



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

| | |
|-----------------|---|
| CHAIR | Mr Stephen Bromhead MP, Member for Myall Lakes |
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| MEMBERS | Mr Garry Edwards MP, Member for Swansea Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon. Shaoquett Moselmane MLC The Hon. Dr Peter Phelps MLC Mr David Shoebridge MLC |
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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. DRUG COURT LEGISLATION AMENDMENT BILL 2014

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

Lower eligibility threshold for compulsory drug treatment order

The Bill expands the pool of offenders who could be ordered to complete the Compulsory Drug Treatment Program. However, the Bill will require the Drug Court to consider an offender's history of prior criminal offending related to long-term drug dependency and lifestyle when assessing their suitability for such an order, to ensure that recidivist offenders remain the target of the program. The Committee also notes the objects of the program include reducing drug dependency of eligible offenders; promoting their re-integration into the community; and reducing their need to resort to criminal activity to support dependencies. The Committee therefore makes no further comment.

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

Expansion of powers of Director of Compulsory Drug Treatment Correctional Centre

The Bill empowers the Director of the Centre to instruct an offender to regress to an earlier stage of the program in certain circumstances, rather than such a decision being made by a judge of the Drug Court. However, the Committee notes that the Director will only be empowered to direct an offender to regress in the program for a period not exceeding three months. The Director would also be required to notify the Drug Court of their direction within seven days, and an offender could apply to the Court for a review within fourteen days. The Committee therefore makes no further comment.

2. LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2014

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

Right of Legal Professional Privilege and Right Against Self-Incrimination

The Committee is concerned that section 466 of the Bill requires the provision of certain information and documents even if provision of this information by a person tends to incriminate the person or to encroach on his or her right to legal professional privilege. The Committee refers the matter to Parliament for further consideration.

Search and Seizure Without Warrant

The Committee notes that the Bill allows an investigator a limited right to enter non-residential premises without a warrant to search for and seize information and evidence relevant to an investigation. Nonetheless, the power only applies in respect of non-residential premises and the investigator must believe on reasonable grounds entry is urgently necessary to prevent destruction of evidence. Owing to these safeguards and the importance of ensuring probity in the legal profession, the Committee makes no further comment.

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

Commencement by Proclamation

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

3. ROMAN CATHOLIC CHURCH TRUST PROPERTY AMENDMENT (JUSTICE FOR VICTIMS) BILL 2014*

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

Retrospectivity

The Committee will always be concerned with any retrospective effect of legislation which may impact on personal rights and liberties. The Committee notes the Bill will allow property of the Catholic Church to be used to satisfy claims that arose before its commencement. The Committee makes no further comment.

4. TAFE CHANGES MORATORIUM (SECURE FUTURE FOR PUBLIC PROVISION OF VOCATIONAL EDUCATION AND TRAINING) BILL 2014 (NO 2)*

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

5. TEACHING SERVICE AMENDMENT (TRANSFERS) BILL 2014

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

6. TRANSPORT ADMINISTRATION AMENDMENT (RAIL TRAILS COMMUNITY MANAGEMENT) BILL 2014*

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

PART TWO – REGULATIONS

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

Part One - Bills

1. Drug Court Legislation Amendment Bill 2014

| | |
|----------------------|---|
| Date introduced | 26 March 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Brad Hazzard MP |
| Portfolio | Attorney General and Minister for Justice |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to amend the *Drug Court Act 1998* and the *Crimes (Administration of Sentences) Act 1999* to give effect to certain recommendations made by the Minister for Justice in the review entitled *Review of the Compulsory Drug Treatment Program and the Compulsory Drug Treatment Correctional Centre pursuant to the Crimes (Administration of Sentences) Act 1999* (May 2013) (the **Review**), and
 - (b) to make a related amendment to the *Crimes (Administration of Sentences) Regulation 2008*.

BACKGROUND

2. The Bill implements reforms recommended by a recent statutory review of the legislation governing the Compulsory Drug Treatment Correctional Centre. The Centre was established in 2006 to specifically target long-term drug-dependent offenders who have failed past treatment in voluntary drug and alcohol programs in either correctional centres or the community, or who have never accessed treatment.
3. The overwhelming response from stakeholders indicated support for the continued operation of the program and the statutory review concluded that the policy objectives of the program and the associated legislation remain valid. The review made twelve recommendations to clarify aspects of the legislation and to make the program available to a greater number of participants. Nine of those recommendations related to amending legislation.

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 Drug Court Act 1998 No 150

6. Schedule 1 [1] provides that an **eligible convicted offender** must be a person who has been sentenced to a term of imprisonment for the relevant offence to be served by way of full-time detention where, at the time the sentence was imposed:
 - (a) the unexpired non-parole period of the sentence was a period of at least 18 months, and
 - (b) the unexpired total sentence was a period of not more than 6 years.
7. Currently, the unexpired non-parole period must be at least 18 months at the time the sentence was imposed and no more than 3 years at the time the Drug Court determines whether to make a compulsory drug treatment order (see recommendation 4 of the Review).
8. Schedule 1 [2] removes the requirement that an eligible convicted offender must be a person who has been convicted of at least 2 offences resulting in a sentence of imprisonment, community service order or good behaviour bond within the 5-year period immediately before the offender's current conviction (see recommendation 5 of the Review).
9. Schedule 1 [3] provides that an eligible convicted offender includes a person whose parole order has been revoked if the person can be referred to the Drug Court by the State Parole Authority under the provision to be inserted by Schedule 1 [5] (see recommendation 9 of the Review).
10. Schedule 1 [4] provides that a person may not be an eligible convicted offender if the offence for which the person has been convicted involved the use of a firearm, or if the person has been convicted at any time of any offence involving the violent use of a firearm. Currently, a person may not be an eligible convicted offender if the person has been convicted at any time of any offence involving the use of a firearm (see recommendation 10 of the Review).
11. Schedule 1 [5] requires the State Parole Authority to refer a person, whose parole has been revoked in respect of a sentence that has previously been the subject of a compulsory drug treatment order which has expired, to the Drug Court to determine whether the person should be the subject of a compulsory drug treatment order (see recommendation 9 of the Review).
12. Schedule 1 [6] provides that for an eligible convicted offender referred to the Drug Court by the State Parole Authority whose parole order has been revoked, the Drug Court may make a new compulsory drug treatment order having regard to the circumstances of the revocation (see recommendation 9 of the Review).
13. Schedule 1 [7] provides that when assessing an offender's suitability to serve a sentence by way of compulsory drug treatment detention, the multi-disciplinary team must have regard to the offender's history of committing offences involving weapons (see recommendation 10 of the Review).
14. Schedule 1 [8] provides that when assessing an offender's suitability to serve a sentence by way of compulsory drug treatment detention, the multi-disciplinary team must have

regard to the offender's history of committing offences that are related to the offender's long-term drug dependency and associated lifestyle (see recommendation 5 of the Review).

15. Schedule 1 [9] extends the effect of a compulsory drug treatment order to include the suspension of any entitlement of an eligible convicted offender to be considered for parole (see recommendation 3 of the Review).
16. Schedule 1 [10] provides that the functions conferred or imposed on the registrar of the Drug Court by the regulations or the rules of court that the registrar may exercise are not restricted to administrative functions (see recommendation 6 of the Review).
17. Schedule 1 [11] enables savings and transitional regulations to be made as a consequence of amendments to the Act. Schedule 1 [12] contains specific savings and transitional provisions.

Schedule 2 Amendment of other legislation

Schedule 2.1 Crimes (Administration of Sentences) Act 1999 No 93

18. Schedule 2.1 [2] provides that if the Director of the Compulsory Drug Treatment Correctional Centre (the **Director**) is satisfied that an offender has failed to comply in a serious respect with any condition of the offender's compulsory drug treatment personal plan, the Director may direct that an offender regress from one stage of compulsory drug treatment detention to a lower stage for a specified period not exceeding 3 months. It also provides that the Director must notify the Drug Court of any such direction within 7 days of issuing the direction and that the offender may apply to the Drug Court for a review of the direction within 14 days of the direction (see recommendation 2 of the Review). Schedule 2.1 [1] makes a consequential amendment.
19. Schedule 2.1 [3] provides that a compulsory drug treatment order may be revoked if, in the opinion of the Drug Court (having regard to advice provided by the Director and the offender's progress in the compulsory drug treatment program), the offender is unlikely to make any further progress in the offender's compulsory drug treatment program (see recommendation 1 of the Review).
20. Schedule 2.1 [5] provides that a court that sentences an offender to a term of imprisonment (a **new sentence**) that is being served concurrently or partly concurrently with a sentence in relation to which a compulsory drug treatment order is made must refer the offender to the Drug Court in order to determine whether the order should be varied or revoked, regardless of when the new sentence was imposed (see recommendation 7 of the Review). Schedule 2.1 [4] makes a consequential amendment.
21. Schedule 2.1 [6] provides that the State Parole Authority may consider an offender's case less than 60 days before the offender's parole eligibility date where the Drug Court has revoked the offender's compulsory drug treatment order (see recommendation 3 of the Review).

Schedule 2.2 Crimes (Administration of Sentences) Regulation 2008

22. Schedule 2.2 enables the State Parole Authority to consider an offender's case at any time after the offender's parole eligibility date without the need for an application

where the Drug Court has revoked the offender's compulsory drug treatment order (see recommendation 3 of the Review).

ISSUES CONSIDERED BY COMMITTEE

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

Lower eligibility threshold for compulsory drug treatment order

23. Schedule 1[1] of the Bill amends section 5A of the *Drug Court Act 1998* to extend eligibility for the program from a certain category of offenders with an unexpired sentence of no more than three years, to those with an unexpired sentence of no more than six years.
24. Schedule 1[2] of the Bill also removes the current eligibility requirement that an offender must have been convicted of at least two offences resulting in a sentence of imprisonment, a community service order or a good behaviour bond within the five-year period immediately before the offender's current conviction.

The Bill expands the pool of offenders who could be ordered to complete the Compulsory Drug Treatment Program. However, the Bill will require the Drug Court to consider an offender's history of prior criminal offending related to long-term drug dependency and lifestyle when assessing their suitability for such an order, to ensure that recidivist offenders remain the target of the program. The Committee also notes the objects of the program include reducing drug dependency of eligible offenders; promoting their re-integration into the community; and reducing their need to resort to criminal activity to support dependencies. The Committee therefore makes no further comment.

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

Expansion of powers of Director of Compulsory Drug Treatment Correctional Centre

25. Schedule 2.1[2] of the Bill inserts a new section 106MA into the *Crimes (Administration of Sentences) Act 1990* to authorise the Director of the Compulsory Drug Treatment Correctional Centre to determine that an offender regress to a lower stage of their treatment program. The Director can exercise this power in circumstances where they are satisfied that an offender has failed to comply in a serious respect with any condition of the offender's compulsory drug treatment personal plan. At present, such decisions can only be made by the Drug Court.

The Bill empowers the Director of the Centre to instruct an offender to regress to an earlier stage of the program in certain circumstances, rather than such a decision being made by a judge of the Drug Court. However, the Committee notes that the Director will only be empowered to direct an offender to regress in the program for a period not exceeding three months. The Director would also be required to notify the Drug Court of their direction within seven days, and an offender could apply to the Court for a review within fourteen days. The Committee therefore makes no further comment.

2. Legal Profession Uniform Law Application Bill 2014

| | |
|----------------------|---|
| Date introduced | 26 March 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | Hon. Brad Hazzard MP |
| Portfolio | Attorney General and Minister for Justice |

PURPOSE AND DESCRIPTION

1. The Legal Profession Uniform Law (the Uniform Law) provides a scheme to regulate the legal profession and is the subject of an agreement between New South Wales, Victoria and potentially other jurisdictions.
2. The objects of this Bill are:
 - (a) to apply the text of the Uniform Law as a law of this State, and
 - (b) to enact complementary provisions having effect for this State, and
 - (c) to repeal the Legal Profession Act 2004 (the repealed Act).
3. The text of the Uniform Law is set out in Schedule 1 to the Legal Profession Uniform Law Application Act 2014 of Victoria. A copy of the Uniform Law is included as a note at the end of the Bill.

BACKGROUND

4. In his second reading speech to Parliament, the Hon. Greg Smith MP, then Attorney General and Minister for Justice stated that the Bill will apply the provisions of the Legal Profession Uniform Law as a law of NSW as well as providing supporting provisions for the regulation of the legal profession in NSW.
5. The Legal Profession Uniform Law is nationally developed uniform legislation passed recently by the Victorian Parliament. The Uniform Law was originally developed under the auspices of the Council of Australian Governments (COAG) from 2009 to 2011 with the aim of delivering harmonised regulation of the legal profession across all States and Territories. COAG established this project as part of its microeconomic reform agenda under the national partnership to deliver a seamless national economy.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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.
8. Clause 3 contains definitions of terms used in the proposed Act.

Part 2 Application of Uniform Law

9. Clause 4 applies the Uniform Law as a law of this State.
10. Clause 5 excludes certain Acts of this State from applying in relation to the Uniform Law.
11. Clauses 6 and 7 provide for the way certain Acts of this State apply in relation to the Uniform Law.
12. Clause 8 provides for the scrutiny and review of Uniform Regulations in this State. However, if a Uniform Regulation is disallowed in this State, the regulation does not cease to have effect in this State unless the regulation is disallowed in a majority of the participating jurisdictions.
13. Clause 9 provides a person cannot be punished twice for the same offence under the Uniform Law as applying in 2 jurisdictions.
14. Clause 10 defines the term this jurisdiction where used in the Uniform Law as applied in this State to mean New South Wales.
15. Clause 11 declares which persons or bodies are “designated local regulatory authorities” and “designated tribunals” where used in the Uniform Law as applied in this State.
16. Clauses 12–18 make various declarations and other arrangements for this State, as contemplated by the Uniform Law.

Part 3 Local regulatory authorities

17. Division 1 provides for the Legal Profession Admission Board. This is supplemented by Schedule 3.
18. Division 2 provides for the Legal Services Commissioner. This is supplemented by Schedule 4.
19. Divisions 3–5 contain provisions about the Bar Council and the Law Society Council, including requiring annual reports and lay representation on committees.

Part 4 Practising certificates and registration certificates

20. Division 1 relates to applications for practising certificates by Australian lawyers in this State under the Uniform Law, and Division 2 relates to applications for registration certificates by foreign lawyers in this State under that Law. These provisions provide for the fees and fidelity fund contributions payable in connection with an application. Division 3 carries over provisions relating to the Attorney General and Crown Solicitor, and authorises regulations to be made exempting government lawyers from certain provisions of the Uniform Law (this is contemplated as jurisdictional legislation referred to in section 56 of that Law).

Part 5 Trust accounts and Public Purpose Fund

21. Part 5 provides for the Public Purpose Fund and for statutory deposits to be made to it from interest payable on general trust accounts. Schedule 5 contains provisions relating to the Trustees of the Public Purpose Fund.

Part 6 Legal costs—particular kinds of costs

22. Part 6 contains provisions, carried over from the repealed Act, for 3 kinds of costs. The first is in clauses 59 and 60 and authorises costs to be fixed by regulation. The second is in clause 61 and Schedule 1 and relates to the maximum costs in personal injury damages matters. The third is in clause 62 and Schedule 2 and relates to costs in civil claims where there are no reasonable prospects of success.

Part 7 Legal costs—costs assessment

23. Division 1 contains definitions.
24. Division 2 provides for the assessment of solicitor-client costs.
25. Division 3 provides for the assessment of party-party costs.
26. Division 4 provides for appeals relating to decisions of costs assessors and review panels.
27. Division 5 sets up the Costs Assessment Rules Committee and provides for costs assessment rules (the rules are expected to play a greater role in the procedures for costs assessment).
28. Division 6 contains general provisions. This Division and Schedule 6 contain provisions relating to costs assessors, including their appointment.

Part 8 Professional indemnity insurance

29. Part 8 complements provisions contained in Part 4.4 of the Uniform Law relating to professional indemnity insurance.
30. Division 1 contains arrangements for the approval of kinds of insurance policies for professional indemnity insurance. Policies that comply with the arrangements are approved insurance policies for the purposes of Part 4.4 of the Uniform Law. This provision corresponds with arrangements under the repealed Act and has a similar effect to section 13 of the Legal Profession Uniform Law Application Act 2014 of Victoria.
31. Division 2 deals with professional indemnity insurance for barristers.
32. Division 3 deals with professional indemnity insurance for solicitors, and carries provisions over from the repealed Act, including provisions for the Solicitors Mutual Indemnity Fund, contributions and levies.
33. Division 4 deals with professional indemnity insurance for incorporated legal practices.
34. Division 5 carries over provisions authorising the Law Society to extend Division 3 to other persons and also referring to provisions in Schedule 7 relating to HIH insurance.

Part 9 Fidelity cover

- 35. Division 1 provides for the Legal Practitioners Fidelity Fund and its management.
- 36. Division 2 relates to claims about defaults of a law practice to which Part 4.5 of the Uniform Law applies.
- 37. Division 3 provides that Part 4.5 of the Uniform Law does not apply to defaults of a law practice consisting of a barrister.

Part 10 Mortgage practices

- 38. Part 10 carries over provisions of the repealed Act relating to mortgage practices. It is supplemented by Schedule 8 (also carried over) containing special provisions regarding mortgages entered into before 7 September 2001.

Part 11 Procedures of NCAT as designated tribunal for disciplinary matters

- 39. Part 11 contains provisions relating to the procedures of the Civil and Administrative Tribunal when exercising functions in connection with disciplinary matters. Provisions are contemplated by section 301 of the Uniform Law. Some procedures are covered by the Civil and Administrative Tribunal Act 2013.

Part 12 Registers and publicising disciplinary action

- 40. Part 12 provides for various registers to be kept by the Law Society Council, Bar Council or Legal Services Commissioner, the availability of the registers for inspection, and other means of publicising disciplinary action.

Part 13 Miscellaneous

- 41. Part 13 contains miscellaneous provisions, including provisions enabling regulations to be made, the repeal of the Legal Profession Act 2004 and the re-enactment of provisions preventing the appointment of Queen's Counsel and official schemes for recognising seniority or status of legal practitioners.

Schedule 1–8

- 42. Schedules 1–8 are referred to above.

Schedule 9 Savings, transitional and other provisions

- 43. Schedule 9 contains savings, transitional and other provisions. This Schedule authorises regulations to be made for this purpose. It also contains a provision for the construction of references to the repealed Act in other legislation and instruments, and a provision carrying over the effect of orders made under the repealed Act in connection with the approval of policies of insurance for professional indemnity insurance.

Schedule 10 Amendments

- 44. Schedule 10 contains amendments to the Interpretation Act 1987 and the Public Notaries Act 1997. References in other legislation to the repealed Act and associated matters are covered by transitional provisions in Schedule 9. It is expected that future legislation will deal with these matters by direct amendment.

Note Legal Profession Uniform Law

45. The note reproduces the text of the Uniform Law set out in Schedule 1 to the Legal Profession Uniform Law Application Act 2014 of Victoria. The explanatory memorandum for the Uniform Law can be accessed at <http://www.legislation.vic.gov.au/>.

ISSUES CONSIDERED BY COMMITTEE

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

Right of Legal Professional Privilege and Right Against Self-Incrimination

46. Section 466 of the Bill provides that certain requirements such as the duty to give written notice of an irregularity in connection with a trust account under section 154, or the duty to produce documents, provide information or otherwise assist in or cooperate with a complaint investigation under section 371 apply, and that a person is not excused from complying with such requirements on the ground of legal professional privilege, or on the ground that compliance may tend to incriminate the person.

The Committee is concerned that section 466 of the Bill requires the provision of certain information and documents even if provision of this information by a person tends to incriminate the person or to encroach on his or her right to legal professional privilege. The Committee refers the matter to Parliament for further consideration.

Search and Seizure Without Warrant

47. Under section 374(2)(c) of the Bill, an investigator may enter non-residential premises for the purpose of carrying out a trust records investigation, compliance audit or complaint investigation to search for and seize information and evidence relevant to the investigation, without the consent of the occupier and without a warrant. This can only occur if the investigator believes on reasonable grounds that it is necessary to do so to prevent the destruction of or interference with relevant material. Nonetheless, by omitting a requirement to satisfy an independent third party that there are reasonable grounds for the search, it may interfere with the right of persons to be free from arbitrary search and seizure activity.

The Committee notes that the Bill allows an investigator a limited right to enter non-residential premises without a warrant to search for and seize information and evidence relevant to an investigation. Nonetheless, the power only applies in respect of non-residential premises and the investigator must believe on reasonable grounds entry is urgently necessary to prevent destruction of evidence. Owing to these safeguards and the importance of ensuring probity in the legal profession, the Committee makes no further comment.

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

Commencement by Proclamation

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

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

3. Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014*

| | |
|--------------------|-------------------------|
| Date introduced | 27 March 2014 |
| House introduced | Legislative Council |
| Member responsible | Mr David Shoebridge MLC |
| | *Private Member's Bill |

PURPOSE AND DESCRIPTION

1. The NSW Court of Appeal has held that property held on trust under the *Roman Catholic Church Trust Property Act 1936* for the use, benefit or purposes of the Roman Catholic Church in New South Wales cannot be used to satisfy legal claims associated with sexual abuse by Roman Catholic clergy, officials or teachers. The object of this Bill is to amend that Act:
 - (a) to allow a person suing a member of the Church's clergy, a Church official or a Church teacher in relation to sexual abuse to join the following as defendants in those proceedings (and to make them liable for any damages awarded):
 - i the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,
 - ii the trustees that make up that body corporate,
 - iii if the regulations so provide, any body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part, and
 - (b) to allow a person who is owed a judgment debt in respect of civil liability arising as a result of sexual abuse by a member of the Church's clergy, a Church official or a Church teacher to recover the debt from any of the following (as an alternative to pursuing the clergy member, official or teacher concerned):
 - i the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,
 - ii the trustees that make up that body corporate,
 - iii if the regulations so provide, anybody corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of

community land of any community of which the relevant member of the clergy, official or teacher was a part, and

- (c) to suspend the operation of the *Limitation Act 1969* for 2 years in relation to such causes of action that would otherwise be out of time.

BACKGROUND

2. This Bill seeks to allow victims of sexual abuse by a member of the Church's clergy, a church official or a church teacher to sue the church's property trust.
3. The Bill arises from concerns highlighted by the 2007 decision of the NSW Court of Appeal in the case of *Trustees of the Roman Catholic Church v Ellis & Anor.*¹

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 Roman Catholic Church Trust Property Act 1936 No 24

6. Schedule 1 makes the amendments described in the above Overview.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

7. The Bill inserts a new Part 3 into the *Roman Catholic Church Trust Property Act 1939* which permits a person bringing civil proceedings relating to sexual abuse to join as a defendant in those proceedings the following:
 - the body corporate established by the Act to hold property on trust for the dioceses in which the relevant abuse allegedly occurred,
 - the trustees that make up that body corporate, and
 - if the regulations so provide, any body corporate established under the *Roman Catholic Church Communities' Lands Act 1942* by which the relevant member of the clergy, official or teacher was employed or that was established as trustee of community land of any community of which the relevant member of the clergy, official or teacher was a part.
8. The new Part 3 also allows a person to bring an action for the recovery of debt, against the above, in respect of civil liability arising as a result of sexual abuse.
9. The Bill provides that these provisions extend to causes of action arising before the commencement of the new Part 3.

¹ [2007] NSWCA 117

The Committee will always be concerned with any retrospective effect of legislation which may impact on personal rights and liberties. The Committee notes the Bill will allow property of the Catholic Church to be used to satisfy claims that arose before its commencement. The Committee makes no further comment.

4. TAFE Changes Moratorium (Secure Future for Public Provision of Vocational Education and Training) Bill 2014 (No 2)*

| | |
|--------------------|------------------------|
| Date introduced | 27 March 2014 |
| House introduced | Legislative Assembly |
| Member responsible | Mr Jamie Parker MP |
| | *Private Member's Bill |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to freeze fees for TAFE courses, and funding to private providers of vocational education and training, at 2010 levels, and
 - (b) to maintain funding to the TAFE Commission at no less than its 2010–2011 level, and
 - (c) to require the Minister to ensure that the TAFE Commission is the principal provider of technical and further education in New South Wales.

BACKGROUND

2. This Bill seeks to take fees for TAFE courses and funding for private providers back to 2010 levels and freeze them at that level. It also provides that no policies should be introduced that do not support the TAFE Commission as the principal provider of technical and further education in New South Wales.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 provides that words and expressions used in the proposed Act have the same meaning as in the Technical and Further Education Commission Act 1990.
6. Clause 4 freezes, at 2010 levels with adjustments for inflation, fees for TAFE courses provided during 2014 and subsequently.
7. Clause 5 freezes, at 2010–2011 level with adjustments for inflation, funding for private providers of vocational education and training.

LEGISLATION REVIEW COMMITTEE

TAFE CHANGES MORATORIUM (SECURE FUTURE FOR PUBLIC PROVISION OF VOCATIONAL EDUCATION AND TRAINING) BILL 2014 (NO 2)*

8. Clause 6 provides that it is the intention of Parliament that funding available to the TAFE Commission is maintained at no less than its 2010–2011 level, with adjustments for inflation.
9. Clause 7 requires the Minister to ensure that the TAFE Commission is the principal provider of technical and further education in New South Wales. In doing so, any government policy that is likely to increase competition with the TAFE Commission in the provision of vocational education and training is not to proceed unless it is specifically authorised by Parliament.

ISSUES CONSIDERED BY COMMITTEE

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

5. Teaching Service Amendment (Transfers) Bill 2014

| | |
|----------------------|----------------------------|
| Date introduced | 27 March 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Adrian Piccoli MP |
| Portfolio | Minister for Education |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Teaching Service Act 1980* to restore the substantive effect of provisions relating to the transfer of officers within the Teaching Service that applied under the general government sector staff transfer provisions (sections 86A and 87) of the *Public Sector Employment and Management Act 2002* immediately before its repeal by the *Government Sector Employment Act 2013*.
2. The *Government Sector Employment Act 2013* continued provisions relating to the transfer of staff between the services of the Crown, but left transfers within a service of the Crown (other than the Public Service) to be regulated by the separate provisions that apply to those other services. The *Teaching Service Act 1980* does not currently contain specific provisions relating to transfers between schools.

BACKGROUND

3. The Bill introduces provisions into the *Teaching Service Act 1980* enabling the transfer of staff within the teaching service, following the repeal the *Public Sector Employment and Management Act 2002*, which contained such provisions.
4. The Bill also contains some amendments in the nature of statute law revision.

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 Principal amendments of Teaching Service Act 1980 No 23

7. Schedule 1 [1] removes a note that refers to the application to the Teaching Service of the general public sector transfer provisions of the *Public Sector Employment and Management Act 2002* that have now been repealed by the *Government Sector Employment Act 2013*.

8. Schedule 1 [2] inserts section 51A into the Act to restore the substantive effect of those repealed provisions (sections 86A and 87) in relation to the permanent or temporary transfer of officers within the Teaching Service. Under the transfer provisions:
 - (a) the Secretary of the Department of Education and Communities is required to consult an officer about a permanent transfer, and
 - (b) an officer may request (but is not entitled to) a transfer, and
 - (c) the Secretary may transfer an officer with or without the officer's consent, and
 - (d) a transfer may be made to any workplace location in the State, and
 - (e) an officer is entitled to be transferred at the officer's existing level of remuneration.
9. Schedule 1 [3] amends section 75 of the Act to confirm the power to terminate the employment of an officer who refuses to comply with a direction for the officer's transfer to another position.

Schedule 2 Law revision amendments of Teaching Service Act 1980 No 23

10. The Schedule makes law revision amendments to take account of changes made by the *Government Sector Employment Act 2013* to government sector employment arrangements.

ISSUES CONSIDERED BY COMMITTEE

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

6. Transport Administration Amendment (Rail Trails Community Management) Bill 2014*

| | |
|--------------------|-----------------------------|
| Date introduced | 27 March 2014 |
| House introduced | Legislative Council |
| Member responsible | The Hon. Michael Veitch MLC |
| | *Private Member's Bill |

PURPOSE AND DESCRIPTION

1. The object of this Bill amend the *Transport Administration Act 1988* to allow the Minister to enter into agreements with not-for-profit organisations or local councils for the use of disused railway lines for recreational activities.

BACKGROUND

2. This Bill enables the Minister to enter into rail trail agreements using disused rail corridor land for recreational purposes. There are more than 30 established rail trails in Australia across jurisdictions except New South Wales. Rail trails have the potential to unlock economic and social opportunities for rural and regional communities.

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 Transport Administration Act 1988 No 109

5. The Schedule contains amendments to the Act to give effect to the object set out above.

ISSUES CONSIDERED BY COMMITTEE

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

Part Two – Regulations

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

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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