such an activity) directing the occupier or person to take the corrective action specified in the catchment correction notice.

81. Clause 78 provides for public authorities to take corrective action in certain circumstances.

82. Clause 79 provides for catchment correction notices to be given orally, but to be later confirmed in writing.

83. Clause 80 provides for the recovery of the administrative costs of preparing and giving a catchment correction notice.

84. Clause 81 enables the Regulatory Authority to issue a catchment protection notice to the occupier of land in a special area or a controlled area on or from which the Regulatory Authority reasonably suspects that a targeted activity has been carried out, will be carried out or is being carried out (or to the person carrying on the activity) directing the occupier or person to take action to ensure:

    (a) either that the targeted activity is not commenced or is no longer carried on, or

    (b) if the targeted activity is permitted to be carried on in future—that the activity is carried on in a manner that does not cause damage to, or detrimentally affect, the quality of any water, or the catchment health of any land, in a special area or controlled area.

85. Clause 82 provides that, if a person does not comply with a catchment protection notice, the Regulatory Authority may take action to cause the notice to be complied with by itself or by its employees.

86. Clause 83 provides for the commencement of operation of a catchment protection notice or variation of a catchment protection notice.

87. Clause 84 provides for the recovery of the administrative costs of preparing and giving a catchment protection notice.

88. Clause 85 provides for appeals to the Land and Environment Court against catchment protection notices.

89. Clause 86 provides for the Regulatory Authority, by notice in writing, to require a person to whom a catchment correction notice has been given to pay all or any reasonable costs and expenses incurred by the Regulatory Authority in connection with monitoring action under the notice, ensuring that the notice is complied with and any other associated matters. If a public authority has taken corrective action under proposed section 78, the public authority may, by notice in writing, require the occupier of the land at or from which the authority reasonably suspects that the targeted activity was carried out, or the person who is reasonably suspected of having carried out the targeted activity, or both, to pay all or any reasonable costs and expenses incurred by it in connection with the corrective action. If the Regulatory Authority has taken action under proposed section 82 because a catchment protection notice has not been complied with, the Regulatory Authority may, by notice in writing, require the person to whom the notice was given to pay all or any reasonable costs and expenses incurred by it in taking the action. These notices are called *compliance cost notices*.

90. Clause 87 provides for the recovery of unpaid amounts specified in a compliance cost notice.

91. Clause 88 provides for the registration of compliance cost notices in relation to land.

92. Clause 89 creates a charge on land if a compliance cost notice is registered.

93. Clause 90 provides that more than one notice under a provision of the Division may be given to the same person.

94. Clause 91 provides that a fee is not payable for the variation of a notice under the Division.

95. Clause 92 makes it an offence to wilfully delay or obstruct a person carrying out action in compliance with a catchment correction notice or catchment protection notice or taking corrective action.

96. Clause 93 makes it an offence to illegally take water that is supplied by Water NSW or alter a meter that registers the supply of water by Water NSW.

97. Clause 94 makes it an offence to discharge any substance into a work of Water NSW.

98. Clause 95 provides for the circumstances in which a director or other person involved in the management of a corporation will attract executive liability with respect to certain offences against the proposed Act or regulations committed by the corporation.

99. Clause 96 provides for the circumstances in which a director or other person involved in the management of a corporation will be treated as being an accessory to an offence

against the proposed Act or regulations committed by the corporation. Clause 97 makes it an offence to cause the commission of an offence in a number of ways.

100. Clause 98 provides for the liability of persons for continuing offences.

101. Clause 99 provides that in any proceedings under the proposed Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of the Act or the regulations) lies with the defendant.

102. Clause 100 provides that proceedings for an offence under the proposed Act may be brought within 2 years after the commission of the alleged offence or within 2 years after the alleged offence first came to the attention of any authorised officer.

103. Clause 101 enables offences against the proposed Act or the regulations to be dealt with summarily by the Local Court or Land and Environment Court.

104. Clause 102 enables an authorised officer to issue penalty notices for offences against the proposed Act or the regulations (and certain other legislation applying in the Sydney catchment area) if those offences have been prescribed as penalty notice offences by the regulations.

105. Clause 103 maintains the right of Water NSW to take civil proceedings against persons who have been prosecuted for offences under the proposed Act or the regulations.

106. Clause 104 provides for when the state of mind of an officer, employee or agent of a corporation may be used as evidence of the state of mind of the corporation.

107. Clause 105 provides that proof of certain appointments is not required.

108. Clause 106 provides that any instrument purporting to be an instrument issued, made or given for the purposes of the proposed Act and to have been signed by the person authorised to issue, make or give the instrument is admissible in any proceedings under the Act and (in the absence of evidence to the contrary) is to be taken to be such an instrument and to have been so signed.

109. Clause 107 provides for the evidentiary value of certificate evidence of certain matters.

110. Clause 108 provides for the evidentiary value of certificates by analysts.

111. Clause 109 enables notices given under the proposed Act to be revoked or varied.

112. Clause 110 enables the Minister (including the portfolio Minister) to delegate the Minister's functions under the proposed Act or the regulations.

113. Clause 111 enables certain reports that are required to be tabled in Parliament under the proposed Act to be presented to the relevant Clerk of the House of Parliament concerned while the House is not sitting.

114. Clause 112 provides for how notices and other documents under the proposed Act may be issued or given to, or served on, a person.

115. Clause 113 excludes certain persons from personal liability in connection with acts or omissions done, or omitted to be done, in good faith for the purposes of executing the proposed Act or any other Act.

116. Clause 114 enables the Governor to make regulations for the purposes of the proposed Act.

117. Clause 115 provides for the review of the proposed Act in 5 years.

118. Schedule 1 sets out the provisions that are to apply to the transfer of assets, rights and liabilities under the proposed Act.

119. Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule provides for:

(a) the abolition of the Sydney Catchment Authority and the transfer of its staff, assets, rights and liabilities to Water NSW, and

(b) the continuation of the current management of State Water Corporation as the management of Water NSW, and

(c) the continuation of the existing operating licences of both the Sydney Catchment Authority and State Water Corporation as operating licences under the proposed Act (with modifications to limit the existing Sydney Catchment Authority operating licence to the carrying out of Sydney catchment functions), and

(d) the continuation of the Sydney catchment area as a declared catchment area under the proposed Act and the continuation of special and controlled areas under the *Sydney Water Catchment Management Act 1998* as special and controlled areas under the proposed Act, and

(e) the continuation of the *Sydney Water Catchment Management Regulation 2013* as a regulation under the proposed Act (which will be renamed as the *Water NSW Regulation 2013* and consequentially amended by Schedule 3).

120. Schedule 3 makes consequential amendments to the Acts, regulations and other statutory instruments specified in the Schedule.

121. Schedule 4 repeals the State Water Corporation Act 2004 and Sydney Water Catchment *Management Act 1998*.

ISSUES CONSIDERED BY COMMITTEE

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

Employment rights

122. Schedule 2[8] of the Bill provides for the transfer of employees from the Public Service to Water NSW.

> **The Committee notes that the transfer of an individual's employment status from public servant to employee of a statutory corporation may trespass on that individual's liberty to choose their employer. Given the safeguards**

outlined in Schedule 2 with respect to workers' entitlements, the Committee makes no further comment on this issue.

Right to silence / Right against self-incrimination

123. Part 6, Division 3 of the Bill outlines investigation powers of authorised officers. These powers include requiring a person to answer questions (section 70) and requiring the provision of information and records (section 71).

The Committee notes that requiring an individual to answer questions and provide information and records impacts on their right to silence and their right against self-incrimination. The Committee notes that the provisions provides safeguards and statutory defences and refers defences and therefore is not unreasonable in the circumstances.

Right to private property

124. Section 29 of the Bill outlines that Water NSW owns all works installed by it, whether or not the land is owned by Water NSW. Section 30 of the Bill outlines that it may acquire land, including by compulsory process.

The Committee notes that providing Water NSW with ownership of items on land it does not own may impact on the rights of the land owners. The Committee also notes that providing for the acquisition of land by compulsory processes also impacts on the rights of land owners. The Committee notes that the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* apply and as such, the Committee makes no further comment.

125. Section 32 of the Bill provides for entry on to private land for the purpose of reading meters and carrying out works, including without notice if that notice would cause delay.

The Committee notes that enabling officers to enter private land without notice impacts on the right to private property. However, given the aim of this section relates to ensuring timely meter reading and completion of public works, the Committee makes no further comment on this issue.

126. Section 36 of the Bill provides for the demolition or removal of a structure on private land that interferes with water management works.

The Committee notes that providing for the demolition or removal of structures on private land interferes with private property rights. However, given the public importance of efficient water management works, the Committee makes no further comment on this issue.

127. Section 68 of the Bill provides an authorised officer with the authority to enter and occupy land for the purpose of ascertaining whether the provisions of the Bill or the regulations have been complied with or have been contravened.

The Committee notes that providing authorised officers with the authority to enter private property interferes with the landowners' rights. However, given that this may only occur under section 68 with either the consent of the

landowner or with a warrant, the Committee makes no further comment in relation to this issue.

128. Part 6, Division 4, Subdivision 2 of the Bill provides the Regulatory Authority with the power to compel corrective action to be carried out on private property by the landowner in circumstances where it reasonably suspects that an activity that may detrimentally affect the quality of water or catchment health has been undertaken (section 77). Subdivision 3 provides the Regulatory Authority with the power to direct preventative action to ensure water quality and catchment health is not detrimentally affected in the future.

The Committee notes that the Regulatory Authority's proposed powers in Part 6 of the Bill impact private property rights in so far as those powers enable the Authority to compel landowners to undertake corrective, or preventative, actions to ensure water quality and catchment health. The Committee makes no further comment.

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

Executive decision making

129. Section 13 of the Bill provides the Governor, on the recommendation of the portfolio Minister, with the power to amend operating licences, substitute an operating licence and/or impose, amend or revoke conditions of operating licences. Section 19 of the Bill provides the Governor with the power to cancel an operating licence.

The Committee notes that section 13 and 19 of the Bill empower the Governor to amend a commercial contract. The Committee makes no further comment.

14. Work Health and Safety (Mines) Amendment Bill 2014

Date introduced	14 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make minor amendments to the *Work Health and Safety (Mines) Act* [*WHS (Mines) Act*], as follows:

(a) by clarifying the relationship between the *WHS (Mines) Act* and the *Work Health and Safety Act 2011* (*WHS Act*) and the regulations made under those Acts,

(b) by specifying that, in the case of a tourist mine, the *mine holder* is the person who is conducting the business or undertaking of the tourist mine,

(c) by clarifying that the term *mining operations* includes injecting minerals into the ground only where the primary purpose is the injection or return of a mineral to the ground,

(d) by providing for the regulations to prescribe how the mine operator of a mine is to be appointed, including by providing for the appointment of one or more mine operators for a mine or the appointment of one person as the mine operator for more than one mine,

(e) by clarifying the activities to which the WHS (Mines) Act does not apply, including civil aviation, and providing for the regulations to modify those exclusions,

(f) by providing for the WorkCover Authority, rather than the mines regulator, to exercise or perform powers and functions under the WHS Act in relation to mining workplaces,

(g) by providing for the regulations to make savings and transitional provisions that amend the savings and transitional provisions in the WHS (Mines) Act,

(h) by validating certain regulatory action taken in relation to coal mining lease areas that were not included in the register of colliery holdings.

BACKGROUND

2. This Bill was introduced to provide clarity in relation to the meaning of the *Work Health and Safety (Mines) Act 2013*, clarifying roles and responsibilities, removing ambiguities and rectifying wording. It also seeks to close possible loopholes in the work health and safety framework.

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 a day or days to be appointed by proclamation.

5. Schedule 1 [1] clarifies the relationship between the WHS (Mines) Act and the WHS Act and the regulations made under those Acts. The WHS (Mines) Act currently provides that it is to be read as if it formed part of the WHS Act but does not make provision for the regulations made under the latter Act. The amendment makes it clear that regulations under the WHS Act are included, so that references in both Acts include references to the other, and include references to both sets of regulations.

6. Schedule 1 [2] and [4] specify that, in the case of a tourist mine, the mine holder is the person who is conducting the business or undertaking of the tourist mine. This makes it clear that a person conducting a tourist mine is covered by the WHS (Mines) Act. (New South Wales currently has about 10 tourist mines).

7. Schedule 1 [3] and [6] provide for the regulations to direct that a mine holder appoint one or more mine operators of a mine or that one person be appointed as the mine operator for more than one mine. In the latter case, all of the relevant mines are, for the purposes of the WHS (Mines) Act, to be treated as one mine.

8. Schedule 1 [5] clarifies that the term *mining operations* includes injecting minerals into the ground only where the primary purpose is the injection of a mineral into, or the return of a mineral to, the ground. The current inclusion of "extracting minerals from the ground or injecting minerals into the ground" could be interpreted as including activities where the injection of minerals is incidental to the activity.

9. Schedule 1 [7] clarifies the activities to which the WHS (Mines) Act does not apply. The current exclusions with respect to railway or railway operations, roads and electricity infrastructure are reframed, activities relating to civil aviation are excluded and provision is made for the regulations to create exceptions to the operation of the exclusions as modified.

10. Schedule 1 [8] provides for the regulations to make savings and transitional provisions that amend the savings and transitional provisions in the WHS (Mines) Act. The amendment also removes the deadline for savings and transitional regulations to take effect (currently 31 March 2015).

11. Schedule 1 [9] validates certain regulatory action taken by the WorkCover Authority, rather than the regulator (that is, the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services), in the past in relation to workplaces to which the WHS (Mines) Act applies. The amendment also validates certain other regulatory action taken under the *Coal Mine Health and Safety Act 2002*, the *Occupational Health and Safety Act 2000* or the WHS Act in relation to coal mining lease areas that were not included in the register of colliery holdings.

12. Schedule 1 [10] omits amendments that have been superseded.

13. Schedule 2.1–2.4 make consequential amendments to Acts and regulations that refer to the Acts proposed to be repealed by the WHS (Mines) Act (that is, the *Coal Mine Health and Safety Act 2002* and the *Mine Health and Safety Act 2004*).

14. Schedule 2.5 amends the definition of *regulator* in the WHS Act to allow for the WorkCover Authority to exercise or perform specific powers or functions on behalf of both the Authority and the mines regulator (currently the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services).

15. Schedule 2.6 prescribes the powers and functions that can be exercised or performed by the WorkCover Authority for both the Authority and the mines regulator.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

16. Schedule 1 [9] outlines that any WorkCover regulatory action taken by the WorkCover Authority before the commencement of this clause is deemed to have also been taken by the head of the Department as regulator in relation to matters or the exercise or performance of a power or function concerning a mining workplace or a coal workplace.

17. Schedule 1 [9] also outlines that for the purposes of the exercise of any regulator function under the *Coal Mine Health and Safety Act 2002*, the *Occupational Health and Safety Act 2000* and the *Work Health and Safety Act 2010*, a coal mining lease area is taken to have been within a colliery holding at any time when it was not otherwise within a colliery holding. This clause extends to the conduct of any investigation and the gathering of evidence and the commencement, maintenance and conclusion of criminal proceedings, but does not affect any decision made by a court before the commencement of this clause.

> **The Committee notes that the amendments made by the Bill extend to the conduct of any investigation and the gathering of evidence and the commencement, maintenance and conclusion of criminal proceedings, before the commencement of the amendments. The Committee is generally concerned where provisions are drafted to have retrospective effect. The Committee makes no further comment.**

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

Commencement by Proclamation Text

18. Clause 2 of the Bill provides the proposed Act is to commence on a day or days to be appointed by proclamation.

> **The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.**

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Regulations amending principal legislation

19. Schedule 1 [8] of the Bill outlines that the regulations may amend Schedule 1 of the Act to consolidate the savings and transitional provisions.

> **The Committee will seek to comment in circumstances where regulations are empowered to amend principal legislation. However, as this is limited to savings and transitional provisions the Committee makes no further comment on this issue.**

Matters in regulations that ought to be in principal legislation

20. Schedule 2 [2] of the Bill outlines that the regulations may prescribe specified powers or functions as power or functions that can be exercised or performed by the WorkCover Authority for both the WorkCover Authority and the mines regulator.

> **The Committee considers the specification of powers and functions that may be exercised by the WorkCover Authority to be matters that are more properly included in principal legislation rather than in the regulations. The Committee refers this matter to Parliament for its consideration.**

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.