



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Garry Edwards MP, Member for Swansea 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
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 3050 / 02 9230 2096
FACSIMILE	02 9230 3052
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

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. CRIMES AMENDMENT (ZOE'S LAW) BILL 2013

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

Criminal Standard

The Committee refers to Parliament for its careful consideration matters relating to offences against a child in utero, with particular respect to a lowering of the threshold for a criminal offence to be met, and the requirements that children in utero be treated with the same standard as a natural person for the purposes of criminal law.

2. CRIMES (SERIOUS SEX OFFENDERS) AMENDMENT BILL 2013

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

Extra-territorial supervision and detention

The Committee is concerned that proposed subsection 5A(3)(b) will have the effect of applying the proposed regime to individuals who have served a sentence in another jurisdiction for a crime committed in that other jurisdiction and the Committee refers to Parliament whether it is appropriate to extend a supervision and detention scheme to such individuals.

Retrospectivity

The Committee notes that the proposed subsection 5A(3)(b) (and proposed clause 11 to Schedule 2 of the Act) has a retrospective effect, in that it applies to acts that were not considered a serious indictable offence at the time the offence was committed in circumstances where those acts would meet the new definition of serious indictable offences. The Committee refers to Parliament whether this is appropriate in the circumstances.

Burden of proof

The Committee notes that proposed subsections 5B(3) and 5E(3) enable the Supreme Court to be satisfied that a person is a 'high risk sex offender' or a 'high risk violent offender' to a standard that is below the balance of probabilities. The Committee refers to Parliament whether this standard is appropriate in the circumstances.

Freedom of movement

The Committee notes that providing the Supreme Court with the power under subsections 5C and 5F with the power to grant supervision or extended supervision orders may affect an individual's freedom of movement. The Committee refers to Parliament whether this is an undue trespass on an affected individual's liberty.

Deprivation of liberty

The Committee notes that subsections 5D and 5G empower the court to order the detention of an individual after the expiration of their original sentence. The Committee refers to Parliament whether this constitutes an undue trespass on the liberty of affected individuals.

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

Insufficiently defined criteria

The Committee prefers that the legislature clearly articulate the criteria for ‘high risk sex offender’ and ‘high risk violent offender’ in circumstances where such criteria affects the liberty of an individual. The Committee refers to Parliament whether proposed subsections 5B(2) and 5E constitute the inappropriate delegation of legislative power to the judiciary.

3. LIQUOR AMENDMENT (SMALL BARS) BILL 2013

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

Commencement by Proclamation

As the Committee has not identified any provisions which appear to trespass on individual rights and liberties, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

4. LOCAL COURT AMENDMENT (COMPANY TITLE HOME UNIT DISPUTES) BILL 2013

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

Commencement by Proclamation

As the Committee has not identified any provisions which appear to trespass on individual rights and liberties, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

5. RACING LEGISLATION AMENDMENT BILL 2013

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

6. ROAD TRANSPORT BILL 2013; ROAD TRANSPORT LEGISLATION (REPEAL AND AMENDMENT) BILL 2013; AND ROAD TRANSPORT (STATUTORY RULES) BILL 2013.

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

Commencement by Proclamation

Given the likely administrative arrangements to take place, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

7. STATUTORY AND OTHER OFFICES REMUNERATION AMENDMENT (JUDICIAL AND OTHER OFFICE HOLDERS) BILL 2013

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

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

PART TWO - REGULATIONS

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

Part One - Bills

1. Crimes Amendment (Zoe's Law) Bill 2013

Date introduced	21 February 2013
House introduced	Legislative Council
Member responsible	Revd the Hon F J Nile MLC
Portfolio*	Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Crimes Act 1900* to establish a separate offence for conduct causing serious harm to or the destruction of a child in utero, and to extend the offence of dangerous driving causing death or grievous bodily harm to dangerous driving causing the destruction of, or serious harm to, a child in utero.

BACKGROUND

2. This Bill has been introduced in response to a case in 2009 where a pregnant woman was hit by a driver under the influence of drugs, and subsequently lost her child after a stillbirth. The case attracted significant media attention after the driver was not charged for the manslaughter of the child in utero ('Zoe') as the legislation did not regard her to be a natural person for the purposes of criminal law.
3. Amendments to the *Crimes Act 1900* had been passed in 2005 to provide for a charge of grievous bodily harm when actions result in the destruction of a child in utero.

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.
6. Schedule 1 [2] creates a new offence of conduct causing serious harm to or the destruction of a child in utero. The offence will apply if the person who causes the serious harm or destruction is reckless as to whether his or her conduct causes serious harm to any person. The offence will not apply to medical procedures or to conduct engaged in by or with the consent of the mother of the child in utero. The offence will carry a maximum penalty of 10 years imprisonment.
7. Schedule 1 [1] changes the definition of *grievous bodily harm* so that it no longer includes the destruction of the foetus of a pregnant woman. Conduct causing such harm will be covered by the new offence described above.

8. Schedule 1 [3] extends the offence of dangerous driving causing death or grievous bodily harm so that it applies to dangerous driving causing the destruction of, or serious harm to, a child in utero. Schedule 1 [4] defines child in utero for the purposes of that extension.
9. Schedule 1 [5] ensures that dangerous driving causing death or grievous bodily harm is an alternative verdict to a charge of recklessly harming or destroying a child in utero.

ISSUES CONSIDERED BY COMMITTEE

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

Criminal Standard

10. While currently it is an offence to commit grievous bodily harm that causes the destruction of a child in utero (other than in the course of a medical procedure), the proposed definition would also include conduct that results in the 'serious harm' of a child in utero, while maintaining existing penalties. This, in effect, will lower the threshold for a criminal offence to be met.
11. Meanwhile, the proposed amendment to the dangerous driving provisions of the *Crimes Act 1900* will deem children in utero equal for some purposes of criminal law, with a natural person.

The Committee refers to Parliament for its careful consideration matters relating to offences against a child in utero, with particular respect to a lowering of the threshold for a criminal offence to be met, and the requirements that children in utero be treated with the same standard as a natural person for the purposes of criminal law.

2. Crimes (Serious Sex Offenders) Amendment Bill 2013

Date introduced	20 February 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to provide for the continued supervision and detention of high risk violent offenders in appropriate cases (in addition to serious sex offenders, as is presently the case); and
 - (b) to permit orders to be made for the continued supervision and detention of an adult offender convicted of an offence as a child in appropriate cases.

BACKGROUND

2. The Bill responds to a concern that there are serious violent offenders in New South Wales prisons who are nearing the end of their sentences who have made no apparent attempt to rehabilitate themselves or who have made it clear to authorities that they intend to re-offend when they are released.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Crimes (Serious Sex Offenders) Act 2006 No 7

Extension of principal Act to high risk violent offenders

5. The *Crimes (Serious Sex Offenders) Act 2006* (the *principal Act*) sets out a scheme for the continued detention or supervision of serious sex offenders who pose an unacceptable risk of committing serious sex offences if not kept under supervision. The primary object of the Act is to ensure the safety and protection of the community.
6. The proposed amendments to the principal Act provide for a similar scheme in respect of high risk violent offenders. A high risk violent offender is a violent offender who poses an unacceptable risk of committing a serious violence offence if he or she is not kept under supervision.

7. A *violent offender* is a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction for a serious violence offence (see definition in Schedule 1 [4]).
8. Schedule 1 [5] defines *serious violence offence* as a serious indictable offence that is constituted by a person:
 - (a) engaging in conduct that causes the death of another person or grievous bodily harm to another person, with the intention of causing, or while being reckless as to causing, the death of another person or grievous or actual bodily harm to another person, or
 - (b) attempting to commit, or conspiring with or inciting another person to commit, an offence of a kind referred to in paragraph (a).
9. An offence is a serious indictable offence if it is an indictable offence punishable by imprisonment for life or for a term of 5 years or more.
10. Schedule 1 [6] provides for the extension of the principal Act to high risk violent offenders.
11. Under the proposed amendments, an extended supervision order can be made by the Supreme Court in respect of an offender only if the offender is a high risk violent offender. An offender is a high risk violent offender only if the offender is a violent offender and the Supreme Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious violence offence if he or she is not kept under supervision. The Supreme Court can make a continuing detention order in respect of the offender if the offender is a high risk violent offender and the Court is satisfied that adequate supervision will not be provided by an extended supervision order.
12. The proposed amendments also re-enact existing provisions relating to serious sex offenders.
13. Schedule 1 [7] and [21] permit the State to make an application to the Supreme Court for an extended supervision order or a continuing detention order in respect of a high risk violent offender, similar to serious sex offenders.
14. Schedule 1 [17] and [33] provide for the making of interim orders.
15. Schedule 1 [19] and [35] make it clear that an extended supervision order or continuing detention order, or an interim order, can be revoked by the Supreme Court if the Court is satisfied that circumstances have changed to render the order unnecessary.
16. Schedule 1 [20] and [36] require the Commissioner of Corrective Services to report to the Attorney General on whether the Commissioner considers the continuation of an extended supervision order or continuing detention order to be necessary and appropriate.
17. Schedule 1 [38] requires a court that sentences a person for a serious violence offence to warn the person about the application of the Act.
18. Schedule 1 [39] requires the Minister to review the operation of the amendments at the end of 3 years after commencement.

19. Schedule 1 [40] provides for savings and transitional matters. The provisions ensure that an order can be made in respect of a person who committed a qualifying offence before the commencement of the proposed amendments.
20. Schedule 1 [2] changes the name of the Act to the *Crimes (High Risk Offenders) Act 2006*, as a consequence of the extension of the Act to high risk violent offenders.
21. Schedule 1 [4] defines expressions used in the proposed amendments, and makes consequential changes to existing definitions.
22. Schedule 1 [1], [3], [8]–[16], [18], [22]–[32], [34] and [37] are other consequential amendments.

Extension of principal Act to offences committed as a child

23. At present, an extended supervision order or continuing detention order can be made in respect of a person if the person has been sentenced to imprisonment following his or her conviction of a serious sex offence. Serious sex offences committed as a child are excluded.
24. Under the proposed amendments, offences committed as a child are not excluded. However, orders can only be made in respect of adults.
25. The amendments permit an order to be made in respect of a sex offender or a violent offender. Schedule 1 [4] defines a *sex offender* as a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction of a serious sex offence. A *violent offender* is defined as a person over the age of 18 years who has at any time been sentenced to imprisonment following his or her conviction for a serious violence offence.
26. An offence committed as a child qualifies for the purposes of the principal Act only if the child is convicted and a sentence of imprisonment is imposed in respect of the offence. This limits the operation of the amendment to serious offences. An offence committed as a child does not qualify under the principal Act if a custodial or non-custodial penalty for the offence is imposed by the Children's Court under section 33 of the *Children (Criminal Proceedings) Act 1987*.

Schedule 2 Amendment of other legislation

27. Schedule 2 makes amendments to other legislation. Most of the amendments are minor changes that are consequential on the extension of the principal Act to high risk violent offenders and the change of name of the Act.
28. Schedule 2.6 [7] amends the *Crimes (Administration of Sentences) Act 1999* to enable regulations to be made under that Act for the preparation and implementation of plans of management in respect of high risk violent offenders, and the provision of services and programs in respect of high risk violent offenders, by Corrective Services NSW. This will permit plans to be made, and programs to be offered, to high risk violent offenders even though they are not inmates. Schedule 2.6 [2] ensures that the existing regulation-making powers in relation to the management of inmates are consistent with the new regulation-making power relating to high risk violent offenders.

29. Schedule 2.7 [2] and [3] amend the *Crimes (Administration of Sentences) Regulation 2008* to extend to high risk violent offenders the existing scheme relating to case plans and programs for inmates.

ISSUES CONSIDERED BY COMMITTEE

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

Extra-territorial supervision and detention

30. Schedule 1[5] of the Bill inserts new section 5A into the *Crimes (Serious Sex Offenders) Act 2006*. Subsection 5A(3)(b) provides that an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence within the meaning of the *Crimes Act 1900* at the time it was committed is to be considered a serious indictable offence.
31. The Committee notes that this may affect such persons who moved to New South Wales after the completion of any sentence in another jurisdiction.

The Committee is concerned that proposed subsection 5A(3)(b) will have the effect of applying the proposed regime to individuals who have served a sentence in another jurisdiction for a crime committed in that other jurisdiction and the Committee refers to Parliament whether it is appropriate to extend a supervision and detention scheme to such individuals.

Retrospectivity

32. Schedule 1[5] of the Bill inserts new section 5A into the *Crimes (Serious Sex Offenders) Act 2006*. Subsection 5A(3)(c) provides that an offence that, at the time that it was committed, was not a serious indictable offence but which was committed in circumstances that would make the offence a serious indictable offence if it were committed at the time of the application for an order against the person is made under this Act, is a serious indictable offence. This is reiterated in Schedule 1[40] in the proposed clause 11 to Schedule 2 of the Act.

The Committee notes that the proposed subsection 5A(3)(c) (and proposed clause 11 to Schedule 2 of the Act) has a retrospective effect, in that it applies to acts that were not considered a serious indictable offence at the time the offence was committed in circumstances where those acts would meet the new definition of serious indictable offences. The Committee refers to Parliament whether this is appropriate in the circumstances.

Burden of proof

33. Schedule 1[6] of the Bill inserts a new Part 1A into the *Crimes (Serious Sex Offenders) Act 2006*. Subsection 5B(3) provides that when determining who is a 'high risk sex offender', the Supreme Court is not required to determine that the risk of a person committing a serious sex offence is more likely than not in order to determine that the person poses an unacceptable risk of committing a serious sex offence. Subsection 5E(3) makes similar provisions in relation to 'high risk violent offenders'.

The Committee notes that proposed subsections 5B(3) and 5E(3) enable the Supreme Court to be satisfied that a person is a 'high risk sex offender' or a 'high risk violent offender' to a standard that is below the balance of

probabilities. The Committee refers to Parliament whether this standard is appropriate in the circumstances.

Freedom of movement

34. Schedule 1[6] of the Bill inserts new Part 1A into the *Crimes (Serious Sex Offenders) Act 2006*. Subsection 5C enables the Supreme Court to make a supervision or an extended supervision order in relation 'high risk sex offenders'. Subsection 5F makes similar provisions in relation to 'high risk violent offenders'.

The Committee notes that providing the Supreme Court with the power under subsections 5C and 5F with the power to grant supervision or extended supervision orders may affect an individual's freedom of movement. The Committee refers to Parliament whether this is an undue trespass on an affected individual's liberty.

Deprivation of liberty

35. Schedule 1[6] of the Bill inserts new Part 1A into the *Crimes (Serious Sex Offenders) Act 2006*. Subsection 5D provides the Supreme Court with the power to continue detention orders if it is satisfied that adequate supervision will not be provided by an extended supervision order. Subsection 5G makes similar provisions in relation to 'high risk violent offenders'.

The Committee notes that subsections 5D and 5G empower the court to order the detention of an individual after the expiration of their original sentence. The Committee refers to Parliament whether this constitutes an undue trespass on the liberty of affected individuals.

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

Insufficiently defined criteria

36. Schedule 1[6] of the Bill inserts new Part 1A into the *Crimes (Serious Sex Offenders) Act 2006*. Subsection 5B(2) provides that an offender is a 'high risk sex offender' if the offender is a sex offender the Supreme Court is satisfied that the offender poses an unacceptable risk of committing a serious sex offence if he or she is not kept under supervision. Subsection 5E makes similar provisions in relation to 'high risk violent offenders'.

The Committee prefers that the legislature clearly articulate the criteria for 'high risk sex offender' and 'high risk violent offender' in circumstances where such criteria affects the liberty of an individual. The Committee refers to Parliament whether proposed subsections 5B(2) and 5E constitute the inappropriate delegation of legislative power to the judiciary.

3. Liquor Amendment (Small Bars) Bill 2013

Date introduced	20 February 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. George Souris MP
Portfolio	Minister for Tourism, Major Events, Hospitality and Racing

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for a new type of liquor licence for small bars. A small bar licence will authorise the licensee to sell liquor by retail on the licensed premises in accordance with the following conditions:
 - (a) liquor must be consumed on the licensed premises (that is, bottle shop or take-away sales are prohibited);
 - (b) liquor can be sold only if there are no more than 60 people on the premises;
 - (c) the small bar must be open to the general public; and
 - (d) food must be available at the small bar.
2. In addition, gaming machines will not be permitted to operate on the premises.

BACKGROUND

3. This Bill forms part of the Government's response to issues in Kings Cross. In the second reading speech, the Minister noted that

It is a whole-of-government approach covering liquor licensing and compliance, transport, policing and public spaces.

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 No 90

6. Schedule 1 [1] updates the definition of *extended trading authorisation* to include such authorisations for small bars.
7. Schedule 1 [2] inserts a definition of *small bar* (the premises to which a small bar licence relates).

8. Schedule 1 [3] includes small bar licences in the types of licences that can be issued.
9. Schedule 1 [4] provides that the standard trading period for a small bar is the period from noon to midnight on any day of the week.
10. Schedule 1 [5] makes a consequential amendment.
11. Schedule 1 [6] inserts provisions about small bar licences. Proposed section 20A provides that a small bar licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on the licensed premises only. Proposed section 20B specifies the trading hours for small bars. Proposed section 20C imposes conditions on small bar licences, namely that the maximum number of patrons is 60, that small bars must be open to the general public and that food must be available.
12. Schedule 1 [7] provides that existing provisions about the temporary freeze on licences do not apply to small bars.
13. Schedule 1 [8] and [9] extend provisions about the requirement for community impact statements to applications relating to small bars.
14. Schedule 1 [10] specifies when a small bar application is not required to be accompanied by a community impact statement.
15. Schedule 1 [11] and [12] provide for late trading for small bars.
16. Schedule 1 [13] makes it an offence for a minor to enter or remain in a small bar during trading hours.
17. Schedule 1 [14] and [15] make it an offence for a licensee to allow a minor to enter or remain in a small bar during trading hours.
18. Schedule 1 [16] requires that a minor be refused entry to a small bar.
19. Schedule 1 [17] provides for the making of savings and transitional regulations consequent on any amendment of the *Liquor Act 2007*.
20. Schedule 1 [18] inserts transitional provisions relating to the conversion of existing general bar licences to small bar licences. It also requires the Minister to review the amendments made by the proposed Act.

Schedule 2 Amendment of other legislation

21. Schedule 2.1 [1] amends the *Liquor Regulation 2008* to exempt applications for small bar licences, for approval to remove such licences to other premises or for the issue or variation of extended trading authorisations for such licences from the requirements to notify certain persons of the making of the application. The exemption only applies if development consent is required to use the premises and the local police and the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services have been notified.
22. Schedule 2.1 [2] makes an application for a small bar licence one for which a category B community impact statement is required.

23. Schedule 2.1 [3] makes it a condition of a small bar licence that the licensed premises cannot be used to conduct a totalizator or a public lottery.
24. Schedule 2.1 [4], [6] and [7] omit redundant provisions about small venues and replace references to them with references to small bars.
25. Schedule 2.1 [5] requires small bars to display notices about the fact that minors are not permitted in such bars during trading hours.
26. Schedule 2.1 [8] specifies the application fees for small bar licences.
27. Schedule 2.1 [9] specifies the application fees for authorisations for late trading in small bars.
28. Schedule 2.1 [10] makes the offence of failing to display a notice about the prohibition of minors an offence that can be dealt with by penalty notice.
29. Schedule 2.2 provides that the *Retail Trading Act 2008* does not apply to premises in respect of which a small bar licence is in force by reason only of the sale or exposing or offering for sale of liquor.
30. Schedule 2.3 amends the standard instrument for a local environmental plan to include small bars within the definition of *food and drink premises* in that standard instrument, and to include a definition of *small bar*.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by Proclamation

31. Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation. Although the Committee has previously expressed a preference that Acts commence on either a designated date or on assent, as there are no provisions in this Bill which appear to trespass on individual rights and liberties, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

As the Committee has not identified any provisions which appear to trespass on individual rights and liberties, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

4. Local Court Amendment (Company Title Home Unit Disputes) Bill 2013

Date introduced	19 February 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to confer jurisdiction on the Local Court to hear and determine proceedings involving certain company title home unit disputes.

BACKGROUND

2. Before the introduction of strata titles legislation in New South Wales in 1961, company title was the most common way of accommodating the subdivision of multistorey residential buildings.
3. In April 2007, the NSW Law Reform Commission released Report 115 'Disputes in company title home units'. The Commission found that the cost of taking company title home unit disputes to the Supreme Court is prohibitive, and effectively disempowers residents in company title home units from holding the board of directors accountable. The NSW Law Reform Commission also estimated that there are approximately 840 company title buildings in New South Wales.
4. The Government has adopted and adapted some of the recommendations of the report, which are given effect in this Bill.

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 to be appointed by proclamation.
7. Schedule 1 [3] provides that the Local Court (the Court) has jurisdiction to hear and determine proceedings involving certain company title home unit disputes between any of the following parties:
8. (a) a company title corporation,
(b) a shareholder or former shareholder of a company title corporation,
(c) a resident or former resident of premises on land owned by a company title corporation.

(d) A company title corporation is a company registered under the Corporations Act 2001 of the Commonwealth that is the owner of land if ownership of a share or shares in that company entitles the owner of the share or shares to the exclusive use and occupation of residential premises on that land. In determining proceedings involving a company title home unit dispute, the Court may make various orders, including an order requiring a person to do or refrain from doing any act, an order for the payment of damages or other money and an order in relation to the interpretation of the constitution of a company title corporation or other contract or agreement.

9. Schedule 1 [1] and [2] extend the Court's jurisdiction in the General Division and the Small Claims Division to include proceedings involving company title home unit disputes, subject to the jurisdictional limits of those Divisions.
10. Schedule 1 [4] provides that proceedings involving company title home unit disputes in the Small Claims Division of the Court may be heard by Magistrates, but not by Assessors.
11. Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of the proposed Act or any other Act that amends the Local Court Act 2007 and Schedule 1 [6] inserts a transitional provision.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by Proclamation

12. Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation. Although the Committee has previously expressed a preference that Acts commence on either a designated date or on assent, as there are no provisions in this Bill which appear to trespass on individual rights and liberties, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

As the Committee has not identified any provisions which appear to trespass on individual rights and liberties, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

5. Racing Legislation Amendment Bill 2013

Date introduced	20 February 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. George Souris
Portfolio	Minister for Tourism, Major Events, Hospitality and Racing

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to provide that Racing NSW may impose sanctions on a registered race club for a breach of conditions of the club's registration that are consistent with sanctions that may be imposed for failure to comply with directions or minimum standards for the conduct of races and race meetings, and
 - (b) to allow licensed bookmakers to offer totalizator odds on bets taken at a licensed racecourse (whether or not the other party to the bet is also at the racecourse).

BACKGROUND

2. This Bill seeks to preserve the diversity in the wagering industry by working to ensure the viability of licensed bookmakers in New South Wales.
3. The Bill also provides Racing NSW with additional tools to manage the conduct of race clubs.

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 Thoroughbred Racing Act 1996 No 37

6. Schedule 1 gives effect to the object referred to in paragraph (a) of the Overview above.

Schedule 2 Amendment of Totalizator Act 1997 No 45

7. Schedule 2 gives effect to the object referred to in paragraph (b) of the Overview above.

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.

6. Road Transport Bill 2013; Road Transport Legislation (Repeal and Amendment) Bill 2013; and Road Transport (Statutory Rules) Bill 2013.

Date introduced	19 February 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Transport

PURPOSE AND DESCRIPTION

1. The proposed *Road Transport Act 2013* will provide for the consolidation of a number of existing Acts dealing with road transport into a single Act.
2. The proposed *Road Transport Legislation (Repeal and Amendment) Act 2013* repeals and makes amendments to various Acts and statutory rules consequent on the enactment of the new Road Transport Act 2013.
3. The *Road Transport Legislation (Repeal and Amendment) Bill 2013* proposes to repeal the *Road Transport (Driver Licensing) Act 1998*, *Road Transport (Vehicle Registration) Act 1997*, *Road Transport (Safety and Traffic Management) Act 1999*, and *Road Transport (Safety and Traffic Management) Act 1999* and *Road Transport (Safety and Traffic Management) Regulation 1999*.
4. That Bill also renames certain other Acts, as well as making certain other Acts and statutory rules consequential on the enactment of the proposed Act, and the renaming and amendment of the *Road Transport (General) Act 2005*.
5. Lastly, the *Road Transport (Statutory Rules) Bill 2013* makes amendments to the statutory rules under the existing road transport legislation, as well renames various other Acts.
6. These three Bill are all cognate with each other.
7. The main purpose of this legislative reorganisation, is to simplify the legislative structure, avoid duplication, and enhance understanding of road users of legal rights and responsibilities.

BACKGROUND

8. Before 1999, the road transport legislation of New South Wales was primarily located in the former *Traffic Act 1909*. In the 1990s, the National Transport Commission began to develop a series of modules for national model road transport legislation. Each module

dealt with a different and discrete topic such as heavy vehicle charges, driver licensing, vehicle operations, and compliance and enforcement.

9. The only module that remains to be completed is the proposed *Heavy Vehicle National Law*, which the States and Territories intend to adopt once the final version of the Law is settled and enacted by the Queensland Parliament in its capacity as the lead jurisdiction for the National Law. This is expected to occur sometime in 2013.
10. In order to expedite the incorporation of the national model road transport legislation into New South Wales law, the modules developed by the National Transport Commission were progressively adopted in New South Wales by enacting a new Act to give effect to a module as it was completed. As part of this process, the *Traffic Act 1909* was initially amended to repeal provisions that were incorporated into each new Act. The *Traffic Act 1909* was eventually repealed in its entirety in December 1999.
11. As a result, there are currently four separate road transport Acts dealing with different aspects of the road transport law of New South Wales. These Acts are:
 - (a) The *Road Transport (Driver Licensing) Act 1998* (which provides for the licensing of vehicles and the regulation of interstate and foreign drivers;
 - (b) The *Road Transport (Vehicle Registration) Act 1997* (which provides for the registration of vehicles and the management of written-off vehicles), and
 - (c) The *Road Transport (Safety and Traffic Management) Act 1999* (which provides for rules and other requirements concerning the safe use of roads by road users and vehicles, including provisions regulating drivers who are under the influence of alcohol or other drugs), and
 - (d) The *Road Transport (General) Act 2005* (which provides for compliance and enforcement provisions in connection with road transport legislation generally and also deals with the management of heavy vehicles, their mass, dimensions and loads, and their drivers).
12. This Bill re-enacts in one Act (with some modifications) the provisions of the *Road Transport (Driver Licensing) Act 1998*, *Road Transport (Vehicle Registration) Act 1997* and *Road Transport (Safety and Traffic Management) Act 1999*, and the compliance and enforcement provisions of the *Road Transport (General) Act 2005* applicable to the road transport legislation generally.
13. This Bill also provides for the existing *Road Rules 2008*, *Road Transport (Driver Licensing) Regulation 2008* and *Road Transport (Vehicle Registration) Regulation 2007* to continue in force as Rules or Regulations made under the proposed Act.

OUTLINE OF PROVISIONS

14. Clause 1 sets out the name (also called the short title) of the proposed Act.
15. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
16. Clause 3 sets out the objects of the proposed Act.

17. Clause 4 defines certain words, terms and expressions used in the proposed Act, including the following.

The term *heavy vehicle* is defined to mean a motor vehicle or trailer that has a GVM of more than 4.5 tonnes, and to include:

- (a) a special purpose vehicle that has such a GVM, and
- (b) a passenger-carrying vehicle that has such a GVM.

The term *the Authority* has been defined to mean Roads and Maritime Services.

The term *the statutory rules* is defined to mean the regulations and rules made by the Governor under the proposed Act.

18. Clause 5 provides that references in the proposed Act (other than in Part 1.2) to a *road* are to be read as including a reference to a *road related area* unless otherwise expressly stated.

19. Clause 6 defines the term *road transport legislation* to mean the following:

- (a) the proposed Act and the statutory rules made under the proposed Act,
- (b) the Road Transport (Vehicle and Driver Management) Act 2005 (which is the new name of the existing Road Transport (General) Act 2005 as amended by the Road Transport Legislation (Repeal and Amendment) Bill 2013) and the regulations under that Act,
- (c) the Motor Vehicles Taxation Act 1988 and the regulations under that Act,
- (d) any other Act or statutory rule made under any other Act (or any provision of such an Act or statutory rule) that is prescribed by the statutory rules.

20. Clause 7 defines the terms *registered* and *registration* in relation to a vehicle.

21. Clause 8 defines the terms *registered operator* and *Australian registered operator* in relation to a vehicle.

22. Clause 9 defines the terms *first offence* and *second or subsequent offence*.

23. Clause 10 defines the term *responsible person* for a vehicle.

24. Clause 11 provides for how the rights, liabilities and obligations of multiple responsible persons for a vehicle are to be determined.

25. Clause 12 enables the statutory rules to apply the *Acts Interpretation Act 1901* of the Commonwealth to the interpretation of provisions of the proposed Act and the statutory rules where appropriate. This may be necessary from time to time where the provisions are based on model laws prepared by the National Transport Commission.

26. Clause 13 provides that notes included in the proposed Act do not form part of the proposed Act.

27. Division 1:

- (a) sets out the interpretative principles to be applied in determining the relationship between the road transport legislation and other written and unwritten laws of the State, and
 - (b) enables the statutory rules to provide for provisions of the *Roads Act 1993* not to apply to vehicles, persons or animals that are regulated by the road transport legislation, and
 - (c) ensures that the Crown in all of its capacities is bound by the proposed Act to the extent that the legislative powers of the New South Wales Parliament permit.
28. Division 2 enables the Minister, by declaratory order published in the Gazette, to include areas in, or exclude areas from, the scope of the road transport legislation and to exclude vehicles, persons and animals from the operation of that legislation. However, the Minister is required to consult with the Minister administering the *Motor Accidents Compensation Act 1999* before making such a declaration in respect of Chapter 4 (Vehicle registration) or the statutory rules made for the Chapter.
29. The Division also enables the statutory rules to exclude vehicles, persons and animals from the operation of the proposed Act and the statutory rules. The Authority will be required to maintain a database of orders and declarations made under the Division.
30. Chapter 2 enables the Governor to make regulations and rules (which are referred to in the proposed Act collectively as *the statutory rules*) for the purposes of the proposed Act. Examples of statutory rule-making powers are listed in Schedule 1 to the proposed Act. The statutory rules may also create offences punishable by a penalty not exceeding 34 penalty units (currently, \$3,740).
31. Part 3.1 sets out the general functions of the Authority in relation to the licensing of drivers in New South Wales and the maintenance of the NSW driver licence register and NSW demerit points register. The Part limits the power of the Authority to issue NSW driver licences to residents of the State who are eligible to be issued with, or apply for, such a licence. The holders of driver licences from other States or the Territories, or from a foreign country, must first surrender that licence before being issued with a NSW driver licence. The Part also provides for the mutual recognition by the Authority of driver licences issued by another State or a Territory. The Authority is required to transmit certain information concerning driving offences committed in New South Wales to the driver licensing authority of the State or Territory in which the licence was issued or, if the offender is unlicensed, the driver licensing authority of the State or Territory in which the offender is resident.
32. Division 1 requires the Authority to maintain the NSW demerit points register. It also provides for the kinds of offences for which demerit points may be incurred.

Division 2 requires the Authority to give the holder of an unrestricted driver licence a notice of licence suspension if the holder incurs 13 or more demerit points (or, in the case of a professional driver, 14 or more demerit points) within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person. An *unrestricted driver licence* is defined in proposed section 4 (1) to mean a driver licence other than a learner licence or provisional licence. The length of the licence suspension varies depending on the

number of demerit points incurred. The Division also enables the Authority to give the holder of an unrestricted driver licence a notice of licence ineligibility as an alternative to a suspension notice. The Division enables a driver who has been served with a notice of licence suspension or licence ineligibility to elect, in certain circumstances, to be of good behaviour as an alternative to having the driver's licence suspended or being ineligible to apply for a licence.

32. The Division also provides for the circumstances when demerit points incurred by a person may be deleted from the NSW demerit points register. The provisions of the Division are based on the provisions of Subdivision 2 of Division 2 of Part 2 of the *Road Transport (Driver Licensing) Act 1998*. The new provisions have the same substantive effect as the current provisions. However, the opportunity has been taken to reorganise and collect common provisions together to avoid the duplication in the current provisions.
33. Division 3 enables the Authority to give the holder of a learner or provisional driver licence a notice of licence suspension, licence cancellation or licence ineligibility if the holder incurs the threshold number of demerit points for the kind of licence concerned within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person. The *threshold number of demerit points* is defined in proposed section 4 (1) to mean:
 - (a) for the holder of a learner licence or a provisional P1 licence—4 or more demerit points, and
 - (b) for the holder of a provisional P2 licence—7 or more demerit points.
35. Division 4 sets out general provisions concerning the determination of demerit points (including in the case of combined licences).
36. Part 3.3 provides for the approval of interlock devices for use in motor vehicles for the purposes of the proposed Act and the approval of interlock installers and service providers. An *interlock device* is a device designed to analyse a breath sample for the presence of alcohol and prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol. The Part also enables statutory rules to be made with respect to the use of such devices.
37. Division 2 of Part 7.4 of the proposed Act makes provision for the use of approved interlock devices as an alternative to licence disqualification for certain traffic offences.
38. Division 1 makes each of the following offences:
 - (a) obtaining a driver licence by false pretences,
 - (b) possessing an Australian driver licence without lawful authority or excuse,
 - (c) altering or producing a driver licence in a way that is calculated to deceive, forging a driver licence or fraudulently lending a driver licence to another person. The Division enables a police officer, or a person authorised in writing by the Authority, to seize licences that are being used or possessed unlawfully. It also enables the officer or authorised person to obtain a sample of a person's signature to ascertain whether a licence that is presented is genuine.

39. Division 2 makes it an offence for a person to drive a motor vehicle while unlicensed or to employ or permit an unlicensed driver to drive a motor vehicle. The Division also makes it an offence for a person to drive a motor vehicle (or apply for a driver licence) while disqualified or if the person's driver licence has been cancelled or suspended.
40. Part 3.5 sets out provisions regulating the keeping, use and release of photographs taken by or provided to the Authority in connection with the road transport legislation and certain other legislation.
41. Part 3.6 authorises the Authority to refuse to issue or renew a driver licence without an appropriate photograph being taken or other identity information being provided on request.

The Part also:

- (a) enables the Authority to cancel or suspend a driver licence for speeding offences of a kind prescribed by the statutory rules, and
 - (b) provides that a person cannot apply for another driver licence if the person's licence expires during a period of licence suspension, and
 - (c) enables the Authority to request information from a person who claims to be a professional driver for the purpose of determining the demerit point threshold for the person.
42. Division 1 sets out the general powers and other functions of the Authority in relation to the registration of registrable vehicles in New South Wales. A *registrable vehicle* is defined in proposed section 4 (1) to mean:
 - (a) any motor vehicle, or
 - (b) any trailer, or
 - (c) any other vehicle prescribed by the statutory rules for the purposes of the definition.
 42. Division 2 requires the Authority to maintain a register of registrable vehicles (called the *NSW registrable vehicles register*). The Division also makes it clear that the Authority cannot register a registrable vehicle unless satisfied that its garage address is in New South Wales.
 43. Division 3 enables the statutory rules to make provision with respect to the issuing, use, transfer, replacement and surrender of special number-plates for registrable vehicles. The Division also makes it clear that any devices, plates or documents issued by the Authority for the purpose of authorising the use of a registrable vehicle remain the property of the Authority.
 44. Division 1 makes each of the following an offence:
 - (a) using an unregistered registrable vehicle on a road,
 - (b) obtaining registration or an unregistered vehicle permit by dishonest means or possessing a device, plate or document obtained by such means without lawful authority or excuse,
 - (c) a registered operator of a registrable vehicle failing to comply with certain obligations in connection with its registration.

45. The Division substantially re-enacts (with one modification) the provisions of sections 18–21A of the *Road Transport (Vehicle Registration) Act 1997*. The provisions of section 21 (Obligations of registered operators) have been re-enacted so as to make it clear that a failure to comply with the obligations imposed is an offence punishable by 20 penalty units (currently, \$2,200).
46. Division 2 makes each of the following an offence:
- (a) a licensed motor dealer, without the approval of the Authority, causing, permitting or allowing an interstate number-plate to be affixed to a registrable vehicle in New South Wales,
 - (b) a corporation causing, permitting or allowing an interstate registered vehicle owned by the corporation for at least 90 days to be used on a road in New South Wales,
 - (c) a person failing to comply with directions given by the Authority or a police officer to provide documentation concerning an interstate registered vehicle.

An interstate registered vehicle is a vehicle that is registered in another State or a Territory.

47. Part 4.3 enables a police officer, or the Authority, to inspect a registrable vehicle (whether or not on a road) for the purpose of deciding its identity, condition or the status (whether in this jurisdiction or another jurisdiction) of any registration or permit relating to the vehicle. It also enables warning and defect notices to be issued, and conditions to be imposed or the use of a vehicle to be prohibited, if it is defective. It will be an offence for a vehicle to be used contrary to any such conditions or prohibition.
48. The Part makes it an offence for a person to use (or cause or permit the use of) a heavy motor vehicle on a road if it is dangerously defective. A *heavy motor vehicle* is a motor vehicle that has a GVM of more than 12 tonnes.
49. Part 4.4 enables a police officer to seize an unregistered registrable vehicle that is being used on a road and also enables police officers and other authorised persons to seize number-plates that are attached to a vehicle whose registration has expired (for at least 15 days) or been cancelled. The Part also enables the Authority to enter any premises in which the business of carrying out repairs to registrable vehicles damaged as a result of accidents is ordinarily carried on and carrying out inspections to see whether a vehicle in such premises complies with its applicable vehicle standards.
50. Division 1 defines words, terms and expressions used in Part 4.5.
51. Division 2 requires the Authority to maintain a register of written-off vehicles (called the *NSW written-off vehicles register*) that records information about vehicles that the Authority has reason to believe are written-off vehicles or were previously written-off vehicles but which have since been repaired and then registered. The Division requires the Authority not to register, renew or transfer the registration of any vehicle (or if the vehicle is registered, the Authority must cancel the registration of the vehicle) if its vehicle identifier is the same as the vehicle identifier of a NSW written-off vehicle or an interstate written-off vehicle unless the vehicle is the subject of an authorisation to repair issued by the Authority under the Division.

52. Division 3 sets out procedures, notifications and other requirements in connection with the assessment of damage to certain vehicles.
53. Division 4 contains miscellaneous provisions concerning the issuing of certificates of compliance by licensed repairers of vehicles, access to and use of the NSW written-off vehicle register, statutory rules for the purposes of Part 4.5 and certificate evidence.
54. Part 4.6 provides that an unregistered registrable vehicle in respect of which an unregistered vehicle permit issued by the Authority is in force is taken for the purposes of the proposed Act or any other Act relating to the registration or licensing of vehicles to be a registered vehicle. It also provides for who is required to pay registration fees in relation to a vehicle owned by the Crown or a NSW Government agency.
55. Division 1 defines words, terms and expressions used in Part 5.1. It also provides for how alcohol concentrations may be measured for the purposes of the proposed Act. The Division re-enacts (with some modification) the provisions of sections 8, 8A and 8B of the *Road Transport (Safety and Traffic Management) Act 1999*. In particular, the definition of *special category driver* in proposed section 107 makes it clear that the holder of an expired learner licence or provisional licence will be treated as a special category driver for the purposes of Part 5.1 regardless of how long the licence has been expired. A person who holds any other kind of expired driver licence will not be treated as being a special category driver unless the licence has been expired for more than 6 months.
56. Division 2 makes each of the following offences:
- (a) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while having a particular prescribed concentration of alcohol present in the person's breath or blood,
 - (b) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while having a prescribed illicit drug present in the person's oral fluid, blood or urine,
 - (c) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while having morphine or cocaine present in the person's blood or urine,
 - (d) a person driving a motor vehicle, attempting to put a motor vehicle in motion or supervising certain drivers of a motor vehicle while under the influence of alcohol or any other drug.
57. Schedule 3 sets out provisions relating to the procedures for, and the use of evidence obtained from, testing for alcohol or other drug use by drivers and other road users.
- The Division also permits a police officer to detain a vehicle in respect of which certain offences against the Division have been committed.
58. Division 1 makes each of the following offences:

(a) organising, promoting or taking part in any of the following without the written approval of the Commissioner of Police for the race, attempt or trial concerned:

- (i) any race between vehicles on a road,
- (ii) any attempt to break any vehicle speed record on a road,
- (iii) any trial of the speed of a vehicle on a road,
- (iv) any competitive trial designed to test the skill of any vehicle driver or the reliability or mechanical condition of any vehicle on a road,

(b) operating a motor vehicle on a road in such a manner as to cause the vehicle to undergo sustained loss of traction by one or more of the driving wheels (or, in the case of a motor cycle, the driving wheel) of the vehicle,

(c) driving a motor vehicle on a road negligently, furiously or recklessly or at a speed or in a manner that is dangerous to the public,

(d) driving a motor vehicle on a road in a manner that is menacing to another person.

59. Division 2 makes each of the following offences:

(a) selling or offering for sale, or purchasing, a prohibited speed measuring evasion article,

(b) driving a motor vehicle, or causing a motor vehicle or trailer to stand, on a road if a prohibited speed measuring evasion article is fitted or applied to, or carried in, the vehicle or trailer.

The Division enables police officers and officers of the Authority to remove (or require the surrender of) prohibited speed measuring evasion articles in certain circumstances. It also provides for the forfeiture to the Crown of such articles in certain circumstances.

60. Division 1 defines words, terms and expressions used in Part 5.3.

In particular, the term *prescribed traffic control device* is defined to mean a sign, signal, marking, structure or other device to direct or warn traffic on a road (or part of a road) that is prescribed by the statutory rules for the purposes of the definition.

The term *speeding offence* is defined to mean an offence against the proposed Act or the statutory rules of failing to obey a speed limit (including an average speed limit calculated in accordance with Division 3), and to include:

- (a) an offence against regulations made for the purposes of section 11C of the *Road Transport (Vehicle and Driver Management) Act 2005* (being regulations concerning heavy vehicle speeding compliance), and
- (b) a speed limiter offence (being an offence against proposed section 162).

61. Division 2 specifies the circumstances in which it is lawful for a prescribed traffic

control device to be installed, displayed, interfered with, altered or removed. A person has appropriate authority to do so if:

- (a) the person is a public authority that has been directed by the Authority under Division 1C of Part 6 of the *Transport Administration Act 1988* to install or display (or to interfere with, alter or remove) the device, or
- (b) the person is otherwise authorised in writing by the Authority to install or display (or to interfere with, alter or remove) the device, or
- (c) the person is permitted or required to remove the device by or under proposed section 124.

The Division makes it an offence for a person to install, display, interfere with, alter or remove a prescribed traffic control device without appropriate authority. Proposed sections 124 and 125 also enable the Authority, the Commissioner of Police and certain other authorised persons to remove (or direct a person to remove) an unlawfully installed or displayed device and to recover any such removal costs.

62. Division 3 enables the use of average speeds between detection points to prove speeding offences involving heavy vehicles.

The Division re-enacts (with some modification) the provisions of section 43A of the *Road Transport (Safety and Traffic Management) Act 1999*. Currently, section 43A of that Act does not extend to the proof of an offence against the heavy vehicle speeding compliance provisions of the regulations made for the purposes of section

11C of the *Road Transport (General) Act 2005* (which will continue in force under the renamed *Road Transport (Vehicle and Driver Management) Act 2005*). However, the Division will extend to this additional kind of offence because of the definition of *speeding offence* for Part 5.3.

63. Division 4 enables the Governor, by order published in the Gazette, to approve types of devices (or combinations of types of devices) (to be called *approved traffic enforcement devices*) for any one or more of the following uses:

- (a) measuring the speed at which a vehicle is travelling (whether or not the vehicle concerned is also photographed),
- (b) photographing a vehicle that is driven in excess of a speed limit applicable to a length of road,
- (c) photographing a vehicle at a point during its journey between different points on a road for use in calculating the vehicle's average speed between those points,
- (d) photographing a vehicle that is driven in contravention of a traffic light signal displaying a red circle or a red arrow,
- (e) photographing a vehicle that is driven in a traffic lane on a road.

Currently, devices used in connection with the detection of particular kinds of traffic offences are approved under different sections of the *Road Transport (Safety and Traffic Management) Act 1999* for the detection purpose concerned. See, in particular, sections 44, 45, 47A, 56, 57A and 57C of the *Road Transport (Safety and Traffic Management) Act*

1999. In most cases, a device requires the approval of the Governor. However, section 45 of the *Road Transport (Safety and Traffic Management) Act 1999* requires certain camera speed detection devices to be approved by the Commissioner of Police.

The Division seeks to consolidate in a single set of provisions the approval of traffic enforcement devices and to require all approvals to be made by the Governor. Approvals for a device may be given for one detection purpose or for several detection purposes for those devices with such a capability. However, the kinds of detection purposes for which an approval can be given are limited to the same purposes for which approval can be given under the *Road Transport (Safety and Traffic Management) Act 1999*.

64. Division 5 sets out procedures for the use of, and the purposes for which, evidence obtained by an approved traffic enforcement device may be used in proceedings for certain kinds of traffic offences. Currently, the use of evidence obtained from approved devices is governed by different provisions depending on the kind of device concerned even though the provisions concerned are each in largely similar terms. See, in particular, sections 47, 47B, 57 and 57B of the *Road Transport (Safety and Traffic Management) Act 1999* and section 22C of the *Road Transport (Vehicle Registration) Act 1997*.

Also, evidence obtained by an approved speed measuring device cannot be used to prove an offence against the heavy vehicle speeding compliance provisions of the regulations made for the purposes of section 11C of the *Road Transport (General) Act 2005* (which will continue in force under the renamed *Road Transport (Vehicle and Driver Management) Act 2005*). This is because the use of such devices is limited to speeding offences against the *Road Transport (Safety and Traffic Management) Act 1999*.

The Division seeks to consolidate in a single set of provisions the current provisions relating to the use of evidence obtained from approved traffic enforcement devices. The permitted uses of such evidence will remain largely the same. However, the Division will also extend to the proof of heavy vehicle compliance offences against the renamed *Road Transport (Vehicle and Driver Management) Act 2005* because of the definition of *speeding offence* for Part 5.3.

65. Division 1 enables certain officers to remove vehicles and things from a road that constitute an obstruction or danger to traffic and give directions to protect the public and facilitate the free flow of traffic.

66. Division 2 makes each of the following offences:

(a) standing or driving, or permitting the standing or driving of, an unsafely loaded vehicle that results in death or injury to another person or damage to property,

(b) failing to stop and give assistance to a person who is injured or killed by a vehicle or horse driven or ridden by the person failing to stop.

64. Division 3 makes each of the following offences:

(a) using a motor vehicle or trailer without first obtaining the consent of the owner,

(b) procuring the use or hire of a motor vehicle or trailer by fraud or misrepresentation.

67. Part 6.1 provides for the monitoring of certain heavy vehicles and vehicles carrying dangerous goods while travelling on roads and the keeping of vehicle movement records for that purpose.
68. Part 6.2 provides for certain heavy vehicles to be fitted with speed limiters to prevent them from being driven on roads at a speed in excess of 100 kilometres per hour.
69. Part 7.1 provides for the appointment of authorised officers (in addition to police officers and persons prescribed by the statutory rules, who are authorised officers in any event) in connection with the administration and enforcement of the road transport legislation. The Part also makes it an offence to obstruct, hinder or impersonate an authorised officer.
70. Part 7.2 enables an authorised officer:
- (a) to require production of a driver licence from a driver or rider of a vehicle or horse and to state the driver's or rider's name and address, and
 - (b) to require production of driver licences from certain supervising passengers of drivers of motor vehicles and to state their names and addresses, and
 - (c) to require a responsible person for a motor vehicle and certain other persons to disclose the identity of a driver of the vehicle who is alleged to have committed an offence against the road transport legislation.

The Part requires drivers to produce their driver licences to the court hearing a charge for a breach of the road transport legislation. It also makes it an offence for a person to knowingly demand production of a driver licence by another person without lawful authority.

71. Division 1 provides for the following matters:
- (a) the manner in which an offence against the applicable road law (within the meaning of the renamed *Road Transport (Vehicle and Driver Management) Act 2005*) is to be dealt with under the road transport legislation if more than one person is liable for the offence,
 - (b) prohibiting double jeopardy in relation to the same failure to comply with the road transport legislation,
 - (c) that each person who is a director of a corporation that has contravened the road transport legislation, or who is concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

The provisions of this Division dealing with the liabilities of directors and managers of corporations differ from the current provisions of section 178 (1) of the *Road Transport (General) Act 2005*. That subsection makes a director or manager of a

corporation liable for a contravention by the corporation without the need to prove that the director or manager knowingly authorised or permitted the contravention. The other provisions of section 178 of the *Road Transport (General) Act 2005* dealing with the liability of partners, employers and others for offences by partnerships, associations and employees will be retained in section 178 of the renamed *Road Transport (Vehicle and Driver Management) Act 2005* because those provisions are limited to applicable road law offences within the meaning of that Act.

72. Division 2 makes a responsible person for a registrable vehicle liable for certain camera recorded traffic offences and for parking offences if the responsible person does not disclose the identity of the actual driver or person in charge of the vehicle at the time of the offence concerned.

The Division re-enacts (with some modification) the provisions of section 179 of the *Road Transport (General) Act 2005*. In particular, the Division now makes it clear that a person falsely nominates another person as being the driver or person in charge of a vehicle for the purposes of the offence of false nomination if either a false name or address (or both a false name and address) is supplied for that other person.

73. Division 3 enables police officers and other authorised officers to issue penalty notices for offences against the road transport legislation and certain other Acts and statutory rules if those offences have been prescribed for that purpose under the statutory rules made under the proposed Act.
74. Division 4 provides that proceedings for an offence against the road transport legislation are to be dealt with summarily before the Local Court or Supreme Court. The Division extends the period during which certain kinds of offences against the road transport legislation may be commenced (including offences against an applicable road law within the meaning of the renamed *Road Transport (Vehicle and Driver Management) Act 2005*). In other cases, the applicable period is 6 months after the offence is alleged to have been committed because of the operation of section 179 of the *Criminal Procedure Act 1986*.

The Division also provides that section 10 (Dismissal of charges and conditional discharge of offender) of the *Crimes (Sentencing Procedure) Act 1999* does not apply if a person is charged before a court with a certain offence (an *applicable offence*) if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge, that section is or has been applied to or in respect of the person in respect of a charge for another applicable offence (whether of the same or a different kind). An *applicable offence* is defined to include certain dangerous driving offences, drug and alcohol related offences and offences involving the use of heavy vehicles. The new provision re-enacts (with some modification) the provisions of section 187 (6) of the *Road Transport (General) Act 2005*. However, the new provision now extends to certain offences involving heavy vehicle driver fatigue or heavy vehicle speeding compliance under the renamed *Road Transport (Vehicle and Driver Management) Act 2005*.

75. Division 1 provides for the circumstances in which a court that convicts a person of an offence against the road transport legislation may order the disqualification of the person from holding a driver licence and the circumstances in which an automatic disqualification will be applied on conviction for a major offence. The Division includes

provisions for the automatic licence disqualifications for certain offences. The Division also provides for the bringing forward of consecutive disqualification periods to avoid orphan periods and for the effect of licence disqualifications.

76. Division 2 enables a court to order the use of an interlock device for certain alcohol-related offences as an alternative to licence disqualification.
77. Division 3 provides for the declaration, by operation of the Division, of certain persons to be habitual traffic offenders if they are convicted of 3 or more serious traffic offences within a 5-year period. A habitual traffic offender is disqualified from holding a driver licence for a period of 5 years on the offender's declaration as such an offender.
78. Division 4 enables the Commissioner of Police to suspend a driver licence of a person for a period not exceeding 14 days if the Commissioner is of the opinion that the person is an incompetent, reckless or careless driver or under the influence of liquor.
79. The Division also enables a police officer to give a driver an immediate licence suspension notice for certain serious offences pending the determination of proceedings for the offence.
80. Division 5 enables the Authority to issue certain persons whose driver licences have been cancelled for certain offences involving a vehicle of a prescribed class with another licence that does not authorise the driving of vehicles of that class.
81. Part 7.5 enables a court that convicts a person of an offence against the road transport legislation to make certain kinds of compensation orders. In cases involving an applicable road law offence (within the meaning of the renamed *Road Transport (Vehicle and Driver Management) Act 2005*), a court is permitted to make orders requiring an offender to pay compensation to a roads authority for damage to road infrastructure.
82. Division 1 sets out the objects of, and defines certain words, terms and expressions used in, Part 7.6. In particular, the term *sanctionable offence* is defined to include certain high range speeding offences, drag racing and other serious speeding offences and police pursuit offences. Division 2 enables a police officer to impose certain additional sanctions in connection with the commission of a sanctionable offence involving a motor vehicle. These include seizing or requiring the surrender of the motor vehicle concerned or its number-plates.
83. Part 7.7 provides for the use of evidentiary certificates in proceedings as prima facie evidence of certain specified matters under the road transport legislation. The Part also makes it unnecessary to prove the appointment of certain specified office holders, including the Chief Executive of the Authority and the Commissioner of Police.

The Part contains other provisions relating to evidence of the state of mind of a body corporate or an employer, evidence of the mass rating of a vehicle or component, evidence regarding measuring devices and weighing by a weighbridge or weighing facility. It enables certain statements or allegations made by the prosecution in proceedings, such as statements that a specified vehicle was a heavy vehicle, to be prima facie evidence of the matter stated and gives evidentiary effect to matters contained in transport documentation.

The Part re-enacts (with some modification) the provisions of Part 5.6 of the *Road Transport (General) Act 2005*. In particular, the Part now provides that certificate evidence from the records of the Authority may be used in any legal proceedings. Currently, such certificate evidence may only be given in proceedings for an offence against the road transport legislation.

84. Part 7.8 confers rights of appeal to the Local Court against certain decisions made under the road transport legislation.

Currently, appeal provisions are largely located in Part 3 of the *Road Transport (General) Regulation 2005* based on regulation-making powers contained in section 242 of the *Road Transport (General) Act 2005*. Although section 241 of the *Road Transport (General) Act 2005* contemplates the possibility of reviews by the Administrative Decisions Tribunal, the current regulations provide for appeals to the Local Court instead of reviews by the Administrative Decisions Tribunal.

The opportunity has been taken to reorganise and collect common provisions together in the proposed Act (instead of the statutory rules) given their importance. The provisions have been consolidated so as to avoid the duplication in the current provisions. The Part provides for all appeals to be determined by the Local Court. The Part also provides for the procedure to be followed in relation to original applications to the Local Court under the road transport legislation.

85. Chapter 8 provides for certain miscellaneous matters relating to the operation of the proposed Act and the road transport legislation generally, including in relation to the following:

- (a) the fixing of fees for services provided by the Authority and the collection of unpaid fees and charges,
- (b) the delegation of functions under the road transport legislation,
- (c) the service and lodgment of documents,
- (d) indemnities from liability for the honest and good faith carrying out of functions under the road transport legislation,
- (e) the review of the proposed Act after 5 years.

86. Schedule 1 sets out examples of the general subject-matter areas for the making of statutory rules under the proposed Act. The Schedule seeks to consolidate in a single set of provisions the various general statutory rule-making powers contained in the existing road transport Acts.

87. Schedule 2 Registration charges for heavy vehicles

88. Schedule 2 sets out provisions for the calculation and payment of registration charges for heavy vehicles.

89. Schedule 3 Testing for alcohol and drug use Schedule 3 sets out provisions relating to the procedures for, and the use of evidence obtained from, testing for alcohol or other drug use by drivers and other road users. The provisions of the Schedule are based on the provisions of Divisions 3–5 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*. The new provisions have the same substantive effect as the

current provisions. However, the opportunity has been taken to reorganise and collect common provisions together to avoid the duplication in the current provisions.

90. Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act and the proposed cognate Acts. In particular, the Schedule provides for the existing Road Rules 2008, Road Transport (Driver Licensing) Regulation 2008 and Road Transport (Vehicle Registration) Regulation 2007 to continue in force as Rules or Regulations made under the proposed Act. The Schedule also provides for the proposed Road Transport (General) Regulation 2013 set out in Schedule 3 to the proposed Road Transport (Statutory Rules) Act 2013 to be taken to be a Regulation made under the proposed Road Transport Act 2013. The provisions of the new Regulation are based on provisions that are currently located in the Road Transport (Safety and Traffic Management) Regulation 1999 and Road Transport (General) Regulation 2005.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by Proclamation

91. The Committee notes that these Bills are to commence on proclamation. While the Committee preference is that Bills commence on a designated date or on assent, the Committee appreciates that the complex legislative restructuring may require that administrative arrangements take place before commencement. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative power.

Given the likely administrative arrangements to take place, the Committee does not consider the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.

7. Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Bill 2013

Date introduced	21 February 2013
House introduced	Legislative Amendment
Member responsible	The Hon. Mike Baird MP
Portfolio	Treasury

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Statutory and Other Offices Remuneration Act 1975* to require the Statutory and Other Offices Remuneration Tribunal to give effect to certain government policies declared by the regulations when making determinations under Part 3 of that Act concerning the remuneration of judicial and other office holders.

BACKGROUND

2. Since 2011, the Industrial Relations Commission and the Statutory and Other Office Remuneration Tribunal [SOORT] have been required to apply a Government wages policy to salary determinations for the public service and certain statutory office holders, while an absolute cap of 2.5 per cent is to apply to increases of remuneration for Members of Parliament, mayors of local councillors. However, the Statutory and Other Offices Remuneration Tribunal is not required to apply the wages policy when it determines the remuneration of judicial officers.
3. This legislation is designed to bring the salary increase of judicial officers in line with other statutory office holders, insofar that remuneration can only increase by more than 2.5 per cent if sufficient savings for the judicial officer have been achieved to offset the increased cost.

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 to be appointed by proclamation.
6. Schedule 1 [1] confines the operation of section 6AA of the Act to the determination of the remuneration packages for chief executive and senior executive office holders.
7. Schedule 1 [2] inserts proposed section 6AB into the Act. The proposed section requires the Statutory and Other Offices Remuneration Tribunal, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders:

(a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Tribunal, and

(b) that applies to the matter to which the determination relates.

The office holders to which Part 3 of the Act applies include judicial officers.

8. Schedule 1 [3] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of an amending Act (including the proposed Act).
9. Schedule 1 [4] provides that section 5 of the *Subordinate Legislation Act 1989* is taken not to apply to the first principal regulation made under the *Statutory and Other Offices Remuneration Act 1975* after the commencement of the proposed Act.

ISSUES CONSIDERED BY THE COMMITTEE

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

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

Part Two - Regulations

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

Appendix One – Index of Ministerial Correspondence on Bills

The Committee does not report on any Ministerial Correspondence on Bills in this Digest.

Appendix Two – Index of Correspondence on Regulations on which the Committee has reported

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In Digest 12/55, the Committee reported on the Water Management (General) Amendment (Water Sharing Plans) Regulation (No 2) 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
3. In Digest 16/55, the Committee reported on the Home Building Amendment (Threshold for Home Warrant Insurance) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
4. In Digest 12/55, the Committee reported on the Local Government (General) Amendment (Election Procedures) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 21 June 2012 which addresses to the Committee's satisfaction the issues raised.
5. In Digest 15/55, the Committee reported on the Police Amendment (Death and Disability) Regulation 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 9 July 2012 which addresses to the Committee's satisfaction the issues raised.
6. On 8 May 2012 the Committee wrote to the Attorney General in relation to James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012. The Committee was in receipt of a response from the Attorney General dated 10 August 2012 which addressed to the Committee's satisfaction the issues raised. Further information in relation to this can be found in Digest 23/55.