



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 13/55 – 27 March 2012



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, 2012, vii 31p

Chair: Mr Stephen Bromhead MP

27 March 2012

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 13 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 13 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

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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 received a response to correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the Digests in which reports on the Regulation and correspondence appear.

Conclusions

PART ONE - BILLS

1. CRIMES AMENDMENT (POSSESSION OR DISCHARGE OF FIREARMS IN COMMISSION OF OFFENCES) BILL 2012*

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

Excessive punishment & mandatory sentencing

The Committee refers to Parliament whether legislation dictating a minimum sentence constitutes mandatory sentencing.

The Committee refers to Parliament whether the legislation dictating a minimum sentence to be imposed with respect to discharging or using a weapon whilst committing a serious offence constitutes mandatory sentencing.

Separation of powers & Fair trial

The Committee refers to Parliament whether removing the court's discretion to proportionally impose punishment on offenders in relation to the particular circumstances of the offence committed is compatible with the doctrine of separation of powers. The Committee also refers to Parliament whether the exclusion of s21 *Crimes (Sentencing Procedure) Act 1999* may result in excessive punishment.

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

Commencement by proclamation

The Committee will always note where the commencement of an Act is delegated to the Executive, once passed by the Legislature. Given that the Bill introduces multiple new offences which significantly increase the time for which offenders will be incarcerated, the Committee refers to Parliament whether commencement by proclamation in this Bill inappropriately delegates legislative powers.

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

Matters which should be regarded by Parliament

As significant punishments may result from commission or attempted commission of an offence whilst in possession of a firearm or imitation firearm, the Committee refers to Parliament whether the inclusion of offences prescribed by the regulations in the definition of serious primary offences inappropriately delegates legislative powers.

2. PRIMARY INDUSTRIES LEGISLATION AMENDMENT (BIOSECURITY) BILL 2012

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

Property

The Committee notes that clause 12 of Schedule 1 may empower the Minister to restrict owners from accessing their property in circumstances where it is declared a restricted area.

The Committee is of the opinion that restricting a person's right to property is appropriate in circumstances outlined in the Bill and does not make an adverse comment in relation to clause 12 of the Bill.

The Committee notes that authorising inspectors to take measures to require the vaccination, inspection, testing, treatment, mustering or confining of animals in a specified manner may impinge on an owner's rights in relation to their animals. The Committee is of the opinion that this is appropriate in the circumstances outlined in the Bill, and does not make an adverse comment in relation to clause 20 of the Bill.

The Committee considers that authorising an inspector to move animals or take measures with respect to property interferes with an owner's right to property is appropriate in circumstances where such movement is for the purpose of controlling, eradicating or preventing the spread of emergency animal disease, and does not make an adverse comment in relation to clauses 19 and 20 of the Bill.

Noting the intent of the amendment with respect to managing emergency animal pests, the Committee considers the Minister's power in proposed Division 2 of the *Animal Diseases (Emergency Outbreaks) Act 1991* to declare a property to be infested impacts on a person's right to property in circumstances where they do not have a right of appeal is appropriate, and does not make an adverse comment in relation to proposed Division 2.

Noting the intent of the amendment with respect to managing emergency animal pests, the Committee considers enabling an area to be declared as a restricted area on the basis of the Minister's opinion adversely impacts on an individual's right to property to be appropriate in the circumstances. The Committee notes that whilst an individual may be required to submit their land and animals to disinfection and other measures of control, eradication or prevention, this is reasonable in the circumstances outlined in the Bill and the Committee does not make an adverse comment in relation to the proposed Division 3.

Noting the intent of the amendment with respect to managing emergency animal pests, the Committee considers enabling an area to be declared as a control area on the basis of the Minister's opinion is a reasonable impact on an individual's right to enjoy their property in the circumstances. The Committee notes that whilst an individual may be required to undertake such measures as ordered by the Minister or submit to such measures as the Minister authorises the inspectors to undertake in relation their property, the Committee considers this to be reasonable in the circumstances and does not make an adverse comment in relation to the proposed Division 4.

Noting the intent of the amendments with respect to managing emergency animal pests and the compensation provisions outlined in Part 7 of the *Animal Diseases (Emergency Outbreaks) Act 1991*, the Committee considers that enabling the Minister to order that property be destroyed constitutes is a reasonable impact on an individual's right to property in the circumstances, and does not make an adverse comment with respect to clause 32.

Whilst the Committee notes the adverse impact that quarantine and disinfection orders have on individual property owners, the overriding public interest with respect to managing emergency animal pests is such that the Committee makes no adverse comment in relation to the issues arising out of the orders outlined in clause 42.

The Committee notes the increase in the maximum length of a quarantine period from 21 days to "a specified period of time" to be determined by the Director General without outlining an upper limit on that specified period of time is reasonable in the circumstances outlined in the Bill, and does not make an adverse comment with respect to clause 22.

The Committee considers that it is reasonable to extend the definition of a "quarantine area" to include a personal property item, such as a boat. The Committee notes that, whilst the extension of the definition of a quarantine area to include a boat may have an undue impact on an individual's right to property, this is reasonable in the circumstances outlined in the Bill and as such does not make an adverse comment in relation to clause 1.

Denial of compensation

The Committee notes that whilst section 25 with respect to section 13A(1A) of the *Plant Diseases Act 1924* may constitute a denial of compensation, the Committee considers this to be reasonable in the circumstances and does not make an adverse comment in relation to clause 19 of the Bill.

Privacy

The Committee notes the inclusion of section 45 (1)(h) in the *Animal Diseases (Emergency Outbreaks) Act 1991* with respect to the right to photograph or take video recordings. The Committee also notes that whilst this may impact on a person's right to privacy with respect to their premises, this is reasonable in the circumstances. As such, the Committee does not make an adverse comment in relation to this aspect of the Bill.

The Committee notes the adverse impact that testing, treating or disinfesting may have with respect to an individual's property. However, given the public interest in effectively managing noxious weeds, the Committee considers the powers outlined in clause 9 and 10 of Schedule 3 of the Bill to be reasonable in the circumstances and does not make an adverse comment in relation to this issue.

The Committee notes that whilst authorising an inspector to enter land without a warrant may represent a trespass on an individual's right to privacy, this is reasonable in the circumstances. As such, the Committee does not make an adverse comment in relation to this aspect of the Bill.

Right to Work

Noting the intention of the amendment with respect to noxious fish and marine vegetation, the Committee considers that whilst limiting of the use of a boat may impact on an individual's right to work, this is reasonable in the circumstances. As such, the Committee does not make an adverse comment in relation to this aspect of the Bill.

Excessive Punishment

Whilst the Committee notes the onerous nature of requiring property owners to report cases of suspected emergency animal pests, notifiable diseases and notifiable weeds, the Committee recognises the importance of managing emergency animal pests, notifiable diseases and noxious weeds in a timely manner. As such, the Committee does not make an adverse comment in relation to this issue.

The Committee notes that a four-fold increase in the length of an 'emergency weed control order' could be considered excessive in circumstances where a 'weed control order' can be

ordered for a specified period of time not exceeding five years, however considers this to be reasonable within the context of the Bill. As such, the Committee makes no adverse comment in relation to this issue.

Right Against Self Incrimination

Whilst the Committee notes the impact that requiring individuals to provide answers and documents may have on an individual's right against self incrimination, the Committee notes that any statement made or any information or answer given is not admissible in evidence against the person in criminal proceedings and as such the Committee does not make an adverse comment in relation to this issue.

Animal Rights

The Committee notes that domestic animals have the capacity to have advocates in court, in the form of their owners. Other animals do not have advocates, and the proposed amendment to section 32 of the *Animal Diseases (Emergency Outbreaks) Act 1991* adversely impacts these animals. The effect of removing the word 'domestic' so as to enable the Minister to order the destruction of any type of animal unduly impacts on the rights of animals. The Committee does not make any adverse comment in relation to this issue.

Notwithstanding the intent of the amendment with respect to managing emergency animal pests, the Primary Industries Minister must consult with the Minister administering the *National Parks and Wildlife Act 1974*. In the circumstances, the Committee does not make an adverse comment in relation to this issue.

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

Wide powers

The Committee considers that in the circumstances described by the Bill it is appropriate for a Director General to be provided wide powers with respect to approving permits, and does not make an adverse comment with respect to this issue.

The Committee considers that providing the Minister with the power to require or authorise any measure the Minister considers reasonably necessary with respect to an individual's land or animals is reasonable within the context of the Bill, and does not make an adverse comment with respect to this issue.

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

Interim relief

The Committee notes proposed section 64A(4) which outlines that section 64A does not prevent a court from making a permanent injunction or other final order. The Committee also notes the effect of preventing interim injunctions, orders or other interim relief insofar as it impacts on the ability of individuals to seek relief that would prevent action being undertaken with respect to the interests of that individual. In the emergency circumstances described by the Bill, interim relief may be necessary to protect the rights of individuals (such as the right to property) as the time required to pursue final orders may render final order ineffective. However, giving consideration to the objects of the Bill, the Committee does not make an adverse comment with respect to this issue.

The Committee notes proposed section 24A(4) which outlines that section 24A does not prevent a court from making a permanent injunction or other final order. The Committee also notes the effect of preventing interim injunctions, orders or other interim relief insofar as it impacts on the ability of individuals to seek relief that would prevent action being undertaken with respect to the interests of that individual. In the emergency circumstances described by the Bill, interim relief may be necessary to protect the rights of individuals (such as the right to property) as the time required to pursue final orders may render final order ineffective. However, giving consideration to the objects of the Bill, the Committee does not make an adverse comment with respect to this issue.

Objection to works authorised by control order

The Committee notes the exclusion of a right of appeal with respect to emergency disease or emergency pest orders under section 13B of the *Plant Diseases Act 1924* and the impact this may have with respect to making of the right to property unduly dependant on an unreviewable decision. However, giving consideration to the objects of the Bill, the Committee does not make an adverse comment with respect to this issue.

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

Commencement by proclamation

The Committee will always note where commencement of part of an Act is delegated to the Executive, once passed by the Legislature. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation and for this reason the Committee does not regard the commencement by proclamation of Schedule 1 to be an inappropriate delegation of legislative power.

3. ROAD TRANSPORT (GENERAL) AMENDMENT (VEHICLE SANCTIONS) BILL 2012

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

Compensation

The Committee notes that the clause requires that these persons and bodies are only protected from liability to the extent to which they act in accordance with this Division. For this reason, the Committee does not make an adverse comment in relation to this issue.

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

Commencement by proclamation

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation and for this reason the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power.

PART TWO - REGULATIONS

1. WORK HEALTH AND SAFETY REGULATION 2011

The Committee makes no adverse comment with respect to the regulation.

Part One - Bills

1. Crimes Amendment (Possession or Discharge of Firearms in Commission of Offences) Bill 2012*

Date introduced	15 March 2012
House introduced	Legislative Council
Minister responsible	The Hon. Robert Borsak MLC
	* Private Member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make it an offence to be in possession of a firearm or imitation firearm at the time of committing or attempting to commit certain specified serious offences or to aid, abet, counsel or procure the commission by another person of a specified serious offence while that person is in possession of a firearm or imitation firearm. The Bill also imposes a further penalty if a firearm or imitation firearm is discharged or used at the time that either of the new offences is committed.

BACKGROUND

2. Since at least 1998, there have been a series of firearm of offences which have received parliamentary scrutiny, attracted a high level of media coverage and caused public concern.
3. The *Crimes Amendment (Possession or Discharge of Firearms in Commission of Offences) Bill 2012* shares many similarities to the *Crimes Amendment (Firearms and Other Offensive Weapons or Instruments) Bill* which was introduced in 1998 by the Hon John Tingle MLC. The 1998 Bill sought to introduce separate penalties with respect to crimes committed when carrying a weapon, with one penalty for the carrying of the weapon and an additional penalty for the offence committed. The Bill was defeated by the House.
4. In his second reading speech in relation to this Bill, the Hon. Robert Borsack MLC stated that there was growing public concern regarding the use of firearms in the commission of crimes. Further to this, he stated:

"that the time has come when we must regard the present level of armed crime of all types as a matter requiring urgent attention and that we must implement laws to reflect community concern. Those laws should be aimed at placing a barrier between the offender and the implement he uses in the offence. It should be made clear that this community will not view with indifference the shootings that are becoming common place."

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 3 months after the date of assent, unless it is commenced sooner by proclamation.

Schedule 1 Amendment of *Crimes Act 1900* No 40

7. Schedule 1 inserts a new section into the *Crimes Act 1900*. Proposed section 93IA makes it an offence:
 - (a) to be in possession of a firearm or imitation firearm at the time of committing or attempting to commit certain specified serious primary offences (proposed section 93IA (2)); or,
 - (b) to aid, abet, counsel or procure the commission of a specified serious primary offence by another person where that other person is in possession of a firearm or imitation firearm (proposed section 93IA (4)).
8. The specified serious primary offences include assault, breaking and entering, and certain sexual assaults. Further offences may be added by the regulations to those already specified in proposed section 93IA (1).
9. The new offences are to be punishable by terms of imprisonment that are not less than those imposed in respect of the specified serious primary offences and which are to be served consecutively. For example, the sentence for the offence of being in possession of a firearm at the time of committing an assault will commence at the end of the sentence for the assault.
10. The proposed section also creates an offence that imposes a further penalty (to be served consecutively) if a firearm or imitation firearm is discharged or used at the time either of the other new offences is committed (proposed section 93IA (6)).
11. Under the proposed section, it will be sufficient to prove that the alleged offender had the firearm or imitation firearm in his or her possession at the time of committing or attempting to commit the specified offence—the offender need not actually inflict or threaten harm through the use of the firearm or imitation firearm.
12. A person will not be guilty of an offence under proposed section 93IA (2) if the person satisfies the court that he or she had a reasonable excuse for having the firearm or imitation firearm in his or her possession or had it in his or her possession for a lawful purpose (proposed section 93IA (3)).
13. An accomplice will not be guilty of an offence under proposed section 93IA (4) if he or she satisfies the court that the principal offender had such a defence or if the accomplice:
 - (a) had terminated his or her involvement in the commission of the offence before it was committed or attempted, or

- (b) did not know and could not have reasonably been expected to have known that the other person would have or had a firearm or imitation firearm in his or her possession at the time of committing or attempting to commit the offence, or
 - (c) took all reasonable steps to prevent the other person from being in possession of the firearm or imitation firearm (proposed section 931A (5)).
14. The proposed section excludes the operation of section 21 (General power to reduce penalties) of the *Crimes (Sentencing Procedure) Act 1999* in respect of the sentences imposed in respect of the new offences (proposed section 931A (7)).
 15. Provision is also made to ensure that the proposed section will not take away the liability of a person to be prosecuted for or found guilty of any of the specified serious primary offences or affect the punishment that may be imposed for such an offence (proposed section 931A (8)).

ISSUES CONSIDERED BY COMMITTEE

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

Excessive punishment & mandatory sentencing

16. The Bill introduces new offences for committing or attempting to commit a serious primary offence whilst in possession of a firearm or imitation firearm (s931A *Crimes Act 1900*). An offender is to be charged with the s931A offence in addition to the serious primary offence that is required to have been committed to form an element of s931A offence irrespective of whether the use of a firearm is regarded as an aggravating circumstance of the serious primary offence.
17. The Bill requires that the punishment imposed for s931A (2) or (4) offences must be not less than the term imposed in respect of the commission of the relevant primary offence and that the sentences must be served consecutively.

The Committee refers to Parliament whether legislation dictating a minimum sentence constitutes mandatory sentencing.

18. The Bill also introduces s931A (6) which requires that an additional punishment be imposed if a firearm or imitation firearm is discharged or used at the time of committing or attempting to commit a serious primary offence. A person who commits a s931A(6) offence is to be sentenced to imprisonment for 5 years and this sentence is to be served consecutively with the sentence of the s931A(2) or s931A(4) offence in addition to the sentence imposed for the serious primary offence.

The Committee refers to Parliament whether the legislation dictating a minimum sentence to be imposed with respect to discharging or using a weapon whilst committing a serious offence constitutes mandatory sentencing.

Separation of powers & Fair trial

19. The Bill excludes the operation of s21 *Crimes (Sentencing Procedure) Act 1999* (the general power to reduce penalties) by the courts in relation to s913A offences.

The Committee refers to Parliament whether removing the court's discretion to proportionally impose punishment on offenders in relation to the particular

circumstances of the offence committed is compatible with the doctrine of separation of powers. The Committee also refers to Parliament whether the exclusion of s21 *Crimes (Sentencing Procedure) Act 1999* may result in excessive punishment.

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

Commencement by proclamation

20. The Bill provides for the Act to commence three months after the date of assent unless by proclamation before that time. This may delegate to the Executive the power to commence the proposed Act on whatever day it chooses before three months has passed.

The Committee will always note where the commencement of an Act is delegated to the Executive, once passed by the Legislature. Given that the Bill introduces multiple new offences which significantly increase the time for which offenders will be incarcerated, the Committee refers to Parliament whether commencement by proclamation in this Bill inappropriately delegates legislative powers.

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

Matters which should be regarded by Parliament

21. The Bill includes in the definition of serious primary offences "any other offence under any law (including the common law prescribed by the regulations" [s931A(k)].

As significant punishments may result from commission or attempted commission of an offence whilst in possession of a firearm or imitation firearm, the Committee refers to Parliament whether the inclusion of offences prescribed by the regulations in the definition of serious primary offences inappropriately delegates legislative powers.

2. Primary Industries Legislation Amendment (Biosecurity) Bill 2012

Date introduced	13 March 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Animal Diseases (Emergency Outbreaks) Act 1991*, the *Fisheries Management Act 1994*, the *Noxious Weeds Act 1993* and the *Plant Diseases Act 1924* as follows:
 - (a) to provide for mechanisms to deal with emergency outbreaks of animal pests, such as the declaration of infested places, restricted areas and control areas and accompanying restrictions on movement, and orders relating to control and eradication of animal pests;
 - (b) to prohibit interim court orders that might prevent or delay emergency measures in circumstances where there is an emergency outbreak of notifiable weeds or plant diseases or pests;
 - (c) to provide for the use of quarantine areas to control the spread of noxious fish and noxious marine vegetation and to make other provision with respect to noxious fish and noxious marine vegetation;
 - (d) to enable various orders relating to fish and marine vegetation quarantine areas, noxious weeds and plant diseases and pests to be published urgently in newspapers or on a government website;
 - (e) to require the appropriate authorities to be notified by persons who, while acting in a professional capacity, become aware of the presence of an emergency animal disease or pest or a notifiable weed or a notifiable plant disease or pest;
 - (f) to make other provision with respect to biosecurity measures under those Acts;
 - (g) to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

BACKGROUND

2. The Minister outlined that the Bill seeks to address two areas: attend to gaps and limitations in legislation that may prevent an effective response to a biosecurity emergency and improve New South Wales' compliance with four national biosecurity agreements.
3. The New South Wales Government has previously managed the equine influenza outbreak in 2007, recent outbreaks of Hendra virus and myrtle rust and those experiences inform the Bill.

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 Schedule 1 to the proposed Act on a day or days to be appointed by proclamation and for the rest of the proposed Act to commence on the date of assent to the proposed Act.

Schedule 1 Amendment of Animal Diseases (Emergency Outbreaks) Act 1991 No 73

Emergency animal pest measures

6. Schedule 1 [1] includes a reference to emergency animal pests in the long title to the Act.
7. Schedule 1 [2] changes the name of the Act to reflect the fact that it will now cover emergency animal pests as well as emergency animal diseases.
8. Schedule 1 [3] provides for animals, that are not indigenous to a particular area to be declared as emergency animal pests by an order made by the Minister.
9. Schedule 1 [72] makes a consequential amendment.
10. Schedule 1 [23] inserts proposed Part 3A which contains provisions relating to the control of emergency animal pests. The proposed Part contains the following provisions:
 - (a) Division 1 (proposed sections 27A and 27B) imposes a duty to notify an inspector of an emergency animal pest or suspected pest on an owner of premises, a person who owns, possesses or controls or is in charge of a suspected emergency animal pest and a person who is consulted in a professional capacity. The Division also makes it an offence to intentionally or recklessly, or to threaten to, release an emergency animal pest.
 - (b) Division 2 (proposed sections 27C–27E) provides for the declaration of infested places by the Minister if the Minister reasonably suspects any premises, place or area is infested with an emergency animal pest. The declaration will apply to animal products, fodder, fittings, soil, vehicles or other things identified by the declaration. A permit will be required to cause a vehicle to enter or leave an infested place and to bring or move any thing to which the declaration applies into, within or out of the place. Movement into or out of an infested place by any person or thing affected by the declaration must be made through specified entry and exit points.
 - (c) Division 3 (proposed sections 27F–27J) provides for the declaration of a restricted area by the Minister if the Minister is of the opinion that any premises, place or area is or may become infested with an emergency animal pest. The declaration will apply to animal products, fodder, fittings, soil, vehicles or other things identified by the declaration and will be revoked if notice of the declaration is not published within 14 days. A permit will be required to move things to which the declaration applies into, within or out of a restricted area. Any movement of any such thing into or out of the restricted area must be through specified entry or exit points. The Minister may also make an area restriction order which authorises inspectors, or requires other persons, to take measures to control, eradicate or prevent the spread of an emergency animal pest.

- (d) Division 4 (proposed sections 27K and 27L) provides for the declaration of a control area by the Minister if the Minister thinks it is reasonably necessary for the purpose of preventing the spread of an emergency animal pest. The Minister may also make a control order for the whole or part of a control area. A control order may prohibit, regulate or control the movement of specified things into, out of or within the control area or a specified part of the area or authorise inspectors or require other persons to take specified measures to control, eradicate or prevent the spread of emergency animal pests.
- (e) Division 5 (proposed sections 27M–27P) contains a general provision about the granting of permits, enables an inspector to use reasonable force on a person acting contrary to a requirement of the Part and makes it clear that the proposed Part does not affect the operation of other provisions relating to inspectors or liability for offences.
11. Schedule 1 [25] enables the Minister to make an importation order prohibiting or imposing conditions on the entry or importation into the State of emergency animal pests, animals, animal products, fodder, fittings, soil, vehicles or other things if the Minister reasonably suspects that any premises, place or area outside the State is infested with an emergency animal pest.
 12. Schedule 1 [32] enables the Minister to make a destruction order requiring the destruction of an emergency animal pest, or any premises (other than a dwelling) or any animal, animal product, fodder, fittings or other thing the Minister reasonably suspects to be infested with an emergency animal pest and which cannot be effectively disinfected.
 13. Schedule 1 [37] and [39] make consequential amendments.
 14. Schedule 1 [42] enables an inspector to make a quarantine order so as to prohibit or restrict the movement of any suspected emergency animal pest, animal product, fodder, fitting, soil, vehicle or other thing on to, within or out of any premises or place if the inspector reasonably suspects that the premises or place is infested with an emergency animal pest or believes on reasonable grounds that it is necessary to make the order to prevent the spread of the pest.
 15. Schedule 1 [45] provides that a quarantine order relating to an emergency animal pest is to be in force for 40 days or for such shorter or longer period as the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the *Director-General*) determines.
 16. Schedule 1 [44] makes a consequential amendment.
 17. Schedule 1 [48] empowers an inspector to make a disinfection order directing the owner or person in charge or control of premises or a place to disinfect the premises or place or things in it or any other person leaving or entering the premises or place to disinfect a vehicle or thing. The inspector may make a disinfection order if the inspector reasonably suspects that the premises or place is infested with an emergency animal pest.
 18. Schedule 1 [50] and [51] enable an inspector to seize and impound a thing if the inspector reasonably suspects it to be infested with an emergency animal pest or if it is in or near a declared area or an area where there are emergency animal pests.

19. Schedule 1 [52] enables an inspector to destroy any thing seized if of the opinion that it is necessary to do so to avoid risk to life or property in connection with an emergency animal pest.
20. Schedule 1 [53] confers powers on inspectors to require persons to answer questions, state name and place of residence and produce records or other documents for the purposes of controlling, eradicating or preventing the spread of an emergency animal pest.
21. Schedule 1 [54] makes a consequential amendment.
22. Schedule 1 [57] enables an inspector who is exercising functions to search for, track, mark for identification, test, treat or destroy an emergency animal pest.
23. Schedule 1 [59] enables an inspector to give a written direction requiring an owner or person in charge or control of any premises, place, area, animal or vehicle, or a person in the premises, place, area or vehicle, to give reasonable assistance to the inspector, if the inspector reasonably suspects that the premises, place, area or vehicle is infested with an emergency animal pest.
24. Schedule 1 [62] changes the name of a Fund to reflect its application to things done in connection with emergency animal pests.
25. Schedule 1 [61] and [73] make consequential amendments.
26. Schedule 1 [63] requires accounts for specific emergency animal pests to be established within the Emergency Animal Diseases and Pests Compensation and Eradication Fund.
27. Schedule 1 [64] requires amounts payable to the State by the Commonwealth or any State or Territory for controlling, eradicating and preventing the spread of emergency animal pests to be paid to that Fund.
28. Schedule 1 [65] enables money to be paid from that Fund for certain expenses connected with emergency animal pests.
29. Schedule 1 [67] sets out circumstances when an animal, place or thing may reasonably be suspected of being infested with an emergency animal pest. Schedule 1 [68] extends the existing privative provision relating to emergency animal diseases to emergency animal pests.
30. Schedule 1 [69] makes a consequential amendment. Schedule 1 [71] includes treatment of infestations in the definition of *disinfected*. Schedule 1 [74] includes procedures relating to the alleviation, control, prevention or eradication of emergency animal pests in the definition of *treatment*.

Emergency animal disease measures

31. Schedule 1 [4] enables a declaration of an infected place (where a place is or may be infected with an emergency animal disease) to extend to any thing (the *affected thing*) identified in the declaration. Currently, it is limited to animals, animal products, fodder, fittings, soil and vehicles.

32. Schedule 1 [5] provides that the declaration may only extend to an affected thing if it is or could be infected with an emergency animal disease or could assist the spread of an emergency animal disease.
33. Schedule 1 [6] extends the requirement for a permit to take something into, within or out of an infected place to an affected thing.
34. Schedule 1 [7] and [8] make consequential amendments.
35. Schedule 1 [9] extends the requirement to take something into or out of an infected place through specified entry and exit points to an affected thing.
36. Schedule 1 [10] makes a consequential amendment.
37. Schedule 1 [11] enables a declaration of a restricted area (where premises, a place or an area within the State is or may be infected with an emergency animal disease) to extend to any thing (an *affected thing*) identified in the declaration. Currently, it is limited to animals, animal products, fodder, fittings, soil and vehicles.
38. Schedule 1 [12] provides that the declaration may only extend to an affected thing if it is or could be infected with an emergency animal disease or could assist the spread of an emergency animal disease.
39. Schedule 1 [13] extends the requirement for a permit to take something into, within or out of a restricted area to an affected thing.
40. Schedule 1 [14] makes a consequential amendment.
41. Schedule 1 [15] extends the requirement to take something into or out of a restricted area through specified entry and exit points to an affected thing.
42. Schedule 1 [16] makes a consequential amendment.
43. Schedule 1 [17] enables an area restriction order to authorise inspectors to take measures within a restricted area for the purposes of controlling, eradicating or preventing the spread of an emergency animal disease.
44. Schedule 1 [18] makes a consequential amendment.
45. Schedule 1 [19] makes it clear that a control order may regulate the movement of animals within a specified part of a control area.
46. Schedule 1 [20] enables a control order to authorise inspectors to take measures within a control area for the purposes of controlling, eradicating or preventing the spread of an emergency animal disease.
47. Schedule 1 [21] enables permits to be granted to authorise entry to or exit from, or movement within, a control area.
48. Schedule 1 [24] enables an importation order that prohibits the entry or importation into the State of things to extend to any thing (an *affected thing*) identified in the order. The order is made by the Minister if the Minister reasonably suspects any premises,

place or area outside the State to be infected with an emergency animal disease. Currently, it is limited to animals, animal products, fodder, fittings, soil and vehicles.

49. Schedule 1 [26], [27] and [29] make consequential amendments.
50. Schedule 1 [28] provides that the importation order may only extend to an affected thing if it is or could be infected with an emergency animal disease or infested with an emergency animal pest, or could assist the spread of an emergency animal disease or an emergency animal pest.
51. Schedule 1 [30] enables a destruction order made by the Minister to authorise the destruction of any animal that is infected, or suspected of being infected, with an emergency animal disease. Currently, such an order may be made only in respect of a domestic animal.
52. Schedule 1 [33], [34] and [38] make consequential amendments.
53. Schedule 1 [31] enables a destruction order to authorise the destruction of any thing that the Minister reasonably suspects to be infected with an emergency animal disease and which cannot be effectively disinfected. Currently, this power is limited to animals, animal products, fodder, fittings, soil and vehicles.
54. Schedule 1 [35] makes a consequential amendment.
55. Schedule 1 [40] enables a quarantine order made by an inspector to prohibit or restrict the movement of any thing into or out of any premises, place or vehicle subject to the order if the inspector reasonably suspects the premises, place or vehicle to be infected with an emergency animal disease and that it is necessary to make the order to prevent the spread of such a disease. Currently, this power is limited to animals, animal products, fodder, fittings, soil and vehicles.
56. Schedule 1 [41] enables a quarantine order to restrict movement within the area to which the order applies.
57. Schedule 1 [43] provides that a quarantine order may only extend to a thing (other than an animal, animal product, fodder, fitting, soil or vehicle) if it is or could be infected with an emergency animal disease or infested with an emergency animal pest, or could assist the spread of an emergency animal disease or an emergency animal pest.
58. Schedule I [46] enables an undertaking, accepted by an inspector instead of issuing a quarantine order, to apply to things other than animals, animal products, fodder, fittings and soil.
59. Schedule 1 [47] enables a disinfection order made by an inspector who reasonably suspects an emergency animal disease infection to require any thing within the premises, a place or a vehicle to be disinfected. Currently, this power is limited to premises, a place or a vehicle and any fodder, fittings or soil within the premises, place or vehicle.

Other amendments

60. Schedule 1 [22] confers on the Director-General (instead of the Minister) the function of determining the means by which a general permit is to be granted.

61. Schedule 1 [36] prohibits the Minister from ordering the destruction of protected fauna under a destruction order unless the Minister has first consulted with the Minister administering the *National Parks and Wildlife Act 1974*.
62. Schedule 1 [49] extends the power of inspectors to seize and impound to things other than animals, animal products, fodder, fittings and soil.
63. Schedule 1 [55] removes an unnecessary word.
64. Schedule 1 [56] extends the power of an inspector to inspect, examine, test, disinfect, fumigate or take samples to any thing. Currently, this power is limited to premises, places, areas, fodder, fittings, soil and vehicles. The amendment also enables inspectors to take photographs and make video recordings.
65. Schedule 1 [58] enables inspectors to exercise functions in places that have been the subject of a declaration of a control area within the preceding 2 years.
66. Schedule 1 [60] enables an inspector to require a person to disinfect any premises, place or vehicle.
67. Schedule 1 [66] empowers the Director-General to delegate his or her functions under the Act.
68. Schedule 1 [70] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Fisheries Management Act 1994 No 38

69. Schedule 2 [1] enables a boat to be declared a quarantine area in connection with the presence of a declared disease.
70. Schedule 2 [6] and [7] make consequential amendments.
71. Schedule 2 [2] provides for orders declaring quarantine areas in connection with declared diseases to be published urgently in a newspaper, a radio or television broadcast or on a Government website.
72. Schedule 2 [5] makes a consequential amendment.
73. Schedule 2 [3] enables an order declaring a quarantine area in connection with a declared disease to prohibit or restrict the movement of fish or marine vegetation or specified fish or marine vegetation into, within or out of the area.
74. Schedule 2 [4] corrects a reference to a quarantine area.
75. Schedule 2 [8] inserts proposed sections 209C and 209D. Proposed section 209C enables the Minister to declare a quarantine area for the purposes of dealing with noxious fish or noxious marine vegetation. The provisions will be equivalent to those in force in relation to declared diseases (including the amendments made by the proposed Act). Proposed section 209D makes it an offence to intentionally or recklessly release into any waters live noxious fish or live noxious marine vegetation.

76. Schedule 2 [9] increases the maximum penalty for selling noxious fish or noxious marine vegetation to \$55,000 for a corporation and \$11,000 for an individual.
77. Schedule 2 [10] enables regulations to be made with respect to eliminating or preventing the spread of noxious fish and noxious marine vegetation, including regulations providing for notifications and destruction of such fish or vegetation.
78. Schedule 2 [11] makes it clear that the power of fisheries officers to conduct a search includes a power to take photographs and video recordings.
79. Schedule 2 [12] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Noxious Weeds Act 1993 No 11

80. Schedule 3 [2] increases the maximum term of an emergency weed control order from 3 months to 12 months.
81. Schedule 3 [3] provides for emergency weed control orders to be published urgently in a newspaper, a radio or television broadcast or on a Government website.
82. Schedule 3 [1] makes a consequential amendment.
83. Schedule 3 [4] reduces the period within which an occupier must notify a local authority of a notifiable weed after becoming aware of the weed from 3 days to 24 hours.
84. Schedule 3 [5] requires a person who, in a professional capacity, becomes aware or suspects that a notifiable weed is on land to notify the applicable local authority within 24 hours. It will be an offence not to do so.
85. Schedule 3 [6] enables the Minister to declare land to be a quarantine area if the Minister thinks that Class 1 or 2 noxious weeds (notifiable weeds) are reasonably likely to spread to the land.
86. Schedule 3 [7] provides for orders declaring quarantine areas to be published urgently in a newspaper or on a Government website.
87. Schedule 3 [8] extends the maximum period for which such an order is in force from 6 months to 12 months.
88. Schedule 3 [9] confers on inspectors and authorised officers who enter premises power to test, treat or disinfect any noxious weed material or matter containing suspected noxious weed material.
89. Schedule 3 [10] confers on inspectors and authorised officers who enter premises power to test, treat or disinfect any box, container, package or receptacle that they reasonably suspect contains any noxious weed material or matter containing suspected noxious weed material.
90. Schedule 3 [11] prohibits a court from making an interim injunction or any other interim order or giving interim relief if it would have the effect of preventing or deferring the taking of any emergency action during an emergency period relating to a notifiable weed emergency. The Minister may, by order, declare that a notifiable weed emergency

exists or is imminent and specify the emergency period for which emergency actions may be taken. The provisions do not prevent a court from making a permanent injunction or a final order in proceedings at any time.

91. Schedule 3 [12] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Plant Diseases Act 1924 No 38

92. Schedule 4 [2] inserts definitions of *emergency disease*, *emergency pest*, *land* and *treat*.
93. Schedule 4 [3] includes infested as part of the meaning of the term *infected*.
94. Schedule 4 [5] makes it clear that the Minister may require measures to be taken under an order made for the purposes of treating, preventing the spread of or eradicating a plant disease or plant pest affecting plants or fruit that are not infected.
95. Schedule 4 [7] provides for such orders to be published urgently in a newspaper, a radio or television broadcast or on a Government website.
96. Schedule 4 [4] and [6] make consequential amendments.
97. Schedule 4 [8] updates an outdated reference to the Government Gazette.
98. Schedule 4 [10] provides for declarations of quarantine areas to be published urgently in a newspaper, a radio or television broadcast or on a Government website.
99. Schedule 4 [9] makes a consequential amendment.
100. Schedule 4 [11] enables an inspector to accept an undertaking on behalf of the Minister, as an alternative to a Ministerial declaration of a quarantine area. Currently, only the Minister may accept such an undertaking.
101. Schedule 4 [14] provides for notifications of special regulations for quarantine areas to be published urgently in a newspaper, a radio or television broadcast or on a Government website.
102. Schedule 4 [12] and [13] make consequential amendments.
103. Schedule 4 [15] requires an inspector or the Director-General to be notified by the owner or occupier of land, a person in possession or control of a plant, plant product or soil or a person consulted in a professional capacity, of the presence or suspected pests (notifiable diseases and pests).
104. Schedule 4 [16] confers on inspectors powers to enter any land, premises, vehicle or vessel for the purpose of carrying out surveillance work in relation to plants, coverings or things if they reasonably suspect that a disease or pest is present or is likely to spread to that land, premises, vehicle or vessel.
105. Schedule 4 [17] makes a consequential amendment.
106. Schedule 4 [18] enables inspectors who enter premises to take photographs or video recordings.

107. Schedule 4 [19] enables a control order made by the Minister to authorise an inspector to destroy or dispose of plants or fruit or coverings for plants or fruit or other property, if the Minister believes on reasonable grounds that it is necessary to do so in order to eradicate or prevent the spread of an emergency disease or emergency pest.
108. Schedule 4 [20] increases the maximum period that a control order may be in force from 6 months to 12 months.
109. Schedule 4 [21] removes the right to object to things authorised by a control order if the control order relates to an emergency disease or emergency pest.
110. Schedule 4 [22] and [23] extend the period for which particular land or premises may be quarantined by an inspector from 21 days to 40 days.
111. Schedule 4 [24] expands the power of inspectors to require persons to answer questions. An inspector will be able to require persons to answer questions relevant to the control or eradication or prevention of the spread of a disease or pest and require records or other documents to be produced.
112. Schedule 4 [25] makes it an offence, without reasonable excuse, to fail to produce a record or other document at the request of an inspector.
113. Schedule 4 [26] removes the privilege against self-incrimination in relation to requirements to provide information and answer questions made by inspectors but provides that any such information or answer is not admissible as evidence against the person in criminal proceedings (except in relation to false information or other offences about complying with inspectors' requirements).
114. Schedule 4 [27] prohibits a court from making an interim injunction or any other interim order or giving interim relief if it would have the effect of preventing or deferring the taking of any emergency action during an emergency period relating to emergency diseases and pests. The Minister may, by order, declare that a plant disease emergency exists involving an emergency disease or emergency pest or is imminent and specify the emergency period for which emergency actions may be taken. The provisions do not prevent a court from making a permanent injunction or a final order in proceedings at any time.
115. Schedule 4 [28] makes it clear that the provision prohibiting payment of compensation for things done by inspectors and others does not prevent compensation being paid under an agreement entered into by the State.
116. Schedule 4 [29] changes the process for declarations of diseases and other matters from a proclamation made by the Governor to an order made by the Minister.
117. Schedule 4 [1] makes a consequential amendment.
118. Schedule 4 [30] enables any thing to be declared a plant disease.
119. Schedule 4 [31] enables the Minister to make an order declaring a disease to be an emergency disease or a pest to be an emergency pest.

120. Schedule 4 [32] provides for orders made by the Minister declaring plant diseases and other matters to be published urgently in a newspaper, a radio or television broadcast or on a Government website.
121. Schedule 4 [33] provides for orders or notifications made or given under the Act to commence on publication or on such later day as may be specified in them.
122. Schedule 4 [34] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.
123. Schedule 4 [35] continues existing proclamations in force.

ISSUES CONSIDERED BY COMMITTEE

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

Property

124. Section 15 of the *Animal Diseases (Emergency Outbreaks) Act 1991* outlines the power of the Minister to declare a restricted area with respect to animals, animal products, fodder, fittings, soil or vehicles. Clause 12 of Schedule 1 of the Bill proposes to insert section 15(3) which would give the Minister the power to declare a class or description of things that are not animals, animal products, fodder, fittings, soil or vehicles. This may have the effect of restricting owners from accessing a restricted area, which would have an impact on their right to property.

The Committee notes that clause 12 of Schedule 1 may empower the Minister to restrict owners from accessing their property in circumstances where it is declared a restricted area. The Committee is of the opinion that restricting a person's right to property is appropriate in circumstances outlined in the Bill and does not make an adverse comment in relation to clause 12 of the Bill.

125. Clause 20 of Schedule 1 of the Bill authorises inspectors to take measures specified in an area restriction order for the purpose of controlling, eradicating or preventing the spread of an emergency animal disease.

The Committee notes that authorising inspectors to take measures to require the vaccination, inspection, testing, treatment, mustering or confining of animals in a specified manner may impinge on an owner's rights in relation to their animals. The Committee is of the opinion that this is appropriate in the circumstances outlined in the Bill, and does not make an adverse comment in relation to clause 20 of the Bill.

126. Clauses 19 and 20 of Schedule 1 of the Bill provide that inspectors can take measures specified in a control order with respect to the control area or a specified part of the control area.

The Committee considers that authorising an inspector to move animals or take measures with respect to property interferes with an owner's right to property is appropriate in circumstances where such movement is for the purpose of controlling, eradicating or preventing the spread of emergency animal disease, and does not make an adverse comment in relation to clauses 19 and 20 of the Bill.

127. Clause 23 of Schedule 1 of the Bill inserts Part 3A Control of Emergency Animal Pests into the *Animal Diseases (Emergency Outbreaks) Act 1991*. The proposed Division 2 empowers the Minister to declare a place to be "infested" on the basis of a reasonable suspicion. Whilst the Minister is required to provide written notice of the declaration to the owner, the owner does not have the power to appeal the decision to declare their property to be infested. Proposed Division 2 outlines that an owner cannot enter or exit a declared place without a permit. Entry is punishable by up to 400 penalty units or imprisonment for 12 months or both.

Noting the intent of the amendment with respect to managing emergency animal pests, the Committee considers the Minister's power in proposed Division 2 of the *Animal Diseases (Emergency Outbreaks) Act 1991* to declare a property to be infested impacts on a person's right to property in circumstances where they do not have a right of appeal is appropriate, and does not make an adverse comment in relation to proposed Division 2.

128. Clause 23 of Schedule 1 of the Bill inserts Part 3A Control of Emergency Animal Pests into the *Animal Diseases (Emergency Outbreaks) Act 1991*. The proposed Division 3 empowers the Minister to declare a premises, place or area to be a "restricted area" if the Minister is of the opinion that it may be or become infested with an emergency animal pest. An owner of such a premises, place or area requires a permit to move things into, within or out of a restricted area and is guilty of an offence if no permit exists (punishable by 400 penalty units or imprisonment for 12 months or both). Proposed Division 3 of Part 3A also enables the Minister to publish an area restriction order which can require or authorise disinfection, measures to control, eradicate or prevent the spread of an emergency animal pest or require or authorise other measures to be taken which the Minister considers reasonably necessary in the circumstances.

Noting the intent of the amendment with respect to managing emergency animal pests, the Committee considers enabling an area to be declared as a restricted area on the basis of the Minister's opinion adversely impacts on an individual's right to property to be appropriate in the circumstances. The Committee notes that whilst an individual may be required to submit their land and animals to disinfection and other measures of control, eradication or prevention, this is reasonable in the circumstances outlined in the Bill and the Committee does not make an adverse comment in relation to the proposed Division 3.

129. Clause 23 of Schedule 1 of the Bill inserts Part 3A Control of Emergency Animal Pests into the *Animal Diseases (Emergency Outbreaks) Act 1991*. The proposed Division 4 empowers the Minister to declare a premises, place or area to be a "control area" if the Minister has the opinion that this is reasonably necessary for the purpose of preventing the spread of an emergency animal pest. The Minister can then issue a control order prohibiting, regulating or controlling the movement of items into, within or out of the control area, order specified persons to take such measures as the Minister thinks fit or authorise inspectors to take such measures. Contraventions of such orders attract penalties of 200 penalty units or imprisonment for six months or both.

Noting the intent of the amendment with respect to managing emergency animal pests, the Committee considers enabling an area to be declared as a control area on the basis of the Minister's opinion is a reasonable impact on an

individual's right to enjoy their property in the circumstances. The Committee notes that whilst an individual may be required to undertake such measures as ordered by the Minister or submit to such measures as the Minister authorises the inspectors to undertake in relation their property, the Committee considers this to be reasonable in the circumstances and does not make an adverse comment in relation to the proposed Division 4.

130. Clause 32 of Schedule 1 of the Bill inserts section 32 (1A) of the *Animal Diseases (Emergency Outbreaks) Act 1991* which provides that the Minister may order the destruction of any premises (other than a dwelling) if the Minister reasonably suspects it to be infested with an emergency animal pest and cannot be effectively disinfected.

Noting the intent of the amendments with respect to managing emergency animal pests and the compensation provisions outlined in Part 7 of the *Animal Diseases (Emergency Outbreaks) Act 1991*, the Committee considers that enabling the Minister to order that property be destroyed constitutes a reasonable impact on an individual's right to property in the circumstances, and does not make an adverse comment with respect to clause 32.

131. Clause 42 of Schedule 1 of the Bill inserts section 35 (1AA) of the *Animal Diseases (Emergency Outbreaks) Act 1991* which provides that an inspector may issue a quarantine order to prohibit or restrict the movement of any suspected emergency animal pest, animal product, fodder, fitting, soil, vehicle or other thing on to, within or out of the premises or place. Clause 48 of the Bill inserts section 39 (1) which provides that an inspector may issue a disinfection order with respect to a premises or place or a person entering or leaving the premises.

Whilst the Committee notes the adverse impact that quarantine and disinfection orders have on individual property owners, the overriding public interest with respect to managing emergency animal pests is such that the Committee makes no adverse comment in relation to the issues arising out of the orders outlined in clause 42.

132. Clause 22 of Schedule 4 has the effect of increasing the maximum length of time of a quarantine from 21 days to "a specified period of time" [section 15(1) *Plant Diseases Act 1924*] to be determined by the Director General.

The Committee notes the increase in the maximum length of a quarantine period from 21 days to "a specified period of time" to be determined by the Director General without outlining an upper limit on that specified period of time is reasonable in the circumstances outlined in the Bill, and does not make an adverse comment with respect to clause 22.

133. Clause 1 of Schedule 2 inserts the word 'boat' into the definition of a quarantine area in the *Fisheries Management Act 1994*.

The Committee considers that it is reasonable to extend the definition of a "quarantine area" to include a personal property item, such as a boat. The Committee notes that, whilst the extension of the definition of a quarantine area to include a boat may have an undue impact on an individual's right to

property, this is reasonable in the circumstances outlined in the Bill and as such does not make an adverse comment in relation to clause 1.

Denial of compensation

134. Clause 19 of Schedule 4 of the Bill inserts section 13A(1A) of the *Plant Diseases Act 1924* which has the effect of authorising an inspector to destroy of plants or fruit or any other non-dwelling property. Section 25 of the *Plant Diseases Act 1924* expressly prohibits the payment of compensation with respect to actions by an inspector unless the acts were wilful, negligent or malicious. Whilst clause 28 of Schedule 4 of the Bill outlines that section 25 does not prevent the payment of compensation in accordance with an agreement entered into by this State, the Bill does not contain any compensation measures with respect to section 13A(1A) of the *Plant Diseases Act 1924*.

The Committee notes that whilst section 25 with respect to section 13A(1A) of the *Plant Diseases Act 1924* may constitute a denial of compensation, the Committee considers this to be reasonable in the circumstances and does not make an adverse comment in relation to clause 19 of the Bill.

Privacy

135. Section 45 (1) of the *Animal Diseases (Emergency Outbreaks) Act 1991* lists the search and entry powers conferred on an inspector. In addition to existing powers, Clause 56 of Schedule 1 of the Bill adds the power to photograph or take video recordings of any premises or place.

The Committee notes the inclusion of section 45 (1)(h) in the *Animal Diseases (Emergency Outbreaks) Act 1991* with respect to the right to photograph or take video recordings. The Committee also notes that whilst this may impact on a person's right to privacy with respect to their premises, this is reasonable in the circumstances. As such, the Committee does not make an adverse comment in relation to this aspect of the Bill.

136. Clause 9 of Schedule 3 of the Bill inserts section 44(c1) in the *Noxious Weeds Act 1993*, which has the effect of providing an inspector or authorised officer with the power to enter premises to test, treat, or disinfect any noxious weed matter or matter that the officer reasonably suspects contains noxious weed material. Clause 10 inserts section 44(j) which provides such an officer with the power to test, treat or disinfect any box, container, package or receptacle in or about those premises that the officer reasonably suspects contains any noxious weed material.

The Committee notes the adverse impact that testing, treating or disinfecting may have with respect to an individual's property. However, given the public interest in effectively managing noxious weeds, the Committee considers the powers outlined in clause 9 and 10 of Schedule 3 of the Bill to be reasonable in the circumstances and does not make an adverse comment in relation to this issue.

137. Clause 16 of Schedule 4 inserts section 13(1BA) in the *Plant Diseases Act 1924*, which has the effect of authorising an inspector to enter any land, premises, vehicle or vessel for the purpose of carrying out surveillance work in relation to plants, coverings or other things.

The Committee notes that whilst authorising an inspector to enter land without a warrant may represent a trespass on an individual's right to privacy, this is reasonable in the circumstances. As such, the Committee does not make an adverse comment in relation to this aspect of the Bill.

Right to Work

138. Clause 8 of Schedule 2 inserts section 209C into the *Fisheries Management Act 1994*. Section 209C outlines that the Minister may declare a boat to be a quarantine area. Such an order may prohibit the taking of fish and movement of fish and require the destruction of fish.

Noting the intention of the amendment with respect to noxious fish and marine vegetation, the Committee considers that whilst limiting of the use of a boat may impact on an individual's right to work, this is reasonable in the circumstances. As such, the Committee does not make an adverse comment in relation to this aspect of the Bill.

Excessive Punishment

139. Clause 23 of Schedule 1 of the Bill inserts Part 3A Control of Emergency Animal Pests into the *Animal Diseases (Emergency Outbreaks) Act 1991*. The proposed section 27A places a reporting duty on a person who owns any premises on which the person suspects there is an emergency animal or pest, with a maximum penalty of 200 penalty units. Clause 4 of Schedule 3 of the Bill changes the reporting requirement from three days to 24 hours with respect to section 15 of the *Noxious Weeds Act 1993*. Clause 15 of Schedule 4 of the Bill inserts a new section 10 in the *Plant Diseases Act 1924* which places a reporting duty on anyone who suspects land that they own or occupy has a notifiable disease or pest present, with a maximum penalty of 100 penalty units.

Whilst the Committee notes the onerous nature of requiring property owners to report cases of suspected emergency animal pests, notifiable diseases and notifiable weeds, the Committee recognises the importance of managing emergency animal pests, notifiable diseases and noxious weeds in a timely manner. As such, the Committee does not make an adverse comment in relation to this issue.

140. Clause 2 of Schedule 3 of the Bill amends section 10(2) of the *Noxious Weeds Act 1993* so that the maximum length of an emergency weed control order is extended from three months to twelve months.

The Committee notes that a four-fold increase in the length of an 'emergency weed control order' could be considered excessive in circumstances where a 'weed control order' can be ordered for a specified period of time not exceeding five years, however considers this to be reasonable within the context of the Bill. As such, the Committee makes no adverse comment in relation to this issue.

Right Against Self Incrimination

141. Clause 24 of Schedule 4 has the effect of amending section 18(1) of the *Plant Diseases Act 1924* so as to require a person to answer any question that the inspector reasonably believes may provide relevant information, require a person to produce any record or

document and inspect and take extracts from or copies of any record or other document. Clause 26 of Schedule 4 of the Bill outlines that any statement made or any information or answer given or furnished in compliance with a requirement under the Bill is not admissible in evidence against the person in criminal proceedings if the person objected at the time to doing so on the ground that it might incriminate the person or the person was not warned on that occasions that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.

Whilst the Committee notes the impact that requiring individuals to provide answers and documents may have on an individual's right against self incrimination, the Committee notes that any statement made or any information or answer given is not admissible in evidence against the person in criminal proceedings and as such the Committee does not make an adverse comment in relation to this issue.

Animal Rights

142. Section 32 of the *Animal Diseases (Emergency Outbreaks) Act 1991* provides the Minister with the power to order the destruction of any domestic animal which is infected with an emergency animal disease or in a declared area if the Minister is satisfied that it is reasonably necessary to do so in order to prevent the spread of an emergency animal disease. Clause 30 of Schedule 1 of the Bill has the effect of removing the word "domestic" from section 32, so that the Minister can order the destruction of any animal in the circumstances described in section 32.

The Committee notes that domestic animals have the capacity to have advocates in court, in the form of their owners. Other animals do not have advocates, and the proposed amendment to section 32 of the *Animal Diseases (Emergency Outbreaks) Act 1991* adversely impacts these animals. The effect of removing the word 'domestic' so as to enable the Minister to order the destruction of any type of animal unduly impacts on the rights of animals. The Committee does not make any adverse comment in relation to this issue.

143. Clause 36 of Schedule 1 of the Bill inserts subsection 32 (4) in *Animal Diseases (Emergency Outbreaks) Act 1991*, outlining that the Primary Industries Minister may only order the destruction of protected fauna following consultation with the Minister administering the *National Parks and Wildlife Act 1974*.

Notwithstanding the intent of the amendment with respect to managing emergency animal pests, the Primary Industries Minister must consult with the Minister administering the *National Parks and Wildlife Act 1974*. In the circumstances, the Committee does not make an adverse comment in relation to this issue.

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

Wide powers

144. Clause 22 of Schedule 1 of the Bill removes the reference to Minister from section 24 (2A) of the *Animal Diseases (Emergency Outbreaks) Act 1991*, and replaces it with the Director General. This has the effect of a permit being granted by such means as

approved by the Director General. Permits can relate to entry and exit from an infected place, vehicle or restricted area or the carrying out of any activity that is the subject of a control order.

The Committee considers that in the circumstances described by the Bill it is appropriate for a Director General to be provided wide powers with respect to approving permits, and does not make an adverse comment with respect to this issue.

145. Clause 23 of Schedule 1 of the Bill inserts Part 3A Control of Emergency Animal Pests in *Animal Diseases (Emergency Outbreaks) Act 1991*. Proposed Division 3 of Part 3A enables the Minister to publish an area restriction order which can require or authorise disinfection, measures to control, eradicate or prevent the spread of an emergency animal pest or require or authorise other measures to be taken which the Minister considers reasonably necessary in the circumstances.

The Committee considers that providing the Minister with the power to require or authorise any measure the Minister considers reasonably necessary with respect to an individual's land or animals is reasonable within the context of the Bill, and does not make an adverse comment with respect to this issue.

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

Interim relief

146. Clause 11 of Schedule 3 of the Bill inserts section 64A in the *Noxious Weeds Act 1993*, outlining that a court must not issue an interim injunction, make any other interim order or give any other interim relief that would have the effect of preventing, restricting or deferring any emergency action or anything authorised or required to be done pursuant to an emergency action during the emergency period.

The Committee notes proposed section 64A(4) which outlines that section 64A does not prevent a court from making a permanent injunction or other final order. The Committee also notes the effect of preventing interim injunctions, orders or other interim relief insofar as it impacts on the ability of individuals to seek relief that would prevent action being undertaken with respect to the interests of that individual. In the emergency circumstances described by the Bill, interim relief may be necessary to protect the rights of individuals (such as the right to property) as the time required to pursue final orders may render final order ineffective. However, giving consideration to the objects of the Bill, the Committee does not make an adverse comment with respect to this issue.

147. Clause 27 of Schedule 4 of the Bill inserts section 24A in the *Plant Diseases Act 1924* which has the effect of restricting the court from issuing an interim injunction, making any other interim order or giving any other interim relief with respect to preventing, restricting or deferring any emergency action or anything authorised or required to be done pursuant to an emergency action during the emergency period.

The Committee notes proposed section 24A(4) which outlines that section 24A does not prevent a court from making a permanent injunction or other final order. The Committee also notes the effect of preventing interim injunctions,

orders or other interim relief insofar as it impacts on the ability of individuals to seek relief that would prevent action being undertaken with respect to the interests of that individual. In the emergency circumstances described by the Bill, interim relief may be necessary to protect the rights of individuals (such as the right to property) as the time required to pursue final orders may render final order ineffective. However, giving consideration to the objects of the Bill, the Committee does not make an adverse comment with respect to this issue.

Objection to works authorised by control order

148. Clause 21 of Schedule 4 of the Bill inserts 13B(4) into the *Plant Diseases Act 1924*, which has the effect of removing a right of objection to the carrying out of works on land or premises with respect to emergency disease or emergency pest orders. Objections under section 13B are considered by the Director-General.

The Committee notes the exclusion of a right of appeal with respect to emergency disease or emergency pest orders under section 13B of the *Plant Diseases Act 1924* and the impact this may have with respect to making of the right to property unduly dependant on an unreviewable decision. However, giving consideration to the objects of the Bill, the Committee does not make an adverse comment with respect to this issue.

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

Commencement by proclamation

149. Schedule 1 of the Act commences on a day or days to be appointed by proclamation.
150. The Minister indicated in the Agreement in Principle speech that it is not possible for Schedule 1 to commence immediately because the provisions in Schedule 1 require regulations in order to become operational.

The Committee will always note where commencement of part of an Act is delegated to the Executive, once passed by the Legislature. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation and for this reason the Committee does not regard the commencement by proclamation of Schedule 1 to be an inappropriate delegation of legislative power.

3. Road Transport (General) Amendment (Vehicle Sanctions) Bill 2012

Date introduced	13 March 2012
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Police and Emergency Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the 2005 Act:
 - (a) to repeal the provisions of Division 2 of Part 5.5 of that Act relating to the wheel clamping of vehicles, and
 - (b) to expand the operation of Division 2 of Part 5.5 of that Act by enabling the imposition of sanctions under that Division in relation to certain high range speed and police pursuit offences, and
 - (c) to enhance the operation of Division 2 of Part 5.5 of that Act by enabling the confiscation of number plates from motor vehicles as an additional sanction.
2. The Bill also contains amendments to the 2005 Act and other legislation of a related, consequential or savings and transitional nature.

BACKGROUND

3. In 2008, the *Road Transport Legislation Amendment (Car Hoons) Bill 2008* was introduced to strengthen sanctions relating to the detention, impounding and forfeiture of motor vehicles. The Bill was in response to the number of 'street racing' incidents on State roads which resulted in a number of casualties including deaths of innocent members of the public.
4. According to the Minister for Police and Emergency Services, the Hon. Michael Gallacher MLC, when wheel clamping "was used it resulted in no time saving for police as they had to attend the address of the offender to ascertain whether the site would be suitable for accommodating a clamped vehicle. The trial showed that clamping was not an effective sanction".
5. Since this time, the figures for high-range speeding offences have remained steady. According to the Minister for Police and Emergency Services, the Hon. Michael Gallacher MLC, "Vehicle sanctions are supported by road safety stakeholders. For example, at a 2009 road safety roundtable convened by the then Roads and Traffic Authority there was strong support for vehicle impounding and number plate confiscation for high-range speeding, particularly for repeat offenders."

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 (other than Schedules 2 and 3) on the date of assent to the proposed Act. Schedules 2 and 3 (other than Schedule 3.1 [4], [16], [17] and [19]) are to commence on a day or days to be appointed by proclamation.

Schedule 1 Amendments to Road Transport (General) Act 2005 No 11 relating to clamping of vehicles

8. Schedule 1 repeals the provisions of the 2005 Act relating to wheel clamping of motor vehicles as referred to in paragraph (a) of the above Overview of the Bill. The provisions to be repealed will continue to apply to motor vehicles whose wheels are clamped before the commencement of the amendments (Schedule 1 [30], proposed clause 23).
9. Schedule 1 [29] provides for the making of savings and transitional regulations.
10. Schedule 1 [30] contains savings and transitional provisions (proposed clauses 24 and 25) concerning the operation of the proposed new sanctions provisions to be inserted by Schedule 2 in relation to offences occurring before the commencement of the provisions.

Schedule 2 Amendments to Road Transport (General) Act 2005 No 11 relating to number plate confiscation and other vehicle sanctions

11. Schedule 2 replaces Division 2 of Part 5.5 of the 2005 Act with a new Division (proposed sections 217–228) for the purposes described in paragraphs (b) and (c) of the above Overview of the Bill.
12. Proposed section 217 states the object of the new Division. It also makes it clear that the Division does not affect any discretion or power that a court or person has apart from the Division in respect of any sanctionable or other offence.
13. Proposed section 217A contains definitions used in the new Division. The Division enables sanctions to be imposed with respect to sanctionable offences as defined in proposed section 217A. These are high range speed offences, an offence under section 40 or 41 (2) of the Road Transport (Safety and Traffic Management) Act 1999, an offence under section 51B (Police pursuits) of the Crimes Act 1900 and any other offence prescribed by the regulations. A high range speed offence is an offence (not being a camera recorded offence) of driving a vehicle at a speed more than 45 kilometres per hour over the designated speed limit applying to the driver for the length of road at the time the offence is committed. Except in the case of a road in a school zone, the designated speed limit is defined to mean the normal speed limit applying to the length of road, not the variable speed limit applicable from time to time.
14. Proposed section 218 describes the circumstances in which a police officer may impose sanctions under the new Division.
15. Proposed section 218A describes the sanctions that may be imposed under the new Division. Proposed section 218A (1) (a) and (b) are similar to existing provisions in section 218 (1A) (b) and (c) of the 2005 Act which enable a police officer to either

impound a vehicle or to give the driver a production notice requiring the driver to produce the vehicle at a specified place within a period of time. The new provisions will require production no later than on the first working day that is 5 days after the notice is given instead of the present 10 days.

16. Proposed section 218A (1) (c)–(e) contain the new sanctions relating to confiscation of number plates. A police officer has several options. The police officer may remove the vehicle’s number plates and attach a number plate confiscation notice so that the vehicle will immediately be prohibited from being operated for a period of 3 months (proposed section 218A (1) (c)). Alternatively, the police officer may (either immediately or as soon as practicable afterwards) give the offending operator a number plate production notice requiring the offending operator to produce the number plates at a specified place by a date and time specified in the notice and attach a number plate confiscation notice to the vehicle. The production date must be no later than the first working day occurring 5 days after the notice is given (proposed section 218B). The motor vehicle will be prohibited from being operated for a period of 3 months commencing from the production date (proposed section 218A (1) (d) and (3) (b)). A number plate production notice may also be sent (together with a number plate confiscation notice) to an offending operator at the garage address of the motor vehicle. In this case, the offending operator is required to attach the number plate confiscation notice to the vehicle (proposed section 218A (1) (e), (2) and (3) (b)).
17. Proposed section 218B contains provisions relating to the giving and withdrawal of motor vehicle and number plate production notices.
18. Proposed section 218C specifies the powers and duties of police officers in relation to the exercise of powers under proposed section 218A. It also makes it clear that the registered operator of a motor vehicle which has had its number plates removed is responsible for the safe and legal parking of the vehicle, any fees for removal or towing and any other costs and financial loss incurred (including any parking fines and any fees for the issue of any number plate to replace a number plate damaged when removed under the proposed section).
19. Proposed section 218D enables the Commissioner of Police to impound vehicles moved to or produced at a place in accordance with proposed section 218A.
20. Proposed section 218E makes it an offence to fail to comply with a motor vehicle or number plates production notice. It also enables the registration of vehicles to be suspended for a period not exceeding 3 months and provides for the automatic forfeiture to the Crown of motor vehicles of repeat offenders against the section.
21. Proposed section 218F creates various offences concerning the confiscation of number plates and operation of motor vehicles during the period in which a vehicle from which number plates have been confiscated is prohibited from being operated.
22. Proposed section 219 provides for the automatic forfeiture to the Crown of motor vehicles used in connection with sanctionable offences on repeat occasions during a 5 year period.

23. Proposed section 219A enables a court to direct that the automatic forfeiture of a motor vehicle under proposed section 218E (5) or 219 (2) be commuted to a period of impounding or confiscation of number plates in certain circumstances.
24. Proposed section 220 requires an offending operator to give the holder of any registered interest in the motor vehicle used in connection with the offence notice of the imposition of any sanction in relation to the motor vehicle under proposed section 218A.
25. Proposed section 221 provides for the retention of impounded motor vehicles and confiscated number plates.
26. Proposed section 222 enables a person to apply to the Local Court for early release of a motor vehicle impounded or number plates confiscated under the proposed Division. The Local Court may only order the release after payment of all movement, towing and storage fees.
27. Proposed section 223 provides for the release of a motor vehicle impounded or number plates confiscated under the proposed Division after payment of all movement, towing and storage fees.
28. Proposed section 224 provides for the safe keeping of a motor vehicle impounded under the proposed Division.
29. Proposed section 225 enables a forfeited motor vehicle to be released to Roads and Maritime Services (the Authority) and used by the Authority for the purposes of crash testing and any educational program for drivers of motor vehicles. It also provides for the disposal of forfeited and unclaimed impounded motor vehicles. Proposed section 226 protects the Crown, the Minister, the Commissioner of Police, the Authority, Transport for NSW and police officers from liability with respect to action taken under the proposed Division.
30. Proposed section 227 protects the Crown, the Minister, the Commissioner of Police and police officers from liability with respect to failure to prosecute for offences against the proposed Division.
31. Proposed section 228 provides for the issue of search warrants for the purpose of investigating contraventions of certain provisions under the proposed Division.

Schedule 3 Amendment of regulations

32. Schedule 3 contains consequential amendments to certain regulations. Schedule 3.2 [3] amends the Road Transport (Vehicle Registration) Regulation 2007 to put it beyond doubt that it is an offence to drive a vehicle registered by the Authority without number plates issued by the Authority.

ISSUES CONSIDERED BY COMMITTEE

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

Compensation

33. Clause 28 protects the Crown, Minister, the Commissioner, Transport NSW, the Authority or any police officer from liability with respect to impounding and crash-

testing of forfeited vehicles. Providing a blanket denial of compensation for all acts, without regard for the circumstances in which potential liability arises may contravene the principle of fairness in providing compensation where a loss is suffered as a result of the actions of another.

The Committee notes that the clause requires that these persons and bodies are only protected from liability to the extent to which they act in accordance with this Division. For this reason, the Committee does not make an adverse comment in relation to this issue.

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

Commencement by proclamation

34. The Bill provides for Schedule 2 and 3 to commence on a day or days to be appointed by proclamation. This may delegate to the Executive the power to commence the proposed Act on whatever day it chooses or not at all.

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation and for this reason the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power.

Part Two - Regulations

1. Work Health and Safety Regulation 2011

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to prescribe matters under the Work Health and Safety Act 2011 to enable that Act to come into operation on 1 January 2012.
2. The provisions of this Regulation are substantially uniform with the Model Work Health and Safety Regulations 2011 prepared by Safe Work Australia.
3. This Regulation is made under the Work Health and Safety Act 2011, including section 276 of, and Schedule 3, to that Act (the general regulation-making powers).
4. This Regulation comprises matters set out in Schedule 3 to the Subordinate Legislation Act 1989, namely matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

ISSUES CONSIDERED BY COMMITTEE

The regulation trespasses on personal rights and liberties: s 9(1)(b)(i) of the LRA

Strict liability

5. The Work Health and Safety Regulation 2011 contains a number of strict liability offences. Many of the offences carry penalties of up to \$6,000 for an individual and \$30,000 for a body corporate.
6. The Committee considers that strict liability offences should only be imposed by regulations when it is clearly in the public interest, and that the severity of the punishment should consider the absence of intent.
7. The Committee notes that strict liability offences often arise in a regulatory context to support public safety and to ensure compliance with regulatory schemes, and that this is particularly the case in the context of uniform work health and safety legislation.
8. Accordingly the Committee considers that the strict liability offences created by this regulation, whilst onerous, seek to ensure that people who have work safety obligations, comply with these obligations under the Principal Act.
9. Whilst the Committee has concerns with respect to the onerous nature of the penalties outlined in the Regulation, the Committee recognises the importance of a national work health and safety scheme and as such does not make an adverse comment in relation to the strict liability offences and associated fine regime outlined in the Regulation.

Freedom from Discrimination

10. Clause 173 only applies to workers who do not permanently reside in Australia in regards to performing limited scientific diving work. The clause forbids non-residents

from carrying out limited scientific diving work unless such workers training meet certain requirements and have obtained relevant diving experience.

11. The Committee will seek to comment on regulations which apply only to a specified group of persons, including non-residents. As the clause serves to ensure that the worker is adequately qualified to perform the work required, the Committee makes no adverse comments.

Rights of the Child

12. Clause 336 outlines that a worker who has not yet attained 16 years of age cannot be directed or allowed to supply hazardous chemicals.
13. The Committee will seek to comment on regulations which directly affect children, particularly circumstances where certain children – in this regulation 16 and 17 year olds – are treated as adults. However, as the clause serves to provide a protection to children under the age of 16 years, the Committee makes no adverse comment in relation to this issue.

Right to privacy

14. Division 1 of 8.5 of the Regulation relates to health monitoring with respect to asbestos work.
15. The Committee will seek to comment in circumstances where employees are the subject of compulsory health monitoring. However, the regulation provides that the health monitoring report only provide advice with respect to test results and do not provide that the test results themselves be provided. The Committee does not make an adverse comment in relation to this issue.
16. As such, the Committee makes no adverse comment with respect to the regulation.

Appendix One – Index of Ministerial Correspondence on Bills

The Committee currently has no ministerial correspondence on Bills.

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

The Committee currently has no correspondence in respect of Regulations on which it has reported.