



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Functions of the Committee

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

8A Functions with respect to Bills

- 1 The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - i trespasses unduly on personal rights and liberties, or
 - ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - iv inappropriately delegates legislative powers, or
 - v insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- 2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations

- 1 The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - i that the regulation trespasses unduly on personal rights and liberties,
 - ii that the regulation may have an adverse impact on the business community,
 - iii that the regulation may not have been within the general objects of the legislation under which it was made,
 - iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- v that the objective of the regulation could have been achieved by alternative and more effective means,
 - vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - vii that the form or intention of the regulation calls for elucidation, or
 - viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- 2 Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

Guide to the Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

Ministerial Correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the Digest contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Bill and correspondence appear.

APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS REPORTED ON

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Regulation and correspondence appear.

Conclusions

PART ONE - BILLS

1. ABORIGINAL LAND RIGHTS AMENDMENT BILL 2014

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

Access to Justice

Providing the Registrar with the power not to refer a claim for land by the Aboriginal Land Council to the Crown Lands Minister may be a barrier to the Council's access to justice. However, given that the Council would have a statutory right to appeal this decision to the Court, the Committee makes no further comment on this issue.

Double Punishment

The Committee notes the general principle that an individual is entitled to be treated equally before the law after he or she has served a judicial punishment. However, given the nature of the work of Local Aboriginal Land Councils, and that the prohibition relates to narrow and clearly defined class of people, the Committee makes no further comment on this issue.

2. BIOSECURITY BILL 2014

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

Extraterritoriality

The Committee notes that extraterritoriality may subject residents of New South Wales outside of the State to laws in two separate jurisdictions. Being subject to separate, but similar, laws may be a trespass on individual rights and liberties. The Committee also notes the wide and ill-defined extent of the Bill to apply to things situated in or outside the territorial limits of the State. The Committee refers this matter to Parliament for its further consideration.

Self-Incrimination

The Committee notes that although information that is required to be given is not admissible in criminal proceedings against the person, this protection against self-incrimination does not extend to further or subsequent information obtained separate to the primary information. This may be a breach of the right against self-incrimination. The Committee refers this matter to Parliament for its further consideration.

Personal Bodily Integrity

The Committee notes that this Bill may allow for authorised officers to visually inspect a person in certain situations. This may affect that person's sense of personal integrity and interfere with their right to privacy. The Committee also notes that the circumstances in which these powers are to apply is when an emergency order is in force or the result of a biosecurity direction. Given the public policy considerations underpinning these provisions, the Committee makes no further comment.

Presumption of Innocence

By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence. However, the Committee notes that if the accused has been granted an exemption to the requirements of the proposed Act it should be reasonably straightforward for him or her to produce evidence of this, for example, a permit issued to him or her under the proposed Act. In the circumstances, the Committee makes no further comment.

Denial of Compensation

The Committee notes that the Bill denies people compensation for certain types of loss resulting from an emergency order made under the proposed Act. Nonetheless, emergency orders are made to minimise, eradicate or prevent the spread of emergency biosecurity matter which may have serious impacts on the NSW economy, environment and community. In the circumstances, the Committee makes no further comment.

Oppressive Official Powers

By providing that the Secretary may reverse his or her decision regarding a compensation payout within 5 years of making it, the Bill may contain an oppressive official power. An individual may have spent the amount of the payout and have difficulty paying it back. The Committee refers the matter to Parliament for further consideration.

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

Wide and Ill-Defined Powers

The Committee notes that the Bill provides for emergency measures with a possibly wide remit of power. Despite some limitations placed on what can be required under an emergency order, the Committee remains concerned that the Bill provides for a wide and ill-defined power which, if used improperly, could also trespass on individual rights and liberties. The Committee refers this matter to Parliament for its further consideration.

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

Exclusion of Judicial Review

By providing that certain permit holders cannot appeal to the Land and Environment Court against a decision to refuse to grant or renew certain permits, the Bill excludes judicial review rights. In the Committee's view there may be some merit in excluding judicial review rights in emergency situations where swift action is required to respond to a serious threat. The Committee makes no further comment.

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

Regulation-making Powers

The Committee notes that that the Bill provides that control measures can be established for biosecurity purposes which can prohibit or control matters expressly authorised by the regulations. Despite some limitations provided for with respect to the powers of the control orders, the Committee remains concerned that the Bill provides for an inappropriately delegated legislative power. The Committee refers this matter to Parliament for its further consideration.

Regulation-making Powers II

The Committee notes that the Bill provides that regulatory measures can be implemented for biosecurity purposes. Despite some limitations provided with respect to the extent of the regulatory measures, the Committee remains concerned that the Bill provides for an inappropriately delegated legislative power. The Committee refers this matter to Parliament for its further consideration.

Matter which should be set by Parliament I

By providing that the regulations may set the circumstances under which compensation otherwise payable under the proposed Act is no longer payable, the Bill may inappropriately delegate legislative power. In the Committee's view, this is a matter that should be included in primary, not subordinate, legislation to allow appropriate Parliamentary scrutiny. Nonetheless, the *Interpretation Act 1987* provides that regulations must be tabled in Parliament and are subject to disallowance. Owing to this safeguard, the Committee makes no further comment.

Matter which should be set by Parliament II

In the Committee's view such matters should be included in primary, not subordinate, legislation to facilitate appropriate Parliamentary scrutiny. The Committee refers this matter to Parliament for further consideration.

Henry VIII Clause

By providing that the regulations may amend parts of the proposed Act, the Bill may inappropriately delegate legislative powers. In the Committee's view, to facilitate appropriate Parliamentary scrutiny, amendments to primary legislation should be made by Parliament, not by the Executive amending a regulation. The Committee refers this matter to Parliament for further consideration.

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

Order in Gazette

In the Committee's view, by providing that the Secretary may, by order published in the Gazette, exempt certain persons from the operation of the proposed Act the Bill may insufficiently subject the exercise of legislative power to Parliamentary scrutiny. In particular, there appears to be no requirement under the *Interpretation Act 1987* for orders published in the Gazette to be tabled in Parliament and to be subject to disallowance by Parliament. The Committee refers the matter to Parliament for further consideration.

Regulations may incorporate rules and standards of other bodies in force

By providing that a regulation may adopt publications of other bodies in force from time to time, the Bill may insufficiently subject the exercise of legislative power to parliamentary scrutiny. Unlike the regulations, there is no requirement under the *Interpretation Act 1987* for the publications to be tabled in Parliament each time they are amended and therefore the amendments are not subject to disallowance by Parliament. The Committee refers the matter to Parliament for further consideration.

3. CRIMINAL PROCEDURE AMENDMENT (DOMESTIC VIOLENCE COMPLAINANTS) BILL 2014

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

Right to Fair Trial

By providing that hearsay and opinion evidence is admissible and can be used as evidence of representations made in a recorded statement by a domestic violence complainant, the Bill may prejudice the accused's right to a fair trial. The Committee refers this matter to Parliament for further consideration.

Procedural Fairness II

The Bill provides an unrepresented defendant with a qualified right to view a recorded statement made against him/her prior to proceedings relating to the alleged offence being listed in court. The defendant may in fact only get the opportunity to view the recorded statement for the first time on the day that proceedings are listed. Nonetheless, the prosecutor is required to have provided the defendant with an *audio* recording of the statement prior to commencement of proceedings and under proposed section 289Q, the court may adjourn any proceedings to enable a defendant to view a recorded statement because he or she has not had a reasonable opportunity to do so. Owing to these safeguards, the Committee makes no further comment.

Procedural Fairness III

By providing that the validity of proceedings is not affected by failures of complainants or police to comply with procedural provisions relating to recorded statements, the Bill may affect a defendant's right to procedural fairness. The Committee refers the matter to Parliament for further consideration.

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

Lack of Clarity

The Committee notes that listing 'any other Act that amends this Act' rather than listing the name of each of those amending Acts limits the clarity of schedule 1, item 25 of the Bill. The Committee would prefer the name of each Act to be listed to avoid this lack of clarity. However, as the relevant provision relates to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertion ensures that the schedule is comprehensive, the Committee makes no further comment on the issue.

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

Commencement by Proclamation

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

4. CROWN LANDS AMENDMENT (PUBLIC OWNERSHIP OF BEACHES AND COASTAL LANDS) BILL 2014

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

5. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2014

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

Increased Penalties

The Committee notes the Bill increases the maximum penalties that may be imposed in relation to a number of offences under the *Environmental Planning and Assessment Act 1979*. While the increases are significant, they are part of an overall scheme to prevent significant harm to the environment and death or serious injury or illness to a person. For this reason, the Committee makes no further comment.

Private Property

The Committee notes the powers to enter private property may interfere with an individual's right to the private enjoyment of their property. The Bill includes safeguards, including that entry may only happen with consent, or under the authority of a search warrant or in circumstances of necessity. In these circumstances, the Committee makes no further comment on this issue.

Right to Silence / Right against Self-incrimination

The Committee notes that requiring individuals to provide documentation and answer questions impacts on that individual's right to silence and right against self-incrimination. Notwithstanding the public policy reasons for including these powers in the Act, the Committee refers this issue to Parliament for its further consideration.

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

Matters in Regulations which ought to be in the Principal Legislation

The Committee notes that the *Environmental Planning and Assessment Act 1979* provides for offences to be included in the regulations. The Committee considers that offences are more appropriately included in the principal legislation. The Committee refers this matter to Parliament for its consideration.

Commencement by Proclamation

The Committee prefers that legislation of this kind, which may affect the rights and responsibilities of an individual, should commence on a fixed date or on assent.

6. LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2014

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

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

7. MOTOR ACCIDENTS (LIFETIME CARE AND SUPPORT) AMENDMENT BILL 2014

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

NSW agencies subject to the law of other jurisdictions

The Committee notes interjurisdictional approach to the support of individuals who sustain catastrophic injuries following a motor accident. The Committee refers to Parliament the question as to whether the legislation ought to clarify that NSW legislation would prevail in relation to the functions of a NSW agency in circumstances where the NSW legislation was inconsistent with the legislation of another jurisdiction.

8. PESTICIDES AMENDMENT BILL 2014

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

Privacy

The Committee notes that the Bill provides for the suspension of the *Privacy and Personal Information Protection Act 1998* in certain circumstances. Given that these circumstances largely relate to the register of licences about pesticide work, the information is unlikely to infringe on individual privacy rights. The Committee makes no further comment.

Absence of Cost Recovery

The Committee notes that the Bill provides for the owner of agricultural produce to pay for the costs of analysing the produce for a prohibited residue even if the findings are that there was no such prohibited residue. The Committee notes that this may be an unfair financial burden on innocent individuals and, as such, refers this matter to Parliament for its further consideration.

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

Primacy of Regulations over Legislation

The Committee notes that the Bill provides for the making of subordinate legislation that can be superior to and suspend the provisions of the primary legislation from which it derives its authority. The Committee notes that this may be an inappropriate delegation of legislative power. The Committee makes no further comment.

9. RELATIONSHIP REGISTER AMENDMENT (RECOGNITION OF SAME-SEX AND GENDER-DIVERSE RELATIONSHIPS)BILL 2014*

Potential Conflict with Marriage Act 1961 (Cth)

The objects of this Bill may be inconsistent with the *Marriage Act 1961 (Cth)*. The Committee refers this matter to Parliament for further consideration as a potential conflict between State and Commonwealth law.

10. RESPONSIBLE MINING (PROTECTING LAND, WATER AND COMMUNITIES) BILL 2014*

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

Right to silence / Right against self-incrimination

The Committee notes that requiring an individual to answer questions and provide information and records impacts on their right to silence and their right against self-incrimination. The Committee refers to Parliament whether this is appropriate in the circumstances.

11. SURVEILLANCE DEVICES AMENDMENT (POLICE BODY-WORN VIDEO)BILL 2014

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

Privacy

In the Committee's view, to ensure proper parliamentary oversight and given the far-reaching privacy implications, rules regarding the acceptable use, publication or communication of material obtained through use of a police body-worn video should be clearly set out in primary legislation – not delegated to subordinate legislation. The Committee refers this matter to Parliament for further consideration.

Privacy II

In the Committee's view, to ensure appropriate parliamentary oversight, particularly given the serious privacy implications, rules governing retention, access to and disposal of police body-worn video recordings should be included in primary legislation, not delegated to operational guidelines. At the very least, such provisions should be included in the regulations as, unlike guidelines, regulations must be tabled in Parliament and are subject to disallowance under sections 40 and 41 of the Interpretation Act 1987. The Committee refers this matter to Parliament for further consideration.

PART TWO – REGULATIONS

1. ASSISTED REPRODUCTIVE TECHNOLOGY REGULATION 2014

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

Privacy

The Committee recognises the public policy issues at stake in relation to gamete donation, storage, fertilisation and any subsequent births. The Committee particularly notes that keeping records in relation to gamete donors, and providing for the release of parts of this information in the future, impacts on the privacy of gamete donors. However, given this regulation is not retrospective and all gamete donors would be aware of this new regime, the Committee makes no further comment on this issue.

2. PRIVACY AND PERSONAL INFORMATION PROTECTION REGULATION 2014

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

Privacy

The Committee notes the importance of the *Privacy and Personal Information Protection Act 1998* in safeguarding the privacy of individuals in New South Wales. In circumstances where exceptions to the Act are granted, the Committee will seek to inform the Parliament for its further consideration.

3. SPORTING VENUES AUTHORITIES REGULATION 2014

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

Right to be heard / right of appeal

The Committee recognises the public policy reasons for enabling a sporting venue authority to ban a person for a specified period. However, the Committee notes that there are no appeal rights available in the Regulation for those individuals who receive a ban. The Committee makes no further comment.

Part One - Bills

1. Aboriginal Land Rights Amendment Bill 2014

Date introduced	21 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Minister for Aboriginal Affairs

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to amend the *Aboriginal Land Rights Act 1983* (the principal Act) as follows:
 - (a) to provide for Aboriginal Land Agreements to be made between the Crown Lands Minister and Aboriginal Land Councils as an alternative to land claims under the principal Act,
 - (b) to clarify the functions of Local Aboriginal Land Councils in relation to business enterprises (including by expressly authorising such a Council to establish an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth and limiting a Local Aboriginal Land Council's power to establish corporations under the Corporations Act 2001 of the Commonwealth),
 - (c) to simplify the matters that are required to be included in a community, land and business plan of an Aboriginal Land Council,
 - (d) to clarify the reporting obligations of Local Aboriginal Land Councils in relation to arrangements between Councils and other persons in relation to the exercise of the Council's functions and the requirements for the approval of the transfer of assets under such an arrangement,
 - (e) to provide for disciplinary action to be taken in relation to officers of Aboriginal Land Councils (including Board members of Local Aboriginal Land Councils and councillors of the New South Wales Aboriginal Land Council) who engage in misconduct such as failing to comply with the disclosure requirements under the principal Act,
 - (f) to authorise the Registrar to apply for search warrants in relation to apparent contravention of the principal Act or the failure of a person to provide records as required by the principal Act,
 - (g) to increase maximum penalties for offences under the principal Act,

- (h) to provide for the appointment by the Registrar under the principal Act of administrators and investigators in respect of Local Aboriginal Land Councils,
- (i) to allow the Registrar to apply for an injunction to prevent a contravention of the principal Act,
- (j) to allow for members of a Local Aboriginal Land Council who have not attended 6 consecutive meetings to be declared to be inactive and provide that such members should not be counted for the purposes of determining the quorum required for a meeting of the Council,
- (k) to make other related, consequential or minor amendments.

BACKGROUND

2. The introduction of the Bill follows a review of the *Aboriginal Land Rights Act 1983*, which is the first review of the Act. The review included extensive consultation with the community, including the Aboriginal community.
3. The Bill has been introduced in the context of delays in the determination of 26,000 land claims in New South Wales. It also seeks to produce efficiencies in the relation to social housing management by Aboriginal Land Councils and improve their reporting and compliance framework.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Aboriginal Land Rights Act 1983 No 42

Amendments relating to Aboriginal Land Agreements, claims to Crown lands and land dealings generally

6. Schedule 1 [10] inserts proposed section 36AA into the principal Act. The proposed section establishes a process for the Crown Lands Minister and an Aboriginal Land Council to enter into an agreement (an Aboriginal Land Agreement) for the transfer or lease of land or giving an undertaking not to make a land claim, amongst other things, as an alternative to the land claim process set out in section 36 of the principal Act. Schedule 1 [12], [14], [37] and [133] make consequential amendments.
7. Schedule 1 [8] and [9] amend section 36 of the principal Act to clarify the role of the Registrar in the land claim process and to provide that the Crown Lands Minister is not to grant a land claim if the claim was made in contravention of an undertaking given by the claimant under an Aboriginal Land Agreement.
8. Schedule 1 [11] provides that, from the time of an appeal against the Crown Lands Minister's refusal to grant a land claim under section 36 of the principal Act until the final determination of that appeal, the Minister must not do anything, without the consent of the claimant, that would cause a land claim in relation to that land to be unsuccessful.

Amendments relating to business enterprise functions of Aboriginal Land Councils

9. Schedule 1 [19] and [43] make provision with respect to an Aboriginal Land Council's reporting obligations under arrangements that are entered into for exercising the Council's functions. The amendments also require the conduct of a risk assessment prior to the transfer of the Council's assets under such an arrangement and, in the case of a Local Aboriginal Land Council, require the members' approval to the transfer of assets under such an arrangement.
10. Schedule 1 [15] makes it clear that the functions of an Aboriginal Land Council include establishing, acquiring, operating or managing business enterprises. Schedule 1 [39] makes a similar amendment in relation to the New South Wales Aboriginal Land Council.
11. Schedule 1 [16] expressly authorises a Local Aboriginal Land Council to establish, acquire, operate or manage an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth. However, a Council may not establish or acquire a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth unless authorised by a policy of the New South Wales Aboriginal Land Council or, if there is no such policy, by the regulations.
12. Schedule 1 [46] and [47] make consequential amendments relating to the business enterprise functions of Aboriginal Land Councils.

Amendments relating to community benefits schemes

13. Schedule 1 [4] makes it clear that a community benefits scheme is one that is funded wholly or partly funded by an Aboriginal Land Council.
14. Schedule 1 [17] provides that a Local Aboriginal Land Council that intends to provide a community benefits scheme in relation to the acquisition or provision of accommodation to Aboriginal persons within the community does not require the approval of the New South Wales Aboriginal Land Council to carry on that scheme if the Local Aboriginal Land Council is registered under the law of this State as an Aboriginal housing organisation or a registered community housing provider. Schedule 1 [21] makes a consequential amendment.
15. Schedule 1 [18] removes a provision that requires the New South Wales Aboriginal Land Council to take certain additional matters into consideration when considering an application by a Local Aboriginal Land Council for the approval of a community benefits scheme in relation to the acquisition or provision of accommodation to Aboriginal persons within the community.
16. Schedule 1 [36] allows the Minister to make certain orders under section 87 of the principal Act in relation to a Local Aboriginal Land Council if an administrator has been appointed in respect of the Council on the ground that the Council has been operating such a scheme without the approval of the New South Wales Aboriginal Land Council. Schedule 1 [13], [107] and [118] make consequential amendments.
17. Schedule 1 [41] and [42] simplify the functions of the New South Wales Aboriginal Land Council in relation to the provision of community benefits schemes by removing special requirements relating to the provision of a funeral fund or social housing scheme. Schedule 1 [40] makes a consequential amendment.

Amendments relating to community, land and business plans of Aboriginal Land Councils

18. Schedule 1 [25] and [49] provide that the functions of the chief executive officer of a Local Aboriginal Land Council, and the functions of the Chief Executive Officer of the New South Wales Aboriginal Land Council, include assisting in the preparation and implementation of the respective Council's community, land and business plan.
19. Schedule 1 [30] requires a Local Aboriginal Land Council to either approve or amend the community, land and business plan for the Council within 9 months after the election of a new Board. Schedule 1 [20] makes a consequential amendment.
20. Schedule 1 [31] replaces section 83 of the principal Act to clarify the matters that are to be included in the community, land and business plan of a Local Aboriginal Land Council.
21. Schedule 1 [33] requires a Local Aboriginal Land Council to provide the New South Wales Aboriginal Land Council with a copy of the plan after it is approved by the members.
22. Schedule 1 [34] removes the requirement for a Local Aboriginal Land Council's community, land and business plan to be approved by the New South Wales Aboriginal Land Council before it takes effect. Schedule 1 [32] and [35] make consequential amendments.

Amendments relating to finances of Aboriginal Land Councils

23. Schedule 1 [50] ensures that the investment of the accounts of Local Aboriginal Land Councils is consistent with the investment of other accounts under the principal Act. Schedule 1 [44] makes a consequential amendment.
24. Schedule 1 [51] requires Local Aboriginal Land Councils to prepare financial statements, and provides for the verification and certification of those accounts, in accordance with the policies of the New South Wales Aboriginal Land Council. Schedule 1 [7], [45], [52], [53], [54], [56], [57] and [105] make consequential amendments.
25. Schedule 1 [55] removes the requirement that the budget of a Local Aboriginal Land Council be approved by the New South Wales Aboriginal Land Council.
26. Schedule 1 [58] requires the report of operations of a Local Aboriginal Land Council to be prepared in accordance with the policies of the New South Wales Aboriginal Land Council.

Amendments relating to administrative matters for Aboriginal Land Councils

27. Schedule 1 [23] inserts proposed section 57A. The proposed section allows the chief executive officer of a Local Aboriginal Land Council to declare a member to be inactive if the member is absent from 6 consecutive meetings. An inactive member is not to be included for the purposes of the determination of the quorum required for a meeting of the Council. A member ceases to be an inactive member of the Council if the member attends a meeting of the Council or requests that the member not be declared an inactive member of the Council.
28. Schedule 1 [24] increases the term of office of a Board member of a Local Aboriginal Land Council from 2 years to 4 years.

29. Schedule 1 [26] provides that a person may, with the consent of the Board of a Council, be employed as the chief executive officer of the Local Aboriginal Land Council if the person would otherwise be excluded because of the person's involvement in the management of a corporation owned or operated by the Aboriginal Land Council or because the person is also the chief executive officer of another Local Aboriginal Land Council. Schedule 1 [48] makes a comparable amendment in relation to the Chief Executive Officer of the New South Wales Aboriginal Land Council.
30. Schedule 1 [27] allows the Registrar, in certain circumstances, to authorise the employment of a person by a Local Aboriginal Land Council despite the person being otherwise prohibited due to the person having been convicted of a certain offence.
31. Schedule 1 [38] provides that the functions of the New South Wales Aboriginal Land Council includes assisting and supporting Local Aboriginal Land Councils in the exercise of functions under the principal Act.

Amendments relating to conduct, disclosure and disciplinary matters

32. Schedule 1 [65] replaces existing provisions relating to disciplinary matters with proposed sections 181A–181F.
33. Proposed section 181A defines certain terms and expressions used in Division 3A of Part 10 of the principal Act (including misconduct). Misconduct includes a contravention of a provision of the principal Act or the regulations, a contravention of an applicable code of conduct and an act of disorder committed by a councillor at a meeting of the New South Wales Aboriginal Land Council or by a Board member at a meeting of the Board or of the members of a Local Aboriginal Land Council.
34. Proposed section 181B sets out the grounds on which disciplinary action may be taken against an officer (to be defined as a Board member of a Local Aboriginal Land Council or a councillor of the New South Wales Aboriginal Land Council) or member of staff of an Aboriginal Land Council.
35. Proposed section 181C provides that an Aboriginal Land Council may formally censure an officer of the Council or member of staff of the Council if the Council is satisfied that the officer or member of staff has engaged in misconduct.
36. Proposed section 181D sets out the obligation of the Registrar to commence disciplinary proceedings in relation to complaints, allegations or reports of misconduct by an officer or member of staff of an Aboriginal Land Council.
37. Proposed section 181E makes provision with respect to the conduct of, and reporting on, investigations by the Registrar into alleged misconduct by officers or members of staff of Aboriginal Land Councils.
38. Proposed section 181F authorises the Registrar to take disciplinary action (including counselling or reprimanding the officer or member of staff, recommending the dismissal of a member of staff, recommending that other action be taken against an officer or member of staff or suspending an officer) if the Registrar is satisfied that there are sufficient grounds for doing so.

39. Schedule 1 [69] requires the Registrar to refer certain disciplinary matters to the Civil and Administrative Tribunal.
40. Schedule 1 [91] authorises the Civil and Administrative Tribunal to, in relation to misconduct by an officer of an Aboriginal Land Council:
 - (a) disqualify an officer from holding office for a period not exceeding 5 years, or
 - (b) order the payment of a pecuniary penalty not exceeding \$11,000, or
 - (c) order the officer to reimburse the Aboriginal Land Council for loss incurred as a result of the misconduct.
41. Schedule 1 [6], [22], [28], [29], [61]–[68], [71]–[91] and [125]–[127] make amendments consequential on the above amendments relating to conduct, disclosure and disciplinary matters.

Amendments relating to the appointment of investigators and administrators for Aboriginal Land Councils

42. Schedule 1 [92] allows the Registrar, rather than the Minister, to appoint investigators to investigate the affairs of Local Aboriginal Land Councils, from a list of investigators prepared by the New South Wales Aboriginal Land Council and approved by the Minister. Schedule 1 [5],[93], [94] and [97]–[99] make consequential amendments.
43. Schedule 1 [103] allows the Registrar, rather than the Minister, to appoint administrators for a Local Aboriginal Land Council from the list of administrators prepared by the New South Wales Aboriginal Land Council and approved by the Minister. Schedule 1 [104], [109], [111]–[113], [116], [117] and [119]–[124] make consequential amendments.
44. Schedule 1 [106] allows for the appointment of an administrator on the recommendation of the New South Wales Aboriginal Land Council.
45. Schedule 1 [108] and [110] clarify the requirement of the Registrar or Minister to give notice, and consider responses, before appointing an administrator for an Aboriginal Land Council.

Minor amendments relating to other matters

46. Schedule 1 [1] and [2] replace references to “Aborigines” with “Aboriginal persons”.
47. Schedule 1 [3] removes a defined term that is no longer used.
48. Schedule 1 [59] requires the Registrar to report to the Minister on the exercise of the Registrar’s functions under the principal Act.
49. Schedule 1 [60] updates a reference to a Department as a consequence of administrative changes.
50. Schedule 1 [95], [96], [100], [101], [114], [115], [128] and [129] increase penalties for certain offences under the principal Act.

51. Schedule 1 [102] makes it clear that the power of the Registrar, the New South Wales Aboriginal Land Council or an investigator to require a person to provide information does not require the person to comply with such a request if doing so would require the person to disclose privileged information.
52. Schedule 1 [130] excludes Local Aboriginal Land Councils from certain disclosure requirements under the Government Information (Public Access) Act 2009.
53. Schedule 1 [131] enables the Registrar to obtain a search warrant to search premises if the Registrar believes on reasonable grounds that a provision of the proposed Act or the regulations has been contravened or that records required to be provided to an investigator or administrator have not been so provided.
54. Schedule 1 [132] provides for the grant of injunctions to prevent a contravention of the principal Act or the regulations.
55. Schedule 1 [134] updates a reference to the status of the Registrar as a consequence of the enactment of the Government Sector Employment Act 2013.
56. Schedule 1 [135] and [136] contain savings and transitional provisions consequent on the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Access to Justice

57. Sub-schedule 1 [8] of the Bill seeks to insert a subsection which would enable the Registrar to refuse to refer a claim to the Crown Lands Minister. However, schedule 1 [8] also provides that the Aboriginal Land Council may appeal this decision to the Court.

Providing the Registrar with the power not to refer a claim for land by the Aboriginal Land Council to the Crown Lands Minister may be a barrier to the Council's access to justice. However, given that the Council would have a statutory right to appeal this decision to the Court, the Committee makes no further comment on this issue.

Double Punishment

58. Sub-schedule 1 [27] outlines a class of people who could not be employed by a Local Aboriginal Land Council, which includes individuals with convictions relating to child sexual intercourse, grooming children for sexual intercourse, and sexual servitude with an individual under the age of 18 years.

The Committee notes the general principle that an individual is entitled to be treated equally before the law after he or she has served a judicial punishment. However, given the nature of the work of Local Aboriginal Land Councils, and that the prohibition relates to narrow and clearly defined class of people, the Committee makes no further comment on this issue.

2. Biosecurity Bill 2014

Date introduced	23 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Minister for Primary Industries

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to provide a framework for the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, dealing with biosecurity matter, carriers and potential carriers, and other activities that involve biosecurity matter, carriers or potential carriers,
- (b) to promote biosecurity as a shared responsibility between government, industry and communities,
- (c) to provide a framework for the timely and effective management of the following:
 - i pests, diseases, contaminants and other biosecurity matter that is economically significant for primary production industries,
 - ii threats to terrestrial and aquatic environments arising from pests, diseases, contaminants and other biosecurity matter,
 - iii public health and safety risks arising from contaminants, non-indigenous animals, bees, weeds and other biosecurity matter known to contribute to human health problems,
 - iv pests, diseases, contaminants and other biosecurity matter that may have an adverse effect on community activities and infrastructure,
- (d) to provide a framework for risk-based decision-making in relation to biosecurity,
- (e) to give effect to intergovernmental biosecurity agreements to which the State is a party,
- (f) to provide the means by which biosecurity requirements in other jurisdictions can be met, so as to maintain market access for industry.

BACKGROUND

2. In her Second Reading Speech to Parliament, the Hon. Katrina Hodgkinson MP, stated that the Bill is a single piece of modern legislation that will give NSW the essential tools and powers to manage pests, diseases, weeds and contaminants and minimise biosecurity threats to the NSW economy, environment and community. The Bill aims to ensure an efficient and flexible response to biosecurity risks, regardless of whether they

are an emergency or ongoing management issue. Ms Hodgkinson stated that a major biosecurity event can have far-reaching implications, from on the farm to the entire nation's economy through trade restrictions.

OUTLINE OF PROVISIONS

3. Part 1 - Preliminary
4. Part 2 – Interpretation, key concepts and principles
5. Part 3 – General biosecurity detail
6. Part 4 – Prohibited matter and related biosecurity duties
7. Part 5 – Emergency orders
8. Part 6 – Control orders
9. Part 7 – Biosecurity zones
10. Part 8 – Powers of authorised officers
11. Part 9 – Biosecurity directions
12. Part 10 – Biosecurity undertakings
13. Part 11 – Prohibited dealings with registrable dealings
14. Part 12 – Biosecurity registration
15. Part 13 – Biosecurity certificates
16. Part 14 – Accreditation of biosecurity certificates
17. Part 15 – Biosecurity audits
18. Part 16 – Appointment of biosecurity auditors
19. Part 17 – Accreditation authorities
20. Part 18 – Offences and criminal proceedings
21. Part 19 – Compensation
22. Part 20 – Recovery of administrative costs and other amounts
23. Part 21 – Permits
24. Part 22 – Administration
25. Part 23 – Miscellaneous
26. Schedule 1 sets out further provisions relating to the general biosecurity duty imposed by proposed Part 3. Those special provisions relate to weeds and include the following:

- (a) a duty to control weeds on roads,
 - (b) a duty to control aquatic weeds,
 - (c) a duty to control weeds in irrigation areas.
27. Schedule 2 specifies matter that is prohibited matter (that is, matter that it is an offence to deal with under proposed Part 4). Some matter is specified as prohibited matter throughout the State and some is only prohibited matter in a specified part of the State. The proposed Act enables the regulations to amend the proposed Schedule by inserting, altering or omitting any items or descriptions.
28. Schedule 3 specifies certain prohibited dealings (that is, dealings that it is an offence to engage in under proposed Division 1 of Part 11). The proposed Act enables the regulations to amend the proposed Schedule by inserting, altering or omitting the description of any matter.
29. Schedule 4 specifies certain registrable dealings (that is, dealings for which registration is required under proposed Division 2 of Part 11). The proposed Act enables the regulations to amend the proposed Schedule by inserting, altering or omitting the description of any matter.
30. Schedule 5 lists some specific regulation-making powers, including the power to make regulations for or with respect to the following:
- (a) exemptions from the proposed Act,
 - (b) fees,
 - (c) the identification and tracing of biosecurity matter,
 - (d) the classification of non-indigenous animals,
 - (e) the powers of authorised officers.

ISSUES CONSIDERED BY COMMITTEE

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

Extraterritoriality

31. Proposed section 5 of the Bill provides that it is the intention of the Parliament that the Act is to apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament, including things situated in or outside the territorial limits of the State.
32. The Committee notes that, generally, legislation is to only have effect within the immediate jurisdiction in which the legislation applies. Provisions that allow for extraterritoriality would subject individuals outside of New South Wales to the laws that apply in the immediate jurisdiction of their location, in addition to the laws of New South Wales.

The Committee notes that extraterritoriality may subject residents of New South Wales outside of the State to laws in two separate jurisdictions. Being

subject to separate, but similar, laws may be a trespass on individual rights and liberties. The Committee also notes the wide and ill-defined extent of the Bill to apply to things situated in or outside the territorial limits of the State. The Committee refers this matter to Parliament for its further consideration.

Self-Incrimination

33. Proposed section 34(1) of the Bill provides that information furnished or an answer given that the person was required to furnish or give to comply with the Act is not admissible in evidence against the person in criminal proceedings. However proposed section 34(2) subsequently provides that further information obtained as a result of information furnished or an answer given in compliance with the Act is not inadmissible on the grounds that the information furnished or answer given might incriminate the person.

The Committee notes that although information that is required to be given is not admissible in criminal proceedings against the person, this protection against self-incrimination does not extend to further or subsequent information obtained separate to the primary information. This may be a breach of the right against self-incrimination. The Committee refers this matter to Parliament for its further consideration.

Personal Bodily Integrity

34. Proposed section 54 of the Bill provides that a requirement in an emergency order that persons permit themselves to be inspected by an authorised officer includes allowing that officer to require a person to submit to a visual inspection (including of the exterior of the person's clothing and shoes). A similar provision exists at proposed section 125 with respect to the inspection of individuals during a biosecurity direction.

The Committee notes that this Bill may allow for authorised officers to visually inspect a person in certain situations. This may affect that person's sense of personal integrity and interfere with their right to privacy. The Committee also notes that the circumstances in which these powers are to apply is when an emergency order is in force or the result of a biosecurity direction. Given the public policy considerations underpinning these provisions, the Committee makes no further comment.

Presumption of Innocence

35. Proposed section 284 of the Bill provides that, in proceedings for an offence against the proposed Act, proof that a person was exempt from a requirement imposed by or under the Act lies on the accused person.

By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence. However, the Committee notes that if the accused has been granted an exemption to the requirements of the proposed Act it should be reasonably straightforward for him or her to produce evidence of this, for example, a permit issued to him or her under the proposed Act. In the circumstances, the Committee makes no further comment.

Denial of Compensation

36. Proposed Part 19 of the Bill deals with compensation payable to owners of animals, plants and property destroyed in accordance with an emergency order to minimise, eradicate or prevent the spread of emergency biosecurity matter. However, proposed section 304 provides that no compensation is payable under the Part for any loss of profit, loss occasioned by breach of contract, loss of production or any other consequential loss.

The Committee notes that the Bill denies people compensation for certain types of loss resulting from an emergency order made under the proposed Act. Nonetheless, emergency orders are made to minimise, eradicate or prevent the spread of emergency biosecurity matter which may have serious impacts on the NSW economy, environment and community. In the circumstances, the Committee makes no further comment.

Oppressive Official Powers

37. Proposed Part 19 of the Bill provides that compensation is payable to the owner of any domestic animal, plant or property that has been destroyed in accordance with an emergency order to minimise, eradicate or prevent the spread of an emergency biosecurity matter. However, proposed section 310 of the Bill provides that if the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services decides a compensation claim and is later satisfied the decision is incorrect, he or she may reverse the decision within 5 years, even though the decision was *not* made on the basis of false or misleading information provided by the claimant.

By providing that the Secretary may reverse his or her decision regarding a compensation payout within 5 years of making it, the Bill may contain an oppressive official power. An individual may have spent the amount of the payout and have difficulty paying it back. The Committee refers the matter to Parliament for further consideration.

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

Wide and Ill-Defined Powers

38. Proposed section 50(5) provides that emergency measures may prohibit, regulate or control the doing of any thing, or require or authorise the doing of any thing. Further, proposed section 50(6) provides that a power to require the doing of things include a power to require a person to arrange for that thing to be done.
39. A list of examples of actions that be compelled under an emergency measure is provided for under proposed section 51.
40. The Committee notes that this list, while extensive, is not exhaustive. The Committee also notes that the limits are applied to emergency orders, provided for under proposed sections 53 – 56 of the Bill. These limitations principally apply to the treatment and inspection of persons, as well as certain destruction requirements.

The Committee notes that the Bill provides for emergency measures with a possibly wide remit of power. Despite some limitations placed on what can be required under an emergency order, the Committee remains concerned that

the Bill provides for a wide and ill-defined power which, if used improperly, could also trespass on individual rights and liberties. The Committee refers this matter to Parliament for its further consideration.

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

Exclusion of Judicial Review

41. Proposed section 351 of the Bill provides that no right of appeal lies to the Land and Environment Court against a decision of a relevant decision-maker to refuse to grant or renew an emergency permit under the proposed Act; to refuse to renew a permit or to suspend or cancel a permit in the case of an emergency; or any decision about a group permit. A permit authorises action that would otherwise be illegal under the proposed Act. A group permit is a permit granted to a specified class of persons.

By providing that certain permit holders cannot appeal to the Land and Environment Court against a decision to refuse to grant or renew certain permits, the Bill excludes judicial review rights. In the Committee's view there may be some merit in excluding judicial review rights in emergency situations where swift action is required to respond to a serious threat. The Committee makes no further comment.

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

Regulation-making Powers

42. Proposed section 68 of the Bill provides for control measures to be established to prevent, eliminate, minimise or manage the biosecurity risk or biosecurity impact to which the order relates. Proposed section 69(m) further provides that control measures may include provisions that prohibit, regulate or control, or that require or authorise any matters expressly authorised by the regulations.
43. The extent to which regulations can be made will be limited by proposed sections 70 and 71 which provide certain protections relating to the detention or treatment or persons, as well as limitations regarding the destruction of items.

The Committee notes that that the Bill provides that control measures can be established for biosecurity purposes which can prohibit or control matters expressly authorised by the regulations. Despite some limitations provided for with respect to the powers of the control orders, the Committee remains concerned that the Bill provides for an inappropriately delegated legislative power. The Committee refers this matter to Parliament for its further consideration.

Regulation-making Powers II

44. Proposed section 79 of the Bill provides that regulatory measures can be implemented for the purpose of preventing, eliminating, minimising or managing a biosecurity risk or biosecurity impact. These regulatory measures may prohibit, regulate or control the doing of any thing, or require or authorise the doing of anything.

45. The extent to which regulations can be made will be limited by proposed sections 81 and 82 which provide certain protections relating to the detention or treatment or persons, as well as limitations regarding the destruction of items.

The Committee notes that that the Bill provides that regulatory measures can be implemented for biosecurity purposes. Despite some limitations provided with respect to the extent of the regulatory measures, the Committee remains concerned that the Bill provides for an inappropriately delegated legislative power. The Committee refers this matter to Parliament for its further consideration.

Matter which should be set by Parliament I

46. Proposed Part 19 of the Bill provides that compensation is payable to the owner of any domestic animal, plant or property that has been destroyed in accordance with an emergency order to minimise, eradicate or prevent the spread of an emergency biosecurity matter. However, proposed subsection 307(2) provides that the Secretary may direct that compensation that is otherwise payable not be paid in any circumstances prescribed by the regulations.

By providing that the regulations may set the circumstances under which compensation otherwise payable under the proposed Act is no longer payable, the Bill may inappropriately delegate legislative power. In the Committee's view, this is a matter that should be included in primary, not subordinate, legislation to allow appropriate Parliamentary scrutiny. Nonetheless, the *Interpretation Act 1987* provides that regulations must be tabled in Parliament and are subject to disallowance. Owing to this safeguard, the Committee makes no further comment.

Matter which should be set by Parliament II

47. Proposed subsection 386(4) of the Bill provides that a regulation may create an offence punishable by a penalty not exceeding \$11,000.

In the Committee's view such matters should be included in primary, not subordinate, legislation to facilitate appropriate Parliamentary scrutiny. The Committee refers this matter to Parliament for further consideration.

Henry VIII Clause

48. The explanatory notes to schedules 2, 3 and 4 of the Bill indicate that the proposed Act enables the regulations to amend each of these schedules by inserting, altering or omitting the description of any matter.

By providing that the regulations may amend parts of the proposed Act, the Bill may inappropriately delegate legislative powers. In the Committee's view, to facilitate appropriate Parliamentary scrutiny, amendments to primary legislation should be made by Parliament, not by the Executive amending a regulation. The Committee refers this matter to Parliament for further consideration.

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

Order in Gazette

49. Proposed section 384 of the Bill provides that the Secretary may, by order published in the Gazette, exempt any specified person or class of persons from the operation of all or any specified provisions in the proposed Act.

In the Committee's view, by providing that the Secretary may, by order published in the Gazette, exempt certain persons from the operation of the proposed Act the Bill may insufficiently subject the exercise of legislative power to Parliamentary scrutiny. In particular, there appears to be no requirement under the *Interpretation Act 1987* for orders published in the Gazette to be tabled in Parliament and to be subject to disallowance by Parliament. The Committee refers the matter to Parliament for further consideration.

Regulations may incorporate rules and standards of other bodies in force

50. Proposed section 386(3) of the Bill provides that a regulation may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.

By providing that a regulation may adopt publications of other bodies in force from time to time, the Bill may insufficiently subject the exercise of legislative power to parliamentary scrutiny. Unlike the regulations, there is no requirement under the *Interpretation Act 1987* for the publications to be tabled in Parliament each time they are amended and therefore the amendments are not subject to disallowance by Parliament. The Committee refers the matter to Parliament for further consideration.

3. Criminal Procedure Amendment (Domestic Violence Complainants) Bill 2014

Date introduced	21 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Criminal Procedure Act 1986 as follows:
 - (a) to enable the use of recorded interviews with complainants in proceedings for domestic violence offences, instead of written statements or oral evidence,
 - (b) to make other consequential and minor amendments.

BACKGROUND

2. The Bill amends the Criminal Procedure Act 1986 to enable domestic violence complainants to give their evidence in chief by way of a prior recorded video or audio statement in criminal proceedings for a domestic violence offence. In discussing the rationale for this change, the Hon. Brad Hazzard MP, Attorney General and Minister for Justice stated:

The power dynamic that typifies domestic violence does not stop at the courtroom door. There is a risk of re-traumatisation of victims. They must attend court and give oral evidence from memory, and usually in front of the perpetrator, about a traumatic incident. They may face pressure from a perpetrator to stop cooperating with the prosecution. This can result in victims being reluctant to come to court or changing their evidence once in the witness box. Some may choose not to report an incident to police. The Bureau of Crime Statistics and Research estimates that only half of domestic assaults are reported to police. New measures for giving evidence using available technology are needed to reduce the trauma faced by victims when in court.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

5. Schedule 1 [1] inserts definitions of domestic violence complainant, domestic violence offence, recorded statement and vulnerable person. Schedule 1 [3], [9], [20]–[22] and [24] make consequential amendments.
6. Schedule 1 [4] enables a recorded statement (that is, a recording made by a police officer, with a complainant's informed consent, of a representation made by the complainant during questioning in connection with the investigation of a domestic violence offence) to be used in committal proceedings for the domestic violence offence instead of a written statement by the complainant. The general requirements for service of copies of the recording, and access for viewing by defendants who are not represented by an Australian legal practitioner, that will apply to a recorded statement used in evidence in chief will apply to its use for this purpose. Provisions that apply to written statements such as those relating to inadmissibility, admissibility as if it were oral evidence, death of the witness, notices of rights, the attendance of the witness and later use of written statements are also applied to the recording and the complainant whose representation was recorded.
7. Schedule 1 [2] makes a consequential amendment.
8. Schedule 1 [5] inserts requirements for recorded statements used in committal proceedings, including that they must contain statements about the complainant's age and as to the truth of the representation.
9. Schedule 1 [6] makes a person guilty of an offence if a representation made by the person that is contained in a recorded statement used in committal proceedings contains matter that the person knew to be false, or did not believe to be true, in a material respect when the representation was made.
10. Schedule 1 [7] requires a copy of a recorded statement used in committal proceedings for a domestic violence offence to be given to an accused person who is committed for trial.
11. Schedule 1 [8] requires the notice given by a prosecutor to the accused person of the prosecution's case in pre-trial disclosure for a domestic violence offence to include a copy of any recorded statement that the prosecutor intends to adduce at the trial.
12. Schedule 1 [10] provides for a brief of evidence in proceedings for a domestic violence offence to include a recorded statement relating to the offence instead of a written statement from the complainant.
13. Schedule 1 [11] makes it an offence for a person to include in a representation contained in a recorded statement matter that the person, at the time the representation was made, knew to be false, or did not believe to be true, in any material respect.
14. Schedule 1 [12] requires a court to consider any recorded statement given to it by the prosecutor before determining a matter on the basis of the court attendance notice in the absence of the accused person and without hearing witnesses.
15. Schedule 1 [13] enables additional evidence, in the form of a recorded statement, to be required by the court in summary proceedings heard in the absence of the accused

person if the proceedings are for a domestic violence offence. Schedule 1 [14]–[16] make consequential amendments.

16. Schedule 1 [17] requires a copy of any recorded statement that is to be adduced as evidence in summary proceedings for a domestic violence offence in the Supreme Court to be included as part of the notice of the prosecution's case given by the prosecutor to the defendant.
17. Schedule 1 [18] makes it clear that any requirements relating to the giving of notice of a recorded statement to a defendant in summary proceedings for a domestic violence offence in the Supreme Court must not be inconsistent with the new requirements for service of, and access to, recorded statements.
18. Schedule 1 [19] inserts provisions enabling the use of recorded statements in proceedings for domestic violence offences, instead of requiring a complainant to give evidence in chief orally.
19. The provisions:
 - (a) define terms used, including recorded statement, and
 - (b) apply in addition to the Evidence Act 1995, and
 - (c) enable a complainant in proceedings for a domestic violence offence to give evidence wholly or partly in the form of a recorded statement that is viewed or heard by the court, and
 - (d) provide that the complainant must be subsequently available for cross-examination or re-examination either orally in the courtroom or in accordance with other existing permitted alternative arrangements for the particular kind of witness, and
 - (e) set out matters a prosecutor must take into account, including the complainant's wishes, in determining whether to adduce evidence in the form of a recorded statement, and
 - (f) enable a recorded statement that has been adduced in proceedings for an offence to also be adduced in concurrent, or related, proceedings for an order under the Crimes (Domestic and Personal Violence) Act 2007, and
 - (g) make it clear that the hearsay rule and the opinion rule do not prevent the admission or use of evidence of a representation in the form of a recorded statement and make its admissibility subject to compliance with requirements for access and service, and
 - (h) require the judge, in a case where there is a jury, to warn that no inference adverse to the accused should be drawn, or greater or lesser weight given to evidence because evidence is given in the form of a recorded statement, and
 - (i) enable a court to order a transcript of a recorded statement to aid comprehension of the evidence by a jury, and
 - (j) require a copy of a recorded statement to be served on an accused person in proceedings for a domestic violence offence as soon as practicable after the

proceedings are commenced or the prosecutor determines that evidence will be given in that form, whichever is the later, and

- (k) if the accused is not represented by an Australian legal practitioner, permit only an audio copy to be served but require viewing access to be given at a police station on one or more occasions, being when the accused is being questioned, if the accused requests or on another notified day (or if that is not reasonably practicable on a day when proceedings are being held), and
 - (l) make it clear that the validity of proceedings is not affected by failures to comply with procedural provisions relating to recorded statements, and
 - (m) enable the court, on the application of the prosecutor, to order an accused person to return a copy of a recorded statement to the prosecutor at the completion of the proceedings, and
 - (n) make it an offence to copy or publish, or give possession of a copy of a recording of a recorded statement except for the legitimate purposes of a criminal investigation or criminal proceedings or in the proper exercise by a public official of the public official's functions, and
 - (o) enable a court to make, vary or revoke an order under the proposed provisions on its own motion or on application by a party or complainant giving evidence and to adjourn proceedings in certain circumstances, and
 - (p) provide for the making of rules of court or regulations relating to the making and use of recorded statements in proceedings for domestic violence offences.
20. Schedule 1 [23] makes it clear that the existing provisions that enable complainants to give evidence from places other than court, and that provide for alternative arrangements to protect complainants in proceedings in respect of certain sexual offences, continue to apply to domestic violence complainants in proceedings where those provisions and the new provisions for the use of recorded statements both apply.
21. Schedule 1 [25] enables regulations to be made containing savings or transitional provisions consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right to Fair Trial

22. Schedule 1, item 19, proposed section 289I of the Bill provides that the hearsay rule and the opinion rule do not prevent admission or use of evidence of a representation in the form of a recorded statement. Generally, out of court statements ('hearsay') cannot be used to prove the truth of the matter asserted therein because the person making the assertion is not available for cross-examination. Similarly, witnesses must generally testify as to what they observed and not give an opinion on what they observed unless there are special circumstances e.g. they are an expert witness with qualifications to give the opinion.

By providing that hearsay and opinion evidence is admissible and can be used as evidence of representations made in a recorded statement by a domestic violence complainant, the Bill may prejudice the accused's right to a fair trial. The Committee refers this matter to Parliament for further consideration.

Procedural Fairness II

23. Schedule 1, item 19, proposed sub section 289M(3) provides that the prosecutor must, so far as is reasonably practicable, provide an accused person who does not have legal representation with an opportunity to view a recorded statement made by a domestic violence complainant at a police station either when he or she is being questioned in relation to the alleged offence; or at the request of the accused person on a day arranged with the accused person; or on another day specified by notice in writing given to the accused person by the prosecutor before committal proceedings or the trial commences.
24. Proposed sub section 289M(4) provides that if it is not reasonably practicable for the prosecutor to comply with the above requirements, he or she must provide the accused person with an opportunity to view a recorded statement that is in the form of a video recording on a day on which proceedings relating to the offence are being held.

The Bill provides an unrepresented defendant with a qualified right to view a recorded statement made against him/her prior to proceedings relating to the alleged offence being listed in court. The defendant may in fact only get the opportunity to view the recorded statement for the first time on the day that proceedings are listed. Nonetheless, the prosecutor is required to have provided the defendant with an *audio* recording of the statement prior to commencement of proceedings and under proposed section 289Q, the court may adjourn any proceedings to enable a defendant to view a recorded statement because he or she has not had a reasonable opportunity to do so. Owing to these safeguards, the Committee makes no further comment.

Procedural Fairness III

25. Schedule 1, item 19, proposed section 289N of the Bill provides that the validity of proceedings is not affected by failures of complainants or police to comply with procedural provisions relating to recorded statements.

By providing that the validity of proceedings is not affected by failures of complainants or police to comply with procedural provisions relating to recorded statements, the Bill may affect a defendant's right to procedural fairness. The Committee refers the matter to Parliament for further consideration.

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

Lack of Clarity

26. Schedule 1, item 25 of the Bill provides that the regulations may include provisions of a savings or transitional nature consequent on the enactment of the proposed Act or 'any other Act that amends this Act'.

The Committee notes that listing ‘any other Act that amends this Act’ rather than listing the name of each of those amending Acts limits the clarity of schedule 1, item 25 of the Bill. The Committee would prefer the name of each Act to be listed to avoid this lack of clarity. However, as the relevant provision relates to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertion ensures that the schedule is comprehensive, the Committee makes no further comment on the issue.

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

Commencement by Proclamation

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

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

4. Crown Lands Amendment (Public Ownership of Beaches and Coastal Lands) Bill 2014

Date introduced	21 October 2014
House introduced	Legislative Assembly
Minister responsible	Kevin Humphries
Portfolio	Minister for Natural Resources, Land and Water

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Crown Lands Act 1989* to ensure that, to the greatest extent possible, beaches and other coastal land that is Crown land remain in public ownership.

BACKGROUND

2. This Bill elevates into law the longstanding policy of successive New South Wales governments that beaches and important coastal areas be retained in public ownership in perpetuity. The Bill will prevent the transfer of such lands into private ownership.
3. The prompt for this Bill was an emerging risk of private ownership of beach land triggered by a recent court decision under the New South Wales *Aboriginal Land Rights Act 1983* which was to allow certain ‘vacant or surplus Crown land’ to be claimed and transferred to Aboriginal land councils.
4. According to the Minister responsible, the Hon. Kevin Humphries MP, in his second reading speech:

The Government does not regard New South Wales beaches and coastline as vacant crown land that is surplus to the community’s needs. The Government views beaches as a shared community resource for recreation and environmental protection. On this basis, the Bill voids land claims to the extent that they are currently lodged on the beach and coastal land as defined in the Bill and prevents any future claims of such land.

OUTLINE OF PROVISIONS

5. Schedule 1 amends the Crown Lands Act 1989 to achieve the object described in the Overview above by:
 - (a) defining as Crown beach and coastal land the beaches and other coastal land that is Crown land to which the Bill relates (proposed section 44F—Schedule 1 [6]), and

- (b) prohibiting the sale, exchange, transfer or disposal of Crown beach and coastal land without preventing leases and certain other dealings or arrangements and agreements being entered into and given effect in relation to the land (proposed section 44G—Schedule 1 [6]), and
 - (c) preventing the Minister from selling, exchanging, transferring or disposing of Crown beach and coastal land (Schedule 1 [3]–[5]), and
 - (d) providing that Division 2 of Part 2 (Claimable Crown lands) of the Aboriginal Land Rights Act 1983 does not apply to or in respect of Crown beach and coastal land and that no land claim may be made or granted in respect of it and that such land must not be transferred or otherwise alienated (Schedule 1 [2] and proposed section 44H—Schedule 1 [6]).
6. Schedule 1 [8] inserts savings and transitional provisions with respect to existing land claims and ensures that no compensation is payable as a consequence of the amendments.
7. Schedule 1 [1] and [7] make consequential amendments.

ISSUES CONSIDERED BY COMMITTEE

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

5. Environmental Planning and Assessment Amendment Bill 2014

Date introduced	22 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Pru Goward MP
Portfolio	Minister for Planning

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the Principal Act):
 - (a) to increase substantially the maximum penalties for offences against the Principal Act and the regulations under the Principal Act, including the following:
 - i a maximum penalty of \$5 million in the case of a corporation or \$1 million in the case of an individual and additional daily penalties for an intentional offence that caused or was likely to cause significant harm to the environment or caused the death of or serious injury or illness to a person (tier 1 maximum penalty),
 - ii a maximum penalty of \$2 million in the case of a corporation or \$0.5 million in the case of an individual and additional daily penalties for other offences against the Principal Act (except certain certificate offences and other offences to which a tier 3 maximum penalty is applied) (tier 2 maximum penalty),
 - iii a maximum penalty of \$1 million in the case of a corporation or \$0.25 million in the case of an individual and additional daily penalties for certain certificate offences and other offences to which a tier 3 maximum penalty is applied (tier 3 maximum penalty),
 - iv a maximum penalty of \$110,000 for an offence against the regulations, and
 - (b) to create additional offences, including for providing false or misleading information in connection with planning matters, and
 - (c) to consolidate and expand the investigative powers of council and Departmental officers for the enforcement of the Principal Act and to make other provision for the enforcement of the Principal Act, including provision for cessation of utilities orders, and
 - (d) to require the Secretary of the Department to establish and facilitate the online delivery of planning services and information (by means of the NSW planning portal), including to enable planning applications to be lodged and dealt with online and to facilitate public access to planning information, and

- (e) to make miscellaneous amendments, including to update references to the Director-General of the Department to the Secretary of the Department, and to clarify the obligation of directors of corporations to declare political donations in connection with planning matters.
2. The Bill also amends the Subordinate Legislation Act 1989 to further postpone the staged repeal of the regulations under the Principal Act.

BACKGROUND

3. Following a review of the planning system by the Hon. Tim Moore and the Hon. Ron Dyer in 2012, the Bill seeks to amend the *Environmental Planning and Assessment Act 1979* to strengthen the enforcement regime, providing the Land and Environment Court with clearer sentencing and other enforcement guidelines. The Bill also increases local councils' investigation and enforcement powers, and provides councils with greater flexibility in taking action in circumstances of a breach of planning law.
4. The Bill also furthers the work being undertaken in relation to ePlanning. To supplement the free online tools currently available, the Bill provides for a planning portal where information and interactive maps can be accessed. Documents can also be lodged online and planning applications may also be tracked.
5. The Bill seeks to resolve copyright concerns raised by local councils in relation to reproducing plans and other documents submitted with a development application.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation (except Schedules 4 and 5 which are to commence on the date of assent).
8. Schedule 1 contains the amendments of the Principal Act outlined above relating to offences and penalties.
9. Schedule 2 contains the amendments of the Principal Act outlined above relating to enforcement powers.
10. Schedule 3 contains the amendments of the Principal Act outlined above relating to ePlanning.
11. Schedules 4, 5 and 6 contain the miscellaneous amendments of the Principal Act and other instruments outlined above.

ISSUES CONSIDERED BY COMMITTEE

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

Increased Penalties

12. Schedule 1 [8] introduces new sections 125A, 125B and 125C to the Act, incorporating new maximum penalties. The previous maximum penalty of \$1.1 million for all offences

is increased to \$5 million for tier 1 offences, \$2 million for tier 2 offences and \$1 million for tier 3 offences.

The Committee notes the Bill increases the maximum penalties that may be imposed in relation to a number of offences under the *Environmental Planning and Assessment Act 1979*. While the increases are significant, they are part of an overall scheme to prevent significant harm to the environment and death or serious injury or illness to a person. For this reason, the Committee makes no further comment.

Private Property

13. Schedule 2 [2] of the Bill inserts new investigative powers into the Act. The powers of investigation officers include the right to enter any agricultural premises at any time and any other premises at any reasonable time [sub-section 119D(1)]. The amendments also provide investigation officers with powers including opening any ground and removing flooring [sub-section 119F(e)].

The Committee notes the powers to enter private property may interfere with an individual's right to the private enjoyment of their property. The Bill includes safeguards, including that entry may only happen with consent, or under the authority of a search warrant or in circumstances of necessity. In these circumstances, the Committee makes no further comment on this issue.

Right to Silence / Right against Self-incrimination

14. Schedule 2 [2] of the Bill provides investigation powers to officers, including the power to require the provision of information and records, to answer questions and record evidence (sections 119J, 119K and 119L). Subsection 119S(2) outlines that a person is not excused from the requirements outlined above on the grounds of self-incrimination.

The Committee notes that requiring individuals to provide documentation and answer questions impacts on that individual's right to silence and right against self-incrimination. Notwithstanding the public policy reasons for including these powers in the Act, the Committee refers this issue to Parliament for its further consideration.

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

Matters in Regulations which ought to be in the Principal Legislation

15. Schedule 1 [8] inserts new section 125D into the Act, outlining maximum penalties for offences against regulations. A person who is guilty of an offence against the regulations is liable to a penalty not exceeding \$110,000.

The Committee notes that the *Environmental Planning and Assessment Act 1979* provides for offences to be included in the regulations. The Committee considers that offences are more appropriately included in the principal legislation. The Committee refers this matter to Parliament for its consideration.

Commencement by Proclamation

16. Clause 2 of the Bill outlines that, with the exception of schedules 4 and 5 of the Bill, the Act is to commence on proclamation.

The Committee prefers that legislation of this kind, which may affect the rights and responsibilities of an individual, should commence on a fixed date or on assent.

6. Local Government Amendment (Elections) Bill 2014

Date introduced	22 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Local Government Act 1993* as follows:
 - (a) to enable, in certain circumstances, a casual vacancy in the office of councillor to be filled by a candidate determined by a countback of votes rather than a by-election,
 - (b) to promote planning for the administration of ordinary elections of councillors by requiring each council that resolves to have its general manager administer its elections (instead of the Electoral Commissioner) to publish on its website a resolution, dealing with various election administration matters, at least 18 months before the ordinary election,
 - (c) to require the Electoral Commissioner to provide each general manager of a council who is administering the elections of the council with a printed and an electronic copy of the residential roll for the local government area concerned,
 - (d) to provide that persons who are entitled to enrol on a roll of non-resident owners of rateable land or roll of occupiers and ratepaying lessees are not required to re-enrol after each ordinary election of councillors,
 - (e) to enable the Council of the City of Sydney (and any other local council prescribed by the regulations), by a resolution made at least 18 months before an ordinary election of councillors, to determine that voting at that election is to be conducted exclusively by means of postal voting.

BACKGROUND

2. The reforms proposed in this Bill are based on the recommendations made by the Joint Standing Committee on Electoral Matters in its report tabled in March 2014 arising from its Inquiry into the 2012 Local Government Elections.
3. In its report, the Committee made 15 recommendations to improve the administration of council elections, and to remove barriers to candidate and voter participation. The recommendations build on earlier reforms in which the *Local Government Act 1993* was amended in 2011 to enable councils to conduct their own elections.
4. Further recommendations made by the Committee will be achieved by way of amendments to the *Local Government (General) Regulation 2005*.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
7. Schedule 1 [1] inserts proposed section 291A into the LG Act to give effect to the object set out in paragraph (a) above. The proposed section provides that a casual vacancy in the office of councillor to which the proposed section applies is to be filled by a countback election conducted in accordance with the regulations. The proposed section applies to a casual vacancy in the office of a councillor if:
 - (a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the local government area, and
 - (b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.

The proposed section does not apply if the councillor who vacated office was elected:

- (a) in an election using the optional preferential voting system, including the election of a mayor elected by the electors of an area (that is, in single member elections), or
 - (b) in an election without a poll being required to be held. If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election, a by-election must be held to fill the casual vacancy.
8. Schedule 1 [2] inserts proposed section 296AA into the LG Act to give effect to the object set out in paragraph (b) above. The proposed section provides that, at least 18 months before the next ordinary election of councillors for a council, the council must resolve:
 - (a) to enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council (as provided by section 296 of the LG Act), or
 - (b) that the elections of the council are to be administered by the general manager of the council.

A resolution that the elections of the council are to be administered by the general manager of the council must include the following information:

- (a) whether the general manager intends to administer elections personally or to engage an electoral services provider,
- (b) if the general manager intends to administer elections personally, whether the general manager has identified any persons to be appointed as the returning officer and substitute returning officer for the next ordinary election of councillors and, if so, the names of those persons,

(c) if the general manager intends to engage an electoral services provider, whether the general manager has identified the electoral services provider and, if so, the name of that provider,

(d) any other information required by the regulations.

As soon as practicable after making any such resolution, the general manager of the council must publish a copy of the resolution on the council's website. If a council fails to comply with the proposed section, the general manager must publish a notice of that failure on the council's website.

9. Schedule 1 [3] inserts proposed section 298 (3)–(8) into the LG Act to give effect to the object set out in paragraph (c) above. The proposed subsections provide that, as soon as practicable after the closing date for the rolls for an election that is to be administered by the general manager of the council concerned, the Electoral Commissioner is to provide the general manager with a printed and an electronic copy of the residential roll for the area and, if the area is divided into wards, a separate printed and electronic copy of the roll for each ward. The electronic copy of the residential roll is to be provided in the format specified by the regulations (if any). The costs of providing these copies of the roll are to be met by the relevant council.
10. Proposed section 298 (5) makes it an offence for a general manager of a council or any other person to use or disclose any information provided in a residential roll under section 298 of the LG Act other than for the purpose of administering an election under that Act.
11. Proposed section 298 (6) makes it an offence for any person to use or disclose any such information for a commercial purpose. The proposed offences carry a maximum penalty of 1,000 penalty units (currently \$110,000).
12. Schedule 1 [4]–[9] amend sections 299 and 300 of the LG Act to give effect to the object set out in paragraph (d) above. Currently, under sections 299 (2) and 300 (2) of the LG Act each roll of non-resident owners or rateable land and roll of occupiers and ratepaying lessees lapses after the election for which it is prepared. New rolls are to be prepared for each new election which are to consist only of the names of those non-resident owners of rateable land and those occupiers and ratepaying lessees who have applied for the inclusion of their names for the purposes of the election for which the rolls are being prepared. Schedule 1 [5] and [8] remove that requirement.
13. Schedule 1 [4], [6], [7] and [9] make amendments that provide that as soon as is practicable after a roll of non-resident owners of rateable land and a roll of occupiers and ratepaying lessees for an election lapses, the general manager of the council concerned is to prepare new rolls and keep them updated. The new rolls prepared by the general manager are to include the names of the persons who:
 - (a) have applied, at any time, for the inclusion of their names in any such roll, and
 - (b) on the closing date for the election are, in the opinion of the general manager, qualified for inclusion in the roll.
14. Schedule 1 [10] inserts proposed section 310B into the LG Act to give effect to the object set out in paragraph (e) above. The proposed section applies to the City of Sydney local

government area and any other local government area prescribed by the regulations for the purposes of the proposed section.

The proposed section provides that a council may, by a resolution made at least 18 months before the next ordinary election of councillors, determine that voting at that election is to be conducted exclusively by means of postal voting. Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by such a resolution to change the means of conducting the voting. Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting. Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting. An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.

ISSUES CONSIDERED BY COMMITTEE

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

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

7. Motor Accidents (Lifetime Care and Support) Amendment Bill 2014

Date introduced	22 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Minister for Finance and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make the following changes to the Scheme under the *Motor Accidents (Lifetime Care and Support) Act 2006* which provides for the treatment and care needs of persons injured in motor accidents who are in need of lifetime care and support:
 - (a) to clarify that the Lifetime Care and Support Authority may satisfy its liability to pay for expenses incurred in relation to an injured person's treatment and care needs by making a reasonable contribution to alternative expenditure that the Authority is satisfied will provide for those needs in a cost effective manner,
 - (b) to enable the Authority to enter into contracts with other local or interstate insurers and authorities with similar functions for the purpose of providing services to injured persons who are eligible under similar lifetime care schemes.

BACKGROUND

2. The Lifetime Care and Support Scheme is the model for the development of the National Injury Insurance Scheme. The Australian Capital Territory has enacted legislation which is substantially in the same terms as the New South Wales scheme. The Australian Capital Territory has requested that the NSW Lifetime Care and Support Authority assist it by administering the ACT scheme.
3. Should the passage of this legislation be successful, an intergovernmental agreement, as well as agreement between the authorities, will be negotiated.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16

6. Schedule 1 [1] provides that the Authority has the option of satisfying its liability under the Act to pay for expenses incurred in relation to a Scheme participant's assessed treatment and care needs by making a reasonable contribution to alternative

expenditure that the Authority is satisfied will provide for those same needs in a cost effective manner.

7. Schedule 1 [3] enables the Authority to enter into arrangements with other insurers and authorities with similar functions, both in New South Wales and in other States or Territories, for the purpose of the Authority exercising functions on their behalf to provide treatment, rehabilitation, care and support services to persons who have been accepted as eligible participants in similar lifetime care schemes.
8. Schedule 1 [2] provides for the Authority to delegate any of its functions under any such arrangements.
9. Schedule 1 [4] provides for payments and receipts under the arrangements referred to in Schedule 1 [3] to be accounted for separately within the Fund kept under the Act and not to affect contributions to the funding of the Scheme by third-party insurance policy holders.

ISSUES CONSIDERED BY COMMITTEE

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

NSW agencies subject to the law of other jurisdictions

10. The Bill provides for the NSW Lifetime Care and Support Authority to undertake the work of a scheme in another jurisdiction, such as the Australian Capital Territory's Lifetime Care and Support Scheme. However, the Bill does not clarify that should there be any inconsistency between the NSW legislation and the legislation of another jurisdiction (for example, the ACT legislation), the NSW legislation would prevail to the extent of the inconsistency.

The Committee notes interjurisdictional approach to the support of individuals who sustain catastrophic injuries following a motor accident. The Committee refers to Parliament the question as to whether the legislation ought to clarify that NSW legislation would prevail in relation to the functions of a NSW agency in circumstances where the NSW legislation was inconsistent with the legislation of another jurisdiction.

8. Pesticides Amendment Bill 2014

Date introduced	22 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Rob Stokes MP
Portfolio	Minister for the Environment

PURPOSE AND DESCRIPTION

1. The objects of this Bill are
 - (a) To amend the *Pesticides Act 1999*:
 - (i) to provide for a new licensing regime for pesticide work; and
 - (ii) to rename certificates of competency under the Act as restricted pesticide authorisations, and
 - (iii) to align the provisions of the Act with recent changes made to the Agvet Code, and
 - (iv) to enact provisions to improve the administration and enforcement of the Act, and
 - (v) to make amendments in the nature of statute law revision, and
 - (vi) to enact savings and transitional provisions consequent on the enactment of the proposed Act, and
 - (b) To make consequential amendments to the *Land and Environment Act 1979* and *Work Health and Safety Regulation 2011*.

BACKGROUND

2. This Bill is the first part of a series of reforms planned by the Government to update and strengthen the ability of the Environment Protection Authority to oversee chemical use and prevent adverse impacts on human health and the environment.
3. The Government indicated its intention that, should it be re-elected, the next step in the chemicals reform program would be to introduce legislation to modernise the *Environmentally Hazardous Chemicals Act 1985* to achieve more streamlined and effective controls on transport of hazardous waste.

OUTLINE OF PROVISIONS

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

6. Currently, Division 1 of Part 6 of the Pesticides Act 1999 (the principal Act) provides for the licensing of pilots who apply pesticides using aircraft and persons who run businesses that do so. Certain other work involving the application of pesticides and the use of fumigants is regulated under the Work Health and Safety Regulation 2011, which continues in operation Part 9.1 of the repealed Occupational Health and Safety Regulation 2001 in relation to such work (the continued OHS provisions). The continued OHS provisions require (with some exceptions) certificates of competency in order to do that work.
7. The proposed Act provides for the cessation of the continued OHS provisions and the transfer of licensing of the application of pesticides and use of fumigants to new provisions to be inserted in the principal Act.
8. Schedule 1.1 amends the principal Act:
 - (a) to enable the regulations to prescribe certain kinds of activities involving pesticides as kinds of prescribed pesticide work, and
 - (b) to make it an offence for a person to carry out prescribed pesticide work (or employ a person to carry out prescribed pesticide work) unless the person carrying out the work holds the kind of licence prescribed by the regulations for that work, and
 - (c) to provide for the granting of such licences, licence conditions, duration of licences and the suspension and revocation of licences, and
 - (d) to require the Environment Protection Authority to keep a Register of Licences and to enable it to make information in the Register available to members of the public, and
 - (e) to rename certificates of competency under the principal Act as restricted pesticide authorisations to avoid confusion with certificates of competency issued under the continued OHS provisions (which will become licences under the Act).
9. Schedule 1.2 amends the principal Act to align its provisions with those of the Agvet Code following recent amendments to the Code. In particular, Schedule 1.2:
 - (a) updates notes and definitions in the principal Act to reflect changes in the Agvet Code, and
 - (b) includes certain deemed permits under the Agvet Code in the definition of permit for the principal Act, and
 - (c) includes certain pesticides the approvals of which have been suspended or cancelled under the Agvet Code in the definition of unregistered pesticide for the principal Act, and
 - (d) makes changes to the Act consequent on the introduction of the concept of reserved chemical products in the Agvet Code.
10. Schedule 1.3 amends the principal Act:

- (a) to make it clear that offences under the principal Act involving damage to property resulting from pesticide use extend to situations where pesticide use prevents, or is likely to prevent, any part of premises used for agricultural operations from being used for such operations or reduces, or is likely to reduce, the capacity of a part of premises to be used for such operations, and
 - (b) to make it an offence for a person to use a pesticide in a manner that harms a companion animal that is in or on premises with the consent of the owner or occupier of the premises, and
 - (c) to enable the Minister to delegate the Minister's functions with respect to the making of pesticide control orders to the Chairperson of the Environment Protection Authority, and
 - (d) to enable a prohibited residue notice or order to extend to persons involved in growing or supplying produce to which the notice or order relates, and
 - (e) to enable a prohibited residue notice or order to require a person to whom it applies to report on and monitor prohibited residue in produce and to arrange for analysis to be undertaken of prohibited residue and the findings of the analysis to be reported to the Environment Protection Authority, and
 - (f) to enable the Environment Protection Authority to enforce written undertakings given to it in connection with a matter in relation to which the Authority has a function under the principal Act, and
 - (g) to enable regulations to be made for or with respect to the analysis, reporting and monitoring of pesticide residues by growers and suppliers of produce.
11. Schedule 1.4 makes certain amendments in the nature of statute law revision, including providing for the abolition of the now defunct Pesticides Implementation Committee.
12. Schedule 1.5 amends the principal Act:
- (a) to update provisions concerning the making of savings and transitional regulations, and
 - (b) to include savings and transitional provisions consequent on the enactment of the proposed Act.
13. Schedule 2.1 makes an amendment to the Land and Environment Court Act 1979 to ensure that proceedings to enforce undertakings by the Environment Protection Authority under its new powers are allocated to Class 4 of the Court's jurisdiction.
14. Schedule 2.2 amends the Work Health and Safety Regulation 2011 to provide for the continued OHS provisions to cease to have effect on a day declared by regulations under the principal Act.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

15. Proposed section 53(9) of the Bill provides that Section 57 of the *Privacy and Personal Information Protection Act 1998* does not apply to the public register of licenses of prescribed pesticide work, or to information in the register that is published or provided to members of the public.

The Committee notes that the Bill provides for the suspension of the *Privacy and Personal Information Protection Act 1998* in certain circumstances. Given that these circumstances largely relate to the register of licences about pesticide work, the information is unlikely to infringe on individual privacy rights. The Committee makes no further comment.

Absence of Cost Recovery

16. Proposed sections 64(2)(b)(v) and 65(2)(b)(vi) will confer additional powers to authorised officers of the Environmental Protection Agency [EPA]. Specifically, the powers will provide that if these officers reasonably suspect that any agricultural produce contains a prohibited residue, they may give notice to or order the owner of the produce to arrange analysis to be undertaken by a qualified laboratory and report the findings to the EPA. The provisions expressly state that any such testing will be at the person's own cost.
17. The Committee notes that there is no scope for the person concerned to recoup the expenses incurred for arranging for the test, even if subsequent report finds that there was no prohibited residue in the produce.

The Committee notes that the Bill provides for the owner of agricultural produce to pay for the costs of analysing the produce for a prohibited residue even if the findings are that there was no such prohibited residue. The Committee notes that this may be an unfair financial burden on innocent individuals and, as such, refers this matter to Parliament for its further consideration.

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

Primacy of Regulations over Legislation

18. Proposed Schedule 2, Clause 1[2] provides that the regulations may contain provisions of a savings or transitional nature, and may have effect despite any specified provisions of the Act.
19. The Committee notes that the effect of this provision may be to authorise the making of subordinate legislation (in this case, regulations) which can be superior to and can suspend the provisions of the primary legislation from which it derives its authority.

The Committee notes that the Bill provides for the making of subordinate legislation that can be superior to and suspend the provisions of the primary legislation from which it derives its authority. The Committee notes that this may be an inappropriate delegation of legislative power. The Committee makes no further comment.

9. Relationship Register Amendment (Recognition of Same-Sex and Gender-Diverse Relationships)Bill 2014*

Date introduced	23 October 2014
House introduced	Legislative Assembly
Member responsible	Mr Alex Greenwich MP
Portfolio	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for the legal recognition of relationships between two adult persons of the same sex, or two adult persons, one or both of whom is gender-diverse, who have had their union solemnised as a marriage or a civil union in certain other countries or in certain other Australian States or Territories. This is achieved:
 - (a) by providing for parties to such unions who apply for the registration or their relationship to be automatically eligible for registration under the *Relationship Register Act 2010*, and
 - (b) by providing for parties to relationships that are so registered to be automatically treated as de facto partners in a de facto relationship for the purposes of NSW law.

BACKGROUND

2. The Relationships Register was introduced in NSW in 2010 and gives all adults in a de facto or couple relationship the opportunity to have their relationship officially recognised by the State, ensuring their rights as a couple. Both heterosexual and homosexual relationships are included.
3. However, one of the requirements to register a relationship is that both adults are not married and each person is required to declare that they are not married to be registered. This prevents the growing number of NSW citizens in same-sex relationships who marry overseas from registering their relationship in NSW.
4. The Bill would give same-sex couples who marry overseas or, should legislation pass, in other Australian States and Territories, automatic recognition of their relationship on the register upon application. It would also ensure that the law recognises such couples as de facto. The Bill extends these provisions to civil unions and to marriages and civil unions between couples where one person is, or both persons are, gender-diverse. Gender-diverse includes someone who is, or identifies as, neither wholly female nor wholly male, or a combination of female and male, or neither female nor male. This will include trans and intersex persons.

OUTLINE OF PROVISIONS

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

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

Schedule 1 Amendment of Relationships Register Act 2010 No 19

7. Schedule 1 [1] updates the long title of the Relationships Register Act 2010 to reflect the proposed extension of that Act to cover unions solemnised overseas, and civil unions, where both of the parties are of the same sex, or one or both of the parties is gender-diverse.
8. Schedule 1 [2] amends the object of the Act to reflect the proposed extension of the Act to cover unions solemnised overseas as marriages or civil unions, where both of the parties are of the same sex, or one or both of the parties is gender-diverse.
9. Schedule 1 [3] inserts definitions for expressions used in the other amendments made by the proposed Act. A person who is gender-diverse is defined as a person who is, or identifies as, neither wholly female nor wholly male, a combination of female and male or neither female nor male.
10. Schedule 1 [4] moves the definition of related by family so that it applies to all of the Act.
11. Schedule 1 [5] restates the eligibility for registration of a relationship. In addition to the current eligibility (that two adult persons are in a relationship as a couple) certain relationships can automatically be registered if an application is made (that is, without having to prove a relationship as a couple). The relationships to which the new provision extends are:
 - (a) the relationship between two adults who are married to each other in a recognised union solemnised as a marriage in another country or in another Australian State or Territory that was solemnised when both parties were adults, or
 - (b) the relationship between two adults who are parties to a recognised civil union solemnised in another country or another Australian State or Territory that was solemnised when both parties were adults.
12. The amendment also provides additional reasons why a relationship cannot be registered (in addition to if either person is married in a marriage recognised under Commonwealth law, that is, in a marriage between a man and a woman). The additional reasons are:
 - (a) either person is married in a recognised union solemnised as a marriage in another country or in another Australian State or Territory to another person, or
 - (b) either person is a party to a recognised civil union solemnised in another country or in another Australian State or Territory with another person.
13. The amendment also provides that, whereas currently an application for registration must be accompanied by a statutory declaration by each person stating that they are in a relationship as a couple with each other, the application must now state that one of the following is true:

- (a) the person is in a relationship as a couple with the other person,
 - (b) the person is married to the other person in a recognised union solemnised as a marriage in another country or in another Australian State or Territory,
 - (c) the person is a party with the other person to a recognised civil union solemnised in another country or in another Australian State or Territory.
14. The statutory declaration must also state the following:
- (a) that the person is not registered under the Act or a corresponding law as being in a registered relationship or an interstate registered relationship, whether with the other applicant or any other person,
 - (b) that the person is not in a relationship as a couple with a person other than the other applicant,
 - (c) that the person is not married in a recognised union solemnised as a marriage in another country or in another Australian State or Territory with another person,
 - (d) that the person is not a party to a recognised civil union solemnised in another country or in another Australian State or Territory with another person.
15. Schedule 1 [6] makes it clear that an existing reference to marriage means a marriage recognised under Commonwealth law (that is, a marriage between a man and a woman).
16. Schedule 1 [7] provides for the regulations to recognise the following:
- (a) a class of unions solemnised in another country (or one or more particular states of another country) or in another Australian State or Territory as marriages between two parties of the same sex or where one or both of the parties is a person who is gender-diverse,
 - (b) a class of civil unions solemnised in another country (or one or more particular states of another country) or in another Australian State or Territory as civil unions between two parties of the same sex or where one or both of the parties is a person who is gender-diverse.
17. The amendment also provides that, for the purposes of any New South Wales law, a person is a de facto partner of, and in a de facto relationship with, another person if the person is in a recognised union solemnised as a marriage in another country or another Australian State or Territory or a recognised civil union solemnised in another country or another Australian State or Territory.
18. Schedule 1 [8] updates a heading to a section.

ISSUES CONSIDERED BY COMMITTEE

Potential Conflict with Marriage Act 1961 (Cth)

19. Schedule 1, item 5 of the Bill gives same sex couples who marry overseas or in another Australian State or Territory automatic recognition of their relationship on the NSW Relationship Register upon application. It also extends these provisions to civil unions.
20. Section 88EA of the *Marriage Act 1961 (Cth)* provides that a union solemnised in a foreign country between (a) a man and another man; or (b) a woman and another woman; must not be recognised as a marriage in Australia.

The objects of this Bill may be inconsistent with the *Marriage Act 1961 (Cth)*. The Committee refers this matter to Parliament for further consideration as a potential conflict between State and Commonwealth law.

10. Responsible Mining (Protecting Land, Water and Communities) Bill 2014*

Date introduced	23 October 2014
House introduced	Legislative Council
Member responsible	The Hon. Jeremy Buckingham MLC
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to protect certain land, water and communities from mining and mining-related activities:
 - (a) by regulating prospecting for, and the mining of, minerals and petroleum in certain environmentally-sensitive areas, including national parks, state conservation areas, productive agricultural land and near rivers, and
 - (b) by preventing planning approval being given to prospecting or mining activities in such areas unless a positive gateway determination has been made by an independent body, and
 - (c) by prohibiting prospecting or mining activities from interfering with highly productive aquifers, and
 - (d) by providing for the involvement of local councils and communities in the prohibition of other prospecting or mining activities, and
 - (e) by ensuring that landholders can refuse to allow the holders of mining authorisations or petroleum titles to carry out prospecting or mining operations on their land, and
 - (f) by re-enacting a requirement that the public interest be considered as a relevant ground in making certain decisions about mining rights.

BACKGROUND

2. The Bill is a response to the ongoing challenges involved in balancing mineral exploration, mining and gas development with the rights of landowners, and concerns relating to aquifers, responsible mining and biodiversity.

OUTLINE OF PROVISIONS

Part 1 Preliminary

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act 3 months after the date of assent to the proposed Act, unless commenced sooner by proclamation.

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

Part 2 Protected land

6. Clause 4 defines protected land to include the following:
- (a) national parks and state conservation areas and land within 2 kilometres of such parks or areas,
 - (b) State forests and land within 2 kilometres of such forests,
 - (c) the area of operations of the Sydney Catchment Authority and land within 2 kilometres of that area,
 - (d) certain urban areas and land within 5 kilometres of such areas,
 - (e) productive agricultural land and land within 2 kilometres of such land,
 - (f) protected catchment areas,
 - (g) Tier 1 Biodiversity land and land within 2 kilometres of such land.
7. Clause 5 provides for the regulations to declare areas to be protected catchment areas (which are within the definition of protected land).
8. Clause 6 provides for the Minister to declare land to be Tier 1 Biodiversity (which is within the definition of protected land).
9. Clause 7 provides for the keeping of an inventory of protected land.
10. Clause 8 provides for the resolution of disputes as to whether or not any particular land is protected land.

Part 3 Prohibition on new or renewed prospecting for and mining of minerals or petroleum on protected land

11. Clause 9 prohibits the granting of any mining authorisation in relation to protected land.
12. Clause 10 prohibits the renewal of any mining authorisation in relation to protected land.
13. Clause 11 prohibits the granting of any petroleum title in relation to protected land.
14. Clause 12 prohibits the renewal of any petroleum title in relation to protected land.

Part 4 Restrictions on mining and prospecting operations on protected land and certain other land

15. Clause 13 provides that a planning approval is not to be given under the Environmental Planning and Assessment Act 1979 in relation to development for the purposes of prospecting and mining activities on protected land unless the determining authority has had regard to a gateway certificate issued under proposed Part 5 (which will only be issued if the development meets the relevant criteria specified in proposed section 22).

16. Clause 14 prohibits any prospecting for, or the mining of, any mineral, or the conduct of any petroleum prospecting or petroleum mining operations, that interferes with highly productive aquifers.
17. Clause 15 provides that an environmental planning instrument (whether a local environmental plan or a State environmental planning policy) cannot permit the carrying out of prospecting for, or mining of, minerals or petroleum on protected land.
18. Clause 16 provides that any provision of an environmental planning instrument in force immediately before the commencement of the proposed Act that permits the carrying out of prospecting for, or mining of, minerals or petroleum on protected land ceases to have effect in relation to the protected land.

Part 5 Gateway certificates

19. Clause 17 establishes the Mining and Petroleum Gateway Panel.
20. Clause 18 specifies the function of the Gateway Panel, which is to consider applications for gateway certificates.
21. Clause 19 provides that the Gateway Panel is not subject to the direction or control of the Minister.
22. Clause 20 provides for the Minister administering the *Agricultural Industry Services Act 1998* and the Minister administering the *Destination NSW Act 2011* to declare land to be critical industry cluster land.
23. Clause 21 provides for the making of applications for gateway certificates.
24. Clause 22 specifies the criteria to be considered in determining applications for gateway certificates.
25. Clause 23 provides for the determination of applications for gateway certificates by the Gateway Panel.
26. Clause 24 specifies the maximum time for the determination of applications for gateway certificates.
27. Clause 25 provides for the Gateway Panel to request further information before determining an application for a gateway certificate.
28. Clause 26 provides that a gateway certificate remains current for 5 years.
29. Clause 27 provides for the giving of notice of the determination of applications for gateway certificates.

Part 6 Independent Mining and Petroleum Authority

30. Clause 28 establishes an Independent Mining and Petroleum Authority and provides that the Authority is, in the exercise of its functions, not generally subject to the control and direction of the Secretary or the Minister.
31. Clause 29 specifies the functions of the Independent Authority.

32. Clause 30 empowers the Independent Authority to require the production of a statement of information.
33. Clause 31 empowers the Independent Authority to obtain documents.
34. Clause 32 provides for the Independent Authority to make reports on the results of assessments that it makes.

Part 7 Community vetoing of prospecting and mining

35. Clause 33 provides that a local council may request the Minister administering the *Environmental Planning and Assessment Act 1979* to make a local environmental plan that prohibits prospecting and mining activities.
36. Clause 34 provides that that Minister must make a local environmental plan in response to any such request.
37. Clause 35 provides that a local environmental plan made in accordance with proposed section 33 prevails over any other environmental planning instrument (whether a local environmental plan or a State environmental planning policy) to the extent of any inconsistency.
38. Clause 36 provides that any environmental planning instrument (whether a local environmental plan or a State environmental planning policy) that is inconsistent with a local environmental plan required to be made under the proposed Part is without effect.

Part 8 Miscellaneous

39. Clause 37 provides for the making of regulations under the proposed Act.
40. Clause 38 provides for the making of savings and transitional regulations.
41. Clause 39 provides that offences under the proposed Act may be dealt with summarily before the Local Court.
42. Clause 40 provides for the delegation of the Secretary's functions.

SCHEDULE 1 AMENDMENT OF MINING ACT 1992 NO 29

43. Schedule 1 [3] makes it clear that the holder of a prospecting title (an exploration licence or assessment lease) must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land. Prospecting operations must not be carried out unless there is an access arrangement agreed between the holder of the prospecting title and all the landholders of the area of land concerned. The ability to prospect under arrangements determined by an arbitrator (when the landholder does not agree) is omitted.
44. Schedule 1 [1], [2], [4], [5], [9], [10], [12], [15], [18], [20] and [23] omit redundant references about arbitrators and the determination of access arrangements by arbitrators in cases where the landholder does not consent to the prospecting operations.
45. Schedule 1 [6] provides that the overall principles to be observed by the holder of a prospecting title in negotiating an access arrangement are that the landholder should

not be in an overall worse position financially as a consequence of the holder of the prospecting title exercising the holder's rights under the *Mining Act 1992*, and that the landholder's land should not be in an overall worse condition environmentally as a consequence of the holder of the prospecting title exercising the holder's rights under that Act.

46. Schedule 1 [7] provides that, if the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.
47. Schedule 1 [8] provides that the holder of the prospecting title must pay the legal costs of the landholder incurred in connection with the holder of the prospecting title seeking access to land, including, but not limited to, the negotiation and making of an access arrangement. Schedule 1 [5] makes a consequential amendment.
48. Schedule 1 [11] removes the procedure for a variation of an access arrangement to be determined by an arbitrator.
49. Schedule 1 [13] removes the procedure for a replacement access arrangement to be determined by an arbitrator when there is a change in landholder.
50. Schedule 1 [14] inserts a note relating to the payment of interest and penalty tax whenever a payment of royalty is late.
51. Schedule 1 [16] makes it an offence for a person, while holding office or exercising functions under the *Mining Act 1992*, to have a beneficial interest in an authority, a mineral claim or an opal prospecting licence (whereas at present a person is only prohibited from actually holding an authority, claim or licence).
52. Schedule 1 [17] re-inserts a provision requiring the public interest to be a relevant ground for making certain decisions about mining rights, in place of a fit and proper person test.
53. Schedule 1 [19] provides for immunity for landholders relating to the exercise of any power or right by or under any other Act, in connection with a power or right exercised under the *Mining Act 1992* or an authority under that Act.
54. Schedule 1 [21] provides that the amendments made by Schedule 1 that relate to access arrangements do not apply if an access arrangement determined by an arbitrator was in force immediately before the commencement of the proposed Act. Such an access arrangement will continue to be valid. The amendments about legal costs do not apply in respect of legal costs relating to an access arrangement for which notice was given before the commencement of the amendments.
55. Schedule 1 [22] is consequential on the creation of an indictable offence by Schedule 1 [16].

Schedule 2 Amendment of Petroleum (Onshore) Act 1991 No 84

56. Schedule 2 [1] inserts a definition of rehabilitation. The term is defined to mean the treatment or management of land, or of water, that may have been damaged or

adversely affected by activities under a petroleum title, so that it is returned to its original condition or to an improved condition, including (but not limited to) the levelling, regrassing, reforesting or contouring of any part of the land the subject of the title, and the filling in or sealing of excavation and drill holes.

57. Schedule 2 [2] prohibits the Minister from suspending a condition of a petroleum title relating to environmental management, the conservation or protection of the environment or the rehabilitation of any land or water.
58. Schedule 2 [7] makes it clear that the holder of a prospecting title (an exploration licence, assessment lease or special prospecting authority) must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land. Prospecting operations must not be carried out unless there is an access arrangement agreed between the holder of the prospecting title and all the landholders of the area of land concerned. The ability to prospect under arrangements determined by an arbitrator (when the landholder does not agree) is omitted.
59. Schedule 2 [4], [5], [9]–[13] and [18]–[20] extend the operation of a Part about access arrangements for prospecting titles so that it also applies to petroleum mining operations under production leases and make it clear that the holder of a production lease must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.
60. Schedule 2 [3], [6], [8], [21], [23] and [33] omit redundant references to arbitrators and to access arrangements being determined by arbitrators in cases where the landholder does not consent to the prospecting operations.
61. Schedule 2 [15] provides that the overall principles to be observed by the holder of a prospecting title or production lease in negotiating an access arrangement are that the landholder should not be in an overall worse position financially as a consequence of the holder of the prospecting title or production lease exercising the holder's rights under the Petroleum (Onshore) Act 1991, and that the landholder's land should not be in an overall worse condition environmentally as a consequence of the holder of the prospecting title or production lease exercising the holder's rights under that Act.
62. Schedule 2 [16] provides that, if the holder of a prospecting title or production lease contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.
63. Schedule 2 [17] provides that the holder of the prospecting title or production lease must pay the legal costs of the landholder incurred in connection with the holder of the prospecting title or production lease seeking access to land, including, but not limited to, the negotiation and making of an access arrangement. Schedule 2 [14] makes a consequential amendment.
64. Schedule 2 [22] removes the procedure for a variation of an access arrangement to be determined by an arbitrator.
65. Schedule 2 [24] removes the procedure for a replacement access arrangement to be determined by an arbitrator when there is a change in landholder.

66. Schedule 2 [25]–[27] modify provisions about restrictions on the rights of holders of production leases over land that is under cultivation. The amended provisions will apply those restrictions to land that has been determined to be agricultural land in accordance with the amended section.
67. Schedule 2 [28] inserts provisions about audits. The provisions:
- (a) describe the nature of an audit and provide for regulations to be made with respect to the accreditation of auditors and the carrying out of audits, and
 - (b) enable the Director-General to impose mandatory audit conditions on petroleum titles, and
 - (c) provide for the certification of an audit report, and
 - (d) make it an offence (of strict liability) to provide false or misleading information to an auditor or in an audit report and also make it an offence for an auditor not to include in an audit information that is materially relevant, and
 - (e) require information to be supplied for audit purposes even if it may incriminate the person concerned and authorise the use of information contained in an audit for the purposes of planning and environment protection legislation, and
 - (f) make provision for the mandatory audit of the Department's performance in administering the Petroleum (Onshore) Act 1991, the Mining Act 1992 and the proposed Act, monitoring the implementation of those 3 Acts and enforcing the conditions of petroleum titles and mining authorities.
68. Schedule 2 [29] makes it an offence to fail to pay any royalty and enables the Minister to charge interest on the amount of any unpaid royalty.
69. Schedule 2 [30] enables the Director-General to publish environmental information about the impact of petroleum prospecting and mining activities obtained by the Director-General or the Independent Authority.
70. Schedule 2 [31] prohibits a person who holds office in an official capacity for the purposes of the *Petroleum (Onshore) Act 1991* from holding directly or indirectly a beneficial interest in a petroleum title (and not merely from holding a petroleum title, as at present). The provision does not prevent the Director-General from being the holder of an exploration licence on behalf of the Crown.
71. Schedule 2 [32] provides for the proposed offence relating to failure to pay a royalty to be dealt with on indictment.
72. Schedule 2 [34] provides for immunity for landholders relating to the exercise of any power or right by or under any other Act, in connection with a power or right exercised under the Petroleum (Onshore) Act 1991 or a petroleum title under that Act.
73. Schedule 2 [35] provides that the amendments proposed to be made by Schedule 2 that relate to access arrangements do not apply if an access arrangement determined by an arbitrator was in force immediately before the commencement of the proposed Act. Such an access arrangement will continue to be valid. The amendments relating to legal

costs do not apply in respect of legal costs relating to an access arrangement for which notice was given before the commencement of the amendments.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

74. Schedule 3 makes amendments consequential on the creation of indictable offences by Schedule 1 [16] and Schedule 2 [31].

ISSUES CONSIDERED BY COMMITTEE

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

Right to silence / Right against self-incrimination

75. Part 6 of the Bill provides for the establishment of an Independent Mining and Petroleum Authority. Proposed sections 30 and 31 outline the power of the Authority to obtain information and obtain documentation. Schedule 2 [28] of the Bill seeks to amend the *Petroleum (Onshore) Act 1991*, inserting section 83F which would provide that a holder of petroleum title who fails to provide information to an auditor in relation to a mandatory audit would be guilty of an offence. Section 84G specifies that self-incriminatory information would not be exempt.

The Committee notes that requiring an individual to answer questions and provide information and records impacts on their right to silence and their right against self-incrimination. The Committee refers to Parliament whether this is appropriate in the circumstances.

11. Surveillance Devices Amendment (Police Body-Worn Video)Bill 2014

Date introduced	23 October 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Surveillance Devices Act 2007 (the Act) to allow for the use of body-worn video by police officers. The Bill excepts police use of body-worn video from offences that prohibit the use of surveillance devices to record private conversations and to record the carrying on of activities.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Brad Hazzard MP, Attorney General and Minister for Justice stated that the Surveillance Devices Act 2007 only permits use of body-worn video devices in very limited circumstances unless a warrant or authorisation has been issued. Mr Hazzard further advised that the NSW Police Force commenced limited trials of body-worn video devices in July 2013 and that, following positive results from these trials, the NSW Government announced \$4 million to fund a broader rollout of the devices and supporting infrastructure. The devices will operate as a modern day equivalent of a police notebook providing for a contemporaneous record of observations and events in the field.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Surveillance Devices Act 2007 No 64

5. Schedule 1 [1] defines body-worn video for the purposes of the Act as equipment worn on the person of a police officer that is capable of recording visual images or sound or both.
6. Schedule 1 [2] and [3] except police use of body-worn video from the offences in sections 7 (1) and 8 (1) of the Act. Those provisions prohibit, in particular circumstances, the use of a listening device to record a private conversation and the use of an optical surveillance device to record visually the carrying on of an activity. As body-worn video is both a listening device and an optical surveillance device for the purposes of the Act, a

police officer's use of body-worn video in the circumstances described by sections 7 (1) and 8 (1) would constitute an offence without the proposed exceptions.

7. Schedule 1 [8] defines the circumstances in which a police officer's use of body-worn video will not be an offence under section 7 (1) or 8 (1) of the Act. Those circumstances are limited to situations where all of the following apply:
 - (a) the police officer is acting in the execution of his or her duty,
 - (b) the use of body-worn video is overt (as when, for example, the police officer has informed the person who is to be recorded of the use of body-worn video),
 - (c) if the police officer is recording a private conversation, the police officer is in uniform or has provided evidence that he or she is a police officer to each party to the private conversation.
8. It will also not be an offence if the police officer uses body-worn video inadvertently or unexpectedly to record a private conversation or the carrying on of an activity, or if the police officer's use of body-worn video is incidental to the use of body-worn video that complies with all the requirements set out in paragraphs (a)–(c) above.
9. Schedule 1 [4], by expanding the definition of protected information in section 39 of the Act, widens the scope of existing offences in section 40 in order to prohibit the disclosure of information obtained from the use of body-worn video in accordance with the requirements of
10. Schedule 1 [8]. The disclosure of information obtained otherwise than in accordance with the requirements of Schedule 1 [8] will be prohibited by existing provisions of the Act.
11. Schedule 1 [5] expands an existing aggravated offence in order to prohibit the disclosure of information obtained from the use of body-worn video in accordance with the requirements of Schedule 1 [8] where the person intends to (or knows that, or is reckless as to whether, the disclosure will) prejudice the effective conduct of an investigation into any offence and not merely an indictable offence (as is currently the case with other forms of protected information).
12. Schedule 1 [6] allows information obtained from the use of body-worn video in accordance with the requirements of Schedule 1 [8] to be disclosed in connection with the exercise of a law enforcement function by a member of the NSW Police Force or the education and training of members of the NSW Police Force, or for any purpose prescribed by the regulations.
13. Schedule 1 [7] is a consequential amendment.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

14. Taken together, schedule 1 items 2, 3 and 8 of the Bill allow a police officer to record and take video footage of private conversations and in private premises as long as the

use is overt, the officer is acting in the execution of his/her duty, and a party to any private conversation knows he or she is being recorded by a police officer.

15. The Committee notes it is likely that many instances of innocent behaviour will thereby be recorded, with significant privacy implications. Some recordings will also be made inside people's homes. Therefore, appropriate safeguards are vital in regulating the use, communication and publication of recorded material. While schedule 1, item 6 of the Bill provides that material obtained can only be published, used or communicated in connection with the exercise of a law enforcement function by a member of the NSW Police Force, or in connection with education and training of members of the NSW Police Force, it also provides that the material can be used, published or communicated for any purpose prescribed in the regulations.

In the Committee's view, to ensure proper parliamentary oversight and given the far-reaching privacy implications, rules regarding the acceptable use, publication or communication of material obtained through use of a police body-worn video should be clearly set out in primary legislation – not delegated to subordinate legislation. The Committee refers this matter to Parliament for further consideration.

Privacy II

16. The Committee notes it is likely that a large amount of behaviour recorded by the police body-worn videos will be innocent and there will be no need to preserve video evidence in these instances. However, the Committee notes that the Bill contains no provisions to govern retention, access to and disposal of recordings. The Second Reading Speech to the Bill indicates that operational guidelines will instead be developed to deal with these matters.

In the Committee's view, to ensure appropriate parliamentary oversight, particularly given the serious privacy implications, rules governing retention, access to and disposal of police body-worn video recordings should be included in primary legislation, not delegated to operational guidelines. At the very least, such provisions should be included in the regulations as, unlike guidelines, regulations must be tabled in Parliament and are subject to disallowance under sections 40 and 41 of the Interpretation Act 1987. The Committee refers this matter to Parliament for further consideration.

Part Two – Regulations

1. Assisted Reproductive Technology Regulation 2014

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with some changes, the Assisted Reproductive Technology Regulation 2009, which was repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.
2. This Regulation makes provision with respect to the following:
 - (a) the registration of ART providers, including additional matters to be included in applications for registration, application fees and annual registration fees,
 - (b) the additional events and changes that registered ART providers must give notice of to the Secretary of the Ministry of Health,
 - (c) the infection control standards that certain ART providers must meet,
 - (d) the qualifications required to provide counselling services under the Act,
 - (e) the steps required to be taken by an ART provider in certain circumstances to establish whether a person, who earlier provided a gamete, is still alive,
 - (f) the information about a donated gamete, or embryo created using a donated gamete, that an ART provider must provide to a registered ART provider,
 - (g) the collection of information about gamete providers and about offspring born as a result of ART treatment, and the keeping of records of that information,
 - (h) the information required to be provided by ART providers for inclusion on the central register,
 - (i) the matters (relating to both ART treatment and surrogacy arrangements) to be entered on, and to be disclosed from, the central register by the Secretary,
 - (j) exemptions applicable to gametes obtained prior to the commencement of the *Assisted Reproductive Technology Act 2007* and limitations on the storage of those gametes.
3. This Regulation is made under the *Assisted Reproductive Technology Act 2007*, including the provisions of the Act referred to in the headings to the clauses of this Regulation and section 71 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

4. Part 3 of the Regulation relates to information and record keeping in relation to sperm and ovum donation (gamete donation). Part 4 of the Regulation relates to the Central register which requires the Secretary to maintain a central register including information in relation to gamete donors, donation dates, medical history and genetic test results. Part 4 also provides for the disclosure of that information to certain individuals.

The Committee recognises the public policy issues at stake in relation to gamete donation, storage, fertilisation and any subsequent births. The Committee particularly notes that keeping records in relation to gamete donors, and providing for the release of parts of this information in the future, impacts on the privacy of gamete donors. However, given this regulation is not retrospective and all gamete donors would be aware of this new regime, the Committee makes no further comment on this issue.

2. Privacy and Personal Information Protection Regulation 2014

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with some changes, the Privacy and Personal Information Protection Regulation 2005, which was repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.
2. This Regulation does the following:
 - (a) prescribes the Inspector of Custodial Services as an investigative agency that is exempt from the need to comply with certain requirements of the *Privacy and Personal Information Protection Act 1998* (the Act),
 - (b) provides that certain information contained in archives or held by a library, art gallery, museum or the State Records Authority is not personal information for the purposes of the Act,
 - (c) exempts certain public sector agencies from the requirements under section 33 of the Act to prepare and implement a privacy management plan,
 - (d) exempts certain public sector agencies from the provisions of Part 6 of the Act relating to public registers,
 - (e) exempts the Council of the Bar Association and the Council of the Law Society from all provisions of the Act,
 - (f) exempts local councils using CCTV cameras to film a public place, and disclosing information obtained thereby to the NSW Police Force by way of live transmission, from certain provisions of the Act relating to the collection of personal information.
3. This Regulation is made under the Privacy and Personal Information Protection Act 1998, including paragraph (g) of the definition of investigative agency in section 3 (1) and sections 4 (3) (k), 4B, 33 and 71 (the general regulation-making power, including the power to exempt public sector agencies from provisions of the Act).
4. This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

5. The Regulation provides that the Inspector of Custodial Services does not need to comply with certain requirement of the *Privacy and Personal Information Protection Act 1998* (clause 4). The Regulation also provides exemptions in relation to libraries, art

galleries, museums and the State Records Authority (clause 5), the Council of the Law Society of NSW and the Council of the Bar Association of NSW (clause 8). The regulation also exempts local councils that are using CCTV cameras to film a public place from the Act insofar as it allows information to be transmitted, live, to the NSW Police Force (clause 9).

The Committee notes the importance of the *Privacy and Personal Information Protection Act 1998* in safeguarding the privacy of individuals in New South Wales. In circumstances where exceptions to the Act are granted, the Committee will seek to inform the Parliament for its further consideration.

3. Sporting Venues Authorities Regulation 2014

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake the *Sporting Venues Authorities Regulation 2008*, which was repealed on 1 September 2014 by section 10 (2) of the Subordinate Legislation Act 1989.
2. This Regulation makes provision with respect to the following:
 - (a) conditions of entry to any land, or facility on land, vested in or managed by a sporting venues authority,
 - (b) the removal of persons from any such land or facilities,
 - (c) enabling sporting venues authorities to ban persons from entering such land or facilities for a period of up to 12 months,
 - (d) the membership of a board of management for a regional sporting venues authority and the exercise of the functions of any such board in circumstances where the board is not constituted,
 - (e) the maximum term that a person may be appointed to such a board of management and to an advisory committee,
 - (f) the functions of Local Venues Councils and the appointment of chairpersons to those Councils,
 - (g) the prescription of an offence under the Regulation as a penalty notice offence (being the offence of re-entering a sporting venue within 48 hours of being directed to leave, or being removed from, the venue).
3. This Regulation is made under the *Sporting Venues Authorities Act 2008*, including sections 14 (5), 33A (7), 38 and 40 (the general regulation-making power) and Schedule 2.
4. This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

ISSUES CONSIDERED BY COMMITTEE

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

Right to be heard / right of appeal

5. Clause 6 of the Regulation provides that a sporting venues authority may, by notice in writing served on a person, ban a person from entering land vested in or managed by the authority as specified in the notice for the period specified in the notice (not

exceeding 12 months). This may only take place if that person has been removed from the venue under clause 5, or been convicted of an offence under clause 5 or if the person has committed any other offence in relation to any land or facility of the authority.

The Committee recognises the public policy reasons for enabling a sporting venue authority to ban a person for a specified period. However, the Committee notes that there are no appeal rights available in the Regulation for those individuals who receive a ban. The Committee makes no further comment.

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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