



## Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 44/55 – 17 September 2013





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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

<b>CHAIR</b>	Mr Stephen Bromhead MP, Member for Myall Lakes
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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. CRIMES AND COURTS LEGISLATION AMENDMENT BILL 2013

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

#### *Retrospectivity*

Schedule 15 of the Bill retrospectively validates the disclosure of certain records under the *Young Offenders Act*. The Committee will always comment when provisions in legislation are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people to order their affairs according to what the law is. In this case, the retrospective provision does not adversely impact on individual rights as it does not create a new offence or penalty. Further, while the Bill validates the previously invalid disclosure of records, those records are not to identify any individual. For these reasons, the Committee makes no further comment.

### 2. CROWN LANDS AMENDMENT (MULTIPLE LAND USE) BILL 2013

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

#### *Retrospectivity*

The Committee notes that the proposed changes to Schedule 8 of the Crown Lands Act 1989 could impact on any pending land claims that have been made under the Aboriginal Land Rights Act 1983 since 9 November 2012. However, the Committee also notes the short timeframe involved and the competing rights of those who hold secondary interests in Crown reserves and makes no further comment.

### 3. DRUGS AND POISONS LEGISLATION AMENDMENT (NEW PSYCHOACTIVE AND OTHER SUBSTANCES) BILL 2013

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

#### *Proportionate punishment*

The Committee is concerned that where a person falsely represents that a substance is a psychoactive substance they could be prosecuted for the same offences as those individuals who supply genuine psychoactive substances. The Committee notes the Bill's public health and safety purposes and also that similar provisions exist in the *Drug Misuse and Trafficking Act 1985* with respect to prohibited drugs. However, the Committee refers to Parliament for consideration whether proposed section 40(3) of the Act could impact on a person's right to receive a penalty proportionate to the offence.

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

#### *Commencement by proclamation*

The Committee prefers that legislation of this kind which impacts on rights and creates new offences commence on a fixed date or assent.

4. FLUORIDATION OF PUBLIC WATER SUPPLIES AMENDMENT BILL 2013

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

5. GAME AND FERAL ANIMAL CONTROL AMENDMENT BILL 2013

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

*Denial of compensation*

The Committee notes Schedule 1 [13] of the proposed Act excludes any right to compensation that may arise for certain categories of person as a result of the proposed Act. This may impact on the rights and liberties of individuals. However, given the administrative changes made by the proposed Act aim to restore public confidence in the regulation of hunting, and to provide for the more effective use of hunting in pest management strategies, and given some affected persons ('authorised agents') may resume their activities under the proposed Act's new regime, the Committee makes no further comment.

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

*Commencement by proclamation*

The proposed Act is to commence on proclamation. The Committee prefers legislation to commence on a fixed date or on assent. However, the main aim of the proposed Act is to make administrative changes that provide for the effective management of game and feral animals in NSW. It is not to remove individual rights or impose new restrictions or obligations on individuals. Hence, the Committee makes no further comment.

*Delegated Power*

The Committee notes that schedule 1 [8] of the proposed Act includes insufficient criteria regarding the scope of persons to whom the Director-General's licensing, enforcement and other regulatory functions may be delegated. It provides such powers can be delegated to persons of a class prescribed by the regulations. However, the Committee notes regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.

6. GRAFFITI CONTROL AMENDMENT BILL 2013

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

7. POLICE INTEGRITY COMMISSION AND INDEPENDENT COMMISSION AGAINST CORRUPTION LEGISLATION AMENDMENT (INSPECTORS) BILL 2013

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

*Retrospectivity*

The Schedules 1[7] and 2[4] are drafted to cover conduct by the Inspector of the Police Integrity Commission before the amendments commence. The Committee will always comment when provisions in legislation are drafted to have such retrospective effect. This is because such provisions are generally considered contrary to fairness which allows people to order their affairs according to the law of the time. Despite this, the Committee notes that these amendments only affect a limited number of specified individuals. Further, given that

these specified individuals are responsible for maintaining integrity in the Police Force, the Committee recognises the public interest of the Bill, and makes no further comment

#### 8. ROYAL COMMISSIONS AND OMBUDSMAN LEGISLATION AMENDMENT BILL 2013

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

##### *Duty to Disclose*

The Committee notes that the disclosure provisions of this Bill, in which secrecy is not an excuse, may compel an individual to reveal personal and sensitive information about another individual or themselves before a Royal Commission. However, given the overall public interest in gathering sufficient evidence for the purposes of the Royal Commission into Institutional Responses to Child Sexual Abuse, and the interest against protecting the revelation of criminal information, the Committee does not consider this provision unreasonable in the circumstances provided, and makes no further comment.

##### *Retrospectivity*

The Committee notes that despite the retrospective application of this provision, it is intended to protect witnesses before the Royal Commission from criminal action as a result of disclosing information that is otherwise subject to secrecy protections. The Committee does not consider this provision unreasonable in the circumstances provided, and makes no further comment.

#### 9. SKILLS BOARD BILL 2013

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

#### PART TWO – REGULATIONS

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



## Part One - Bills

### 1. Crimes and Courts Legislation Amendment Bill 2013

Date introduced	12 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to amend the Coroners Act 2009 with respect to the membership and functions of the Domestic Violence Death Review Team constituted under that Act,
  - (b) to amend the Crimes (Appeal and Review) Act 2001 to clarify the time within which a prosecutor may appeal against a costs order and when a defendant may apply for the annulment of a conviction or sentence made or imposed by the Local Court,
  - (c) to amend the Crimes (Forensic Procedures) Act 2000 to include the taking of certain measurements of a person as a non-intimate forensic procedure,
  - (d) to amend the Crimes (Sentencing Procedure) Act 1999 to provide that an order varying a licence or privilege is a penalty in respect of which proceedings may be reopened and a conviction or order corrected,
  - (e) to amend the Criminal Procedure Act 1986 with respect to the giving of evidence by victims of certain offences under the Crimes (Domestic and Personal Violence) Act 2007,
  - (f) to amend the Drug Misuse and Trafficking Act 1985 and Drug Misuse and Trafficking Regulation 2011 to prohibit the possession of drug encapsulators or unique parts of drug encapsulators or tablet presses,
  - (g) to amend the Evidence Act 1995 with respect to the compellability of a spouse or de facto partner to give evidence in respect of proceedings for domestic violence or child assault offences,
  - (h) to amend the Justices of the Peace Act 2002 to allow justices of the peace to certify true and accurate copies of documents,

- (i) to amend the Law Enforcement (Powers and Responsibilities) Act 2002 and Minors (Property and Contracts) Act 1970 to increase the jurisdictional limits of the Local Court and District Court under those Acts,
- (j) to amend the Local Court Act 2007 to remove a limitation on the jurisdiction of the Local Court in relation to goods that are subject of a hire-purchase agreement and certain other goods,
- (k) to amend the Oaths Act 1900 to make provision with respect to the taking of statutory declarations by persons who are unable to understand written English, the taking of oaths or statutory declarations for the purposes of laws and courts in jurisdictions other than New South Wales and the taking of affidavits made by more than one person,
- (l) to amend the Telecommunications (Interception and Access) (New South Wales) Act 1987 with respect to keeping records under that Act,
- (m) to amend the Young Offenders Act 1997 and Young Offenders Regulation 2010 to allow for the disclosure of certain records to the Australian Bureau of Statistics and the Australian Institute of Criminology.

## BACKGROUND

- 2. The purpose of the Bill is to make miscellaneous amendments to courts and crimes related legislation as part of the Government's regular legislative review and monitoring program. The Bill amends a number of Acts to improve the efficiency and operation of the State's courts and tribunals and criminal laws.

## 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 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

### **Schedule 1 – Amendment of *Coroners Act 2009***

- 6. Item [1] of the proposed amendments to the *Coroners Act 2009* replaces the definition of domestic violence death for the purposes of investigations of deaths by the Domestic Violence Death Review Team in two respects. First, where the deceased was in a domestic relationship with the perpetrator, the death must be in the context of domestic violence. Second, the definition is expanded to include deaths of persons who were bystanders to the domestic violence or who were the new partner (or mistakenly believed by the perpetrator to be the new partner) or who were a relative or kin of a person who was in a domestic relationship with the perpetrator, where the death occurred in a domestic violence context.
- 7. Items [2] and [3] make consequential amendments to the definition of domestic relationship in section 101C of the *Coroners Act 2009*.

8. Item [4] amends the definition of domestic relationship for the purposes of investigations of deaths by the Domestic Violence Death Review Team as it applies to persons who are relatives of perpetrators to remove the qualification that there must have been previous episodes of domestic violence between the person and the perpetrator.
9. Item [5] replaces the list of members of the Domestic Violence Death Review Team to reflect the change in names for certain positions and Departments and to include a representative of Corrective Services NSW as a member of the team.
10. Item [6] updates a reference to the Department of Family and Community Services.

**Schedule 2 – Amendment of *Crimes (Appeal and Review) Act 2001***

11. Item [1] of the proposed amendments to the *Crimes (Appeal and Review) Act 2001* makes it clear that an application for the annulment of a conviction or sentence by a defendant may only be made if the defendant was not in appearance when the conviction was made or the sentence was imposed. The proposed amendment also provides that a defendant is not able to make such an application if the defendant had lodged a written plea in relation to the proceedings.
12. Item [2] makes it clear that appeal against an order for costs must be made within 28 days of the making of the order.

**Schedule 3 – Amendment of the *Crimes (Forensic Procedures) Act 2000***

13. The proposed amendment to the *Crimes (Forensic Procedures) Act 2000* makes it clear that the taking of measurements of the whole or any part of a person's body (other than the person's private parts) is a non-intimate forensic procedure that may be carried out by order of a senior police officer or Magistrate if the person has been asked to consent the procedure and has not consented. The proposed amendment also removes the requirement that the taking of such measurements must be for the purposes of "biomechanical analysis".

**Schedule 4 – Amendment of *Crimes (Sentencing Procedure) Act 1999***

14. The proposed amendment to the *Crimes (Sentencing Procedure) Act 1999* makes it clear that a court may reopen proceedings to correct an order or direction relating to the variation of a licence or privilege (such as the variation of a driver licence pursuant to a driver licence order under section 13C of the *Graffiti Control Act 2008*).

**Schedule 5 – Amendment of the *Criminal Procedure Act 1986***

15. The proposed amendment to the *Criminal Procedure Act 1986* includes certain offences under the *Crimes (Domestic and Personal Violence) Act 2007* relating to stalking, intimidation or the contravention of an apprehended violence order as personal assault offences for the purposes of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*. That Part provides special rules relating to the giving of evidence by vulnerable persons in certain proceedings relating to personal assault offences.

**Schedule 6 – Amendment of the *Drug Misuse and Trafficking Act 1985***



16. The proposed amendments to the Drug Misuse and Trafficking Act 1985 make it clear that it is an offence to possess a tablet press (a device that is capable of being used to produce a prohibited drug in a pill, tablet or other similar form) or a drug encapsulator (a device that is capable of being used to produce a prohibited drug in a capsule or similar form) including any unique part of such a press or encapsulator.

**Schedule 7 – Amendment of the *Drug Misuse and Trafficking Regulation 2011***

17. The proposed amendment to the *Drug Misuse and Trafficking Regulation 2011* replaces a reference to a pill or tablet press with references to a tablet press and drug encapsulator as a consequence of the amendments made to the Drug Misuse and Trafficking Act 1985 by the proposed Act.

**Schedule 8 – Amendment of the *Evidence Act 1995***

18. The proposed amendment to the *Evidence Act 1995* makes it clear that special rules that apply to the compellability of the spouse or de facto partner of an accused person to give evidence in proceedings for a domestic violence offence or a child assault offence apply only to the compellability of the spouse or de facto partner (and not other family members). The general rules applicable to the compellability of spouses and other family members to give evidence in proceedings continue to apply in respect of offences other than domestic violence offences and child assault offences. The amendment gives effect to the recommendations of the Supreme Court in *LS v Director of Public Prosecutions (NSW) and Anor* [2011] NSWSC 1016.

**Schedule 9 – Amendment of *Justices of the Peace Act 2002***

19. The proposed amendments to the *Justices of the Peace Act 2002* provide that the functions of a justice of the peace include certifying a document to be a true and accurate copy of an original document.

**Schedule 10 – Amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002***

20. The proposed amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* provides that applications in relation to property in police custody with a value of between \$40,000 and \$100,000 may be made to the Local Court rather than to the District Court.

**Schedule 11 – Amendment of *Local Court Act 2007***

21. The proposed amendment to the *Local Court Act 2007* removes a provision that excludes proceedings relating to goods that are the subject of a hire-purchase agreement or goods that are detained by their owner or by some other person acting on the owner's behalf from the civil jurisdiction of the Local Court.

**Schedule 12 – Amendment of *Minors (Property and Contracts) Act 1970***

22. The proposed amendments to the *Minors (Property and Contracts) Act 1970* increase the jurisdictional limits of the Local Court (increased from matters with a value not exceeding \$10,000 to matters not exceeding \$100,000) and the District Court (increased from matters not exceeding \$100,000 to matters not exceeding \$750,000).

**Schedule 13 – Amendment of *Oaths Act 1900***

23. Items [1] and [5] of the proposed amendments to the *Oaths Act 1900* make it clear that the existing provisions relating to statutory declarations and affidavits given by persons who are blind or illiterate extend to all persons who are unable to read written English.
24. Items [2] and [3] provide that the authority of a person to take and receive an oath, declaration or affidavit extends to the taking of an oath, declaration or affidavit for use in jurisdictions other than New South Wales.
25. Item [4] makes it clear that a person who takes and receives a statutory declaration from more than one deponent may do so with two or more of the deponents present at the same time or with each of the deponents separately.
26. Item [6] provides that the requirement that a person who takes and receives a statutory declaration or affidavit must see the face of the person making the declaration or affidavit for the purpose of identification does not extend to a declaration or affidavit made for the purposes of proceedings in, or a law of, the Commonwealth.

**Schedule 14 – Amendment of *Telecommunications (Interception and Access) (New South Wales) Act 1987***

27. Item [1] of the proposed amendments to the *Telecommunications (Interception and Access) (New South Wales) Act 1987* (the Act) amends the definition of restricted record to be consistent with the Telecommunications (Interception and Access) Act 1979 of the Commonwealth.
28. Item [2] removes a requirement that the chief officer of an eligible authority cause a certified true copy of each instrument revoking a warrant to be kept in the authority's records.

**Schedule 15 – Amendment of *Young Offenders Act 1997***

29. Item [2] of the proposed amendments to the *Young Offenders Act 1997* (the Act) allows for the disclosure of records relating to warnings, cautions and conferences under the Act to the Australian Bureau of Statistics and the Australian Institute of Criminology, but only if the name and other information identifying a person to whom any such record relates have been removed from the record.
30. Item [1] provides that a record held by the Australian Bureau of Statistics or the Australian Institute of Criminology relating to a warning given under Part 3 of the Act is not required to be destroyed when the person to whom the record relates reaches the age of 21 years.
31. Item [3] validates the disclosure of records to the Australian Bureau of Statistics and the Australian Institute of Criminology before the commencement of the amendments made by items [1] and [2], if the records could have been validly disclosed had the amendments been in force at the time of the disclosure.

**Schedule 16 – Amendment of *Young Offenders Regulation 2010***

32. The proposed amendment to the Young Offenders Regulation 2010 limits the circumstances in which records relating to warnings, cautions and conferences may be divulged to the Australian Bureau of Statistics or the Australian Institute of Criminology.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity*

33. Schedule 15 of the Bill amends the *Young Offenders Act 1997* to allow Police disclosure of records relating to warnings, cautions and conferences under the Act to the Australian Bureau of Statistics and the Australian Institute of Criminology, but only if the name and other information identifying a person to whom any such record relates have been removed from the record. Such information is used for national reviews of crime in Australia and for evidence-based research by these organisations. Schedule 15 also validates any disclosure of such records made to these organisations *before* the commencement of the amendments contained in schedule 15. That is, the amendments have retrospective effect.

**Schedule 15 of the Bill retrospectively validates the disclosure of certain records under the *Young Offenders Act*. The Committee will always comment when provisions in legislation are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people to order their affairs according to what the law is. In this case, the retrospective provision does not adversely impact on individual rights as it does not create a new offence or penalty. Further, while the Bill validates the previously invalid disclosure of records, those records are not to identify any individual. For these reasons, the Committee makes no further comment.**

## 2. Crown Lands Amendment (Multiple Land Use) Bill 2013

Date introduced	12 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Stoner MP
Portfolio	Deputy Premier, Minister for Trade and Investment and Minister for Regional Infrastructure and Services

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Crown Lands Act 1989* as follows:
  - (a) to provide that a secondary interest (a lease, licence, permit, easement or right-of-way) can be granted in respect of Crown land that is reserved for a public purpose (a Crown reserve) so long as use and occupation of the land under the secondary interest would not be likely to materially harm the use and occupation of the land for the public purpose for which it is reserved,
  - (b) to authorise the Minister or a reserve trust to validate the grant of a secondary interest over a Crown reserve by making such changes to the secondary interest as may be necessary to ensure that it was validly granted,
  - (c) to require notice to be given to the Minister or a reserve trust before the validity of a secondary interest over a Crown reserve can be challenged in court proceedings.

### BACKGROUND

2. The Bill proposes to amend the *Crown Lands Act 1989* to ensure the legal validity of secondary interests in Crown reserves (such as leases, licenses and permits). The validity of such interests was called into question by the NSW Court of Appeal decision in *Minister Administering the Crown Lands Act 1989 v New South Wales Aboriginal Land Council* [2012] NSWCA 358.
3. The case involved a claim by the Aboriginal Land Council under the *Aboriginal Land Rights Act 1983*. That Act allows Aboriginal Land Councils to make claims over Crown land if the land is not being lawfully used or occupied. The land in question was Crown land reserved for public recreation purposes. The NSW Government submitted that the existence of a grazing licence granted over the land was evidence that the land was being lawfully used and occupied. However the court disagreed and found that the licence was unlawful as it was not for the same purpose as the Crown reserve or in furtherance of or incidental to that purpose. The effect of the decision is that many secondary use interests in Crown reserves may be legally invalid.
4. The Minister's second reading speech states that there are more than 8,000 secondary tenures issued over Crown reserves in NSW, that they generate up to almost \$10 million

in fees annually and that, as a result of the court decision, there is a good chance that up to 90 per cent of them could be subject to challenge.

## 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 Crown Lands Act 1989 No 6

7. Schedule 1 [1] makes consequential amendments to definitions.
8. Schedule 1 [2] provides that the existing power of the Minister to grant a secondary interest in respect of a Crown reserve is not limited by the reservation if the Minister is of the opinion that use or occupation of the land under the secondary interest would not be likely to materially harm its use or occupation for the reserved purpose. The amendment also authorises the Minister to validate a secondary interest that would otherwise be invalid by making any necessary changes to the purpose or the terms and conditions of the secondary interest. Any such validation is backdated to the date on which the secondary interest was originally granted.
9. Schedule 1 [3] makes consequential amendments to definitions.
10. Schedule 1 [4] prevents a challenge to the validity of a secondary interest in a Crown reserve until the Minister has been given notice of the alleged invalidity.
11. Schedule 1 [5] extends the amendments made by the Bill to secondary interests granted by a reserve trust, with the functions of the Minister to be exercised by the reserve trust.
12. Schedule 1 [6] inserts a savings and transitional regulation-making power.
13. Schedule 1 [7] extends the amendments made by the Bill to existing secondary interests but not so as to affect previous court decisions and not so as to affect any Aboriginal land rights claim made before the Court of Appeal decision on the Goomallee Claim. The amendments that require prior notice of a challenge to the validity of a secondary interest do not extend to pending proceedings.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity*

14. The Bill proposes to amend Schedule 8 of the *Crown Lands Act 1989* to ensure that secondary interests in Crown Land (such as leases or licences) that were granted before the commencement of the Bill will be considered to have been validly granted.
15. As secondary interests in Crown Land can impact on land claims under the *Aboriginal Land Rights Act 1983*, the Bill provides that land claims under that Act that were made before 9 November 2012, the date of the decision in *Minister Administering the Crown*

*Lands Act 1989 v New South Wales Aboriginal Land Council (Goomallee Claim)* [2012] NSWCA 358, will not be affected.

**The Committee notes that the proposed changes to Schedule 8 of the Crown Lands Act 1989 could impact on any pending land claims that have been made under the Aboriginal Land Rights Act 1983 since 9 November 2012. However, the Committee also notes the short timeframe involved and the competing rights of those who hold secondary interests in Crown reserves and makes no further comment.**

### 3. Drugs and Poisons Legislation Amendment (New Psychoactive and Other Substances) Bill 2013

Date introduced	10 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Fair Trading

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are to amend:
  - (a) the *Poisons and Therapeutic Goods Act 1966* (the Poisons Act) to provide for the addition of a ninth schedule to the Poisons List containing the substances that are in the current Poisons Standard within the meaning of Part 6-3 of the *Therapeutic Goods Act 1989* of the Commonwealth (Schedule 9 substances), and
  - (b) the *Drug Misuse and Trafficking Act 1985* (the Drug Misuse Act):
    - i to prohibit the possession, manufacture, production or supply (or taking part in the manufacture, production or supply) of Schedule 9 substances other than prohibited drugs unless authorised under the Poisons Act, and
    - ii to prohibit the manufacture (or the knowingly taking part in the manufacture) of a psychoactive substance for human consumption or supply of such a substance, and
    - iii to prohibit the publication or display of an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a substance for its psychoactive effects and providing information on how or where it may be acquired, and
    - iv to remove the requirement in determining whether a drug is an analogue of a prohibited drug that the drug have psychotropic properties.

#### BACKGROUND

2. In February 2012, the NSW Legislative Assembly Legal Affairs Committee commenced an inquiry into issues relating to synthetic drugs and psychoactive substances. On 30 May 2013, the Committee tabled its report, *Law reform issues regarding synthetic drugs*, which made thirteen recommendations to the NSW Government about better regulating these drugs.
3. Following the release of the Committee's report, the Minister for Fair Trading imposed an interim 60 day product safety ban on the sale, supply or possession of 19 synthetic

drug products. The Federal Government also issued an interim product safety ban for 60 days for the same products, stating that this ban could be extended for up to 120 days.

4. The reforms contained in this Bill respond to some of the recommendations in the Committee's report and have been formulated by representatives from various NSW Government agencies including NSW Fair Trading, the Department of Premier and Cabinet, Ministry of Health, the NSW Forensic and Analytical Science Service, the NSW Police Force, the Ministry for Police and Emergency Services and the Department of Attorney General and Justice.

## 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.

### Schedule 1 Amendment of Drug Misuse and Trafficking Act 1985 No 226

7. Schedule 1 [1] and [2] insert and amend definitions for the purpose of the proposed Part 2C.
8. Schedule 1 [3] is a consequential amendment.
9. Schedule 1 [4] inserts proposed section 25B into the Drug Misuse Act to prohibit the possession, manufacture, production or supply (or taking part in the manufacture, production or supply) of Schedule 9 substances other than prohibited drugs unless authorised under the Poisons Act.
10. Schedule 1 [5] inserts proposed Part 2C (proposed sections 36ZD–36ZG) into the Drug Misuse Act to:
  - (a) prohibit the manufacture (or the knowingly taking part in the manufacture) of a psychoactive substance for human consumption or supply of such a substance, and
  - (b) prohibit the publication or display of an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a substance for its psychoactive effects and providing information on how or where it may be acquired.
11. Proposed section 36ZD contains definitions of words and expressions used in the proposed Part. A *psychoactive substance* is defined as being any substance (other than a substance to which the proposed Part does not apply) that, when consumed by a person, has the capacity to induce a psychoactive effect.
12. Proposed section 36ZE lists the substances to which the proposed Part does not apply.
13. Proposed section 36ZF makes it an offence to manufacture or supply a psychoactive substance knowing that it is being supplied to or acquired for a person primarily for human consumption or being reckless as to whether it is being supplied or acquired for human consumption.
14. Proposed section 36ZG makes it an offence to publish or display an advertisement knowing or being reckless as to whether it promotes the consumption or sale of a



substance for its psychoactive effects and providing information on how or where it may be acquired.

15. Schedule 1 [6] amends section 40 of the Drug Misuse Act so that if a substance is represented as being a psychoactive substance for the purpose of supply it will be taken to be a psychoactive substance.
16. Schedule 1 [7] enables regulations to be made exempting persons from the provisions of the Drug Misuse Act relating to psychoactive substances.
17. Schedule 1 [8] amends Schedule 1 to the Drug Misuse Act to remove the requirement in determining whether a drug is an analogue of a prohibited drug that the drug have psychotropic properties.

## **Schedule 2 Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

18. Schedule 2 [1] inserts a definition of a *Schedule 9 substance*.
19. Schedule 2 [2]–[4] provide for a ninth schedule to the Poisons List containing the substances that are in the current Poisons Standard within the meaning of Part 6-3 of the *Therapeutic Goods Act 1989* of the Commonwealth (Schedule 9 substances). The amendments incorporate by reference Schedule 9 of the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons into the Poisons List. Any new substances added to the Commonwealth Schedule will automatically be included in the Poisons List. It will be an offence under the proposed amendments to the Drug Misuse Act made by Schedule 1 [4] to sell, supply, manufacture or possess such a substance unless authorised by or under the Poisons Act.
20. Schedule 2 [5] inserts proposed section 17D into the Poisons Act to enable the Director-General of the Ministry of Health to authorise a specified person or class of persons to manufacture, supply or possess a specified Schedule 9 substance (not being a prohibited drug within the meaning of the Drug Misuse Act) for medical or scientific research, analytical, teaching or training purposes or for industrial or commercial purposes.
21. Schedule 2 [6] provides for evidence in prosecutions that a substance is a Schedule 9 substance.

## **ISSUES CONSIDERED BY COMMITTEE**

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

#### *Proportionate punishment*

22. The Bill proposes to amend section 40 of the *Drug Misuse and Trafficking Act 1985* so that where a substance is falsely represented as a psychoactive substance, it is nevertheless taken to be a psychoactive substance for the purposes of the Act and Regulations.
23. The Bill proposes to include a new section 36ZF in the *Drug Misuse and Trafficking Act 1985* with a new offence of knowingly or recklessly supplying psychoactive substances. The maximum penalty for this offence is 20 penalty units, imprisonment for two years or both. This offence could also apply to persons who are representing that they are supplying psychoactive substances even when they are not.

24. The Minister's second reading speech states that this is consistent with existing provisions in the *Drug Misuse and Trafficking Act 1985* which allow a person who sells a substance representing it as a prohibited drug to be prosecuted as if that substance actually were a prohibited drug, regardless of the actual identity of the substance.

**The Committee is concerned that where a person falsely represents that a substance is a psychoactive substance they could be prosecuted for the same offences as those individuals who supply genuine psychoactive substances. The Committee notes the Bill's public health and safety purposes and also that similar provisions exist in the *Drug Misuse and Trafficking Act 1985* with respect to prohibited drugs. However, the Committee refers to Parliament for consideration whether proposed section 40(3) of the Act could impact on a person's right to receive a penalty proportionate to the offence.**

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

*Commencement by proclamation*

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

**The Committee prefers that legislation of this kind which impacts on rights and creates new offences commence on a fixed date or assent.**

## 4. Fluoridation of Public Water Supplies Amendment Bill 2013

Date introduced	12 September 2013
House introduced	Legislative Assembly
Member responsible	Dr Andrew McDonald MP
	Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Fluoridation of Public Water Supplies Act 1957* to enable the Minister to direct a water supply authority to add fluorine to a public water supply under its control. Failure to comply with such a direction is an offence, with a maximum penalty of \$5,500 and a maximum daily penalty of \$550 if the offence continues.

### BACKGROUND

2. There have been ongoing concerns that three North Coast councils have been failing to fluoridate water supplies within their remit. This concern has been reinforced by what local health professionals have described as an increase in child tooth decay in the region, at levels significantly higher than the State average. This Bill seeks to override the councils' reticence, and enable the Minister to enforce fluoridation of the local water supply.

### 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 amends the Fluoridation of Public Water Supplies Act 1957 in the manner referred to in the above Overview.

### 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. Game and Feral Animal Control Amendment Bill 2013

Date introduced	11 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Minister for Primary Industries

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Game and Feral Animal Control Act 2002* (the Principal Act) and other Acts and instruments as follows:
  - (a) to abolish the Game Council of New South Wales,
  - (b) to transfer to the head of the Department responsible to the Minister (the Regulatory Authority) the licensing, enforcement and other regulatory functions of the Game Council under the Principal Act,
  - (c) to establish a Game and Pest Management Advisory Board to represent the interests of licensed game hunters in matters arising under the Principal Act and to provide advice to the Minister and the Regulatory Authority in relation to game and feral animal control and other matters,
  - (d) to make other miscellaneous and consequential amendments.

### BACKGROUND

2. The proposed Act aims to restore public confidence in the regulation of hunting, and to provide for more effective use of hunting in pest management strategies. It does this by giving effect to the primary recommendations of the 2012 review into the governance arrangements of the Game Council, conducted by Mr Steve Dunn.
3. The review found that the Game Council lacks a proper framework for governance, strategic planning, internal regulatory compliance, enterprise-wide risk management and policy. It also found that there is an inherent conflict of interest associated with the Game Council's function to represent the interests of hunters and its role as a hunting regulator.
4. The proposed Act will abolish the Game Council and the Committee of Management established under the Principal Act, and instead provide for licensing, enforcement and other regulatory functions to be undertaken by the Director General of the Department of Trade and Investment. The Minister advised in her second reading speech that these amendments aim to address the governance issues identified by the review.
5. The proposed Act also establishes a Game and Pest Management Advisory Board. The board is to consist of eight members appointed by the Minister, and will represent the

interests of hunters. It will also provide advice to the Minister on game and feral animal control, and matters such as hunter education and research expenditure.

6. The Minister advised in her second reading speech that advisory board members will be appointed on merit. The board will include representatives of regional New South Wales and members will be required to have expertise, skills and knowledge in pest management, wildlife, veterinary science, hunting, education and community engagement. In this way, the proposed Act aims to ensure the board delivers balanced, evidence-based advice on pest animal control which properly represents the interests of all stakeholders in pest animal management.

## OUTLINE OF PROVISIONS

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

### **Schedule 1 Amendment of *Game and Feral Animal Control Act 2002* No 64**

9. Schedule 1 [1], [2], [10] and [11] omit provisions of the Principal Act relating to the establishment and functions of the Game Council and the Committee of Management of the Game Council.
10. Schedule 1 [3] and [4] insert provisions into the Principal Act relating to the establishment and functions of the Game and Pest Management Advisory Board. The Board will consist of not more than 8 members appointed by the Minister (including regional representatives) and will represent the interests of licensed game hunters in matters arising under the Principal Act and provide advice to the Minister and the Regulatory Authority in relation to game and feral animal control and other matters.
11. Schedule 1 [10] inserts standard provisions into the Principal Act relating to the members and procedure of the Advisory Board.
12. Schedule 1 [5] and [9] replace references to the Game Council with references to the Regulatory Authority in various sections of the Principal Act relating to licensing, enforcement and other regulatory functions under the Principal Act.
13. Schedule 1 [6] and [7] make consequential changes on the abolition of the Game Council and the Game Council Division of the Government Service in relation to the appointment of inspectors.
14. Schedule 1 [8] inserts section 53A into the Principal Act to enable the Regulatory Authority to delegate functions to authorised persons.
15. Schedule 1 [8] also inserts section 53B into the Principal Act to establish the Game and Pest Management Trust Fund under the control of the Minister to finance research into game and feral animal control and game hunting enforcement costs. One of the functions of the Advisory Board will be to provide advice to the Minister on priorities for expenditure on any such research.

16. Schedule 1 [12] authorises the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act or any other Act that amends the Principal Act.
17. Schedule 1 [13] inserts specific savings and transitional provisions consequent on the enactment of the proposed Act (including the formal dissolution of the Game Council).

#### **Schedule 2 Consequential amendments of other Acts and instruments**

18. Schedule 2 makes consequential changes to the following Acts and instruments:
  - (a) *The Game and Feral Animal Control Further Amendment Act 2012* (uncommenced amending Act)—consequential changes and replacement of proposed Native Game Bird Management Committee (that was to comprise representatives of the Department of Primary Industries, the Game Council and the Office of Environment and Heritage and that is to set quotas of native game birds that may be killed) with the Regulatory Authority acting in consultation with the head of the Office of Environment and Heritage.
  - (b) *The Public Sector Employment and Management Act 2002*—abolition of separate Game Council Division of the Government Service (the staff are transferred to the Department of Trade and Investment, Regional Infrastructure and Services by Schedule 1 [13] to the proposed Act).
  - (c) *The Deer Act 2006*—removal of requirement for the Minister to consult the Game Council before making a deer control order.
  - (d) *The First State Superannuation Act 1992, State Authorities Non-contributory Superannuation Act 1987, State Authorities Superannuation Act 1987 and Superannuation Act 1916*—removal of Game Council as an employer of staff for the purposes of those Acts.
  - (e) *The Game and Feral Animal Control Regulation 2012, Local Land Services Act 2013, Public Finance and Audit Act 1983 and Rural Lands Protection Act 1998*—consequential changes on the abolition of Game Council.

#### **ISSUES CONSIDERED BY COMMITTEE**

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

###### *Denial of compensation*

19. Schedule 1 [13] excludes any compensation rights of people who were members of the Game Council or the Committee of Management of the Game Council immediately before its dissolution. These rights may otherwise have arisen as a result of loss of these offices. Similarly, schedule 1 [13] excludes any compensation rights of people authorised by the Game Council to grant game hunting licences ('authorised agents'), where such authorisation is terminated as a result of the proposed Act.

**The Committee notes Schedule 1 [13] of the proposed Act excludes any right to compensation that may arise for certain categories of person as a result of the proposed Act. This may impact on the rights and liberties of individuals. However, given the administrative changes made by the proposed Act aim to**

**restore public confidence in the regulation of hunting, and to provide for the more effective use of hunting in pest management strategies, and given some affected persons ('authorised agents') may resume their activities under the proposed Act's new regime, the Committee makes no further comment.**

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

*Commencement by proclamation*

20. Clause 2 of the proposed Act provides it is to commence on proclamation. The Committee prefers legislation to commence on a fixed date or on assent, especially where it directly impacts on the rights and obligations of individuals. However, the main aim of the proposed Act is to make administrative changes that provide for the effective management of game and feral animals in NSW, not to remove rights or impose new restrictions or obligations on individuals.

**The proposed Act is to commence on proclamation. The Committee prefers legislation to commence on a fixed date or on assent. However, the main aim of the proposed Act is to make administrative changes that provide for the effective management of game and feral animals in NSW. It is not to remove individual rights or impose new restrictions or obligations on individuals. Hence, the Committee makes no further comment.**

*Delegated Power*

21. Schedule 1 [8] of the proposed Act provides the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services may delegate any of his or her licensing, enforcement and other regulatory functions, that are conferred by the proposed Act, to an authorised person including a person of a class prescribed by the regulations. The Committee considers such matters are more appropriately dealt with in legislation than regulations – by leaving the matter to regulations in this instance, it is not clear exactly what class of persons the power may be delegated to.

**The Committee notes that schedule 1 [8] of the proposed Act includes insufficient criteria regarding the scope of persons to whom the Director-General's licensing, enforcement and other regulatory functions may be delegated. It provides such powers can be delegated to persons of a class prescribed by the regulations. However, the Committee notes regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.**

## 6. Graffiti Control Amendment Bill 2013

Date introduced	11 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Minister for Justice

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Graffiti Control Act 2008* (the Principal Act) to implement certain recommendations arising from the statutory review of that Act. In particular, the Bill:
  - (a) replaces certain graffiti offences with a new two-tiered graffiti offence, and
  - (b) clarifies how community clean up orders may be made, and
  - (c) sets a maximum number of hours of community clean up work that may be specified in any one community clean up order, and
  - (d) makes other amendments of a machinery, savings or transitional nature.
2. The Bill also makes a consequential amendment to the *Passenger Transport Regulation 2007*.

### BACKGROUND

3. The purpose of the Bill is to amend the *Graffiti Control Act 2008* to implement a number of recommendations made by the recent statutory review of that Act.
4. The review found that, while some of the objectives of the Act are being met, the primary objective of ensuring that all graffiti offences are dealt with under the same Act is not being adequately achieved. For example, charges for graffiti offences are often brought under section 195 of the *Crimes Act 1900*, which is an offence for destroying or damaging property. When offences are dealt with under that section, the court does not have access to the community clean up provisions of the *Graffiti Control Act 2008*.
5. The review also raised concerns about the responsiveness of the *Graffiti Control Act 2008* to emerging forms of graffiti and recommended improvements to the community clean up scheme.

### OUTLINE OF PROVISIONS

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



### Schedule 1 Amendment of Graffiti Control Act 2008 No 100

8. Schedule 1 [1] substitutes section 4 of the Principal Act (Damaging or defacing property by means of graffiti implement). The substituted section (Marking premises or property) creates a two-tiered offence, one being a basic offence in proposed section 4 (1) and the other being an offence committed in circumstances of aggravation in proposed section 4 (2).
9. The basic offence prohibits a person, without reasonable excuse (proof of which lies on the person), from intentionally marking any premises or other property, unless the person has first obtained the consent of:
  - (a) if the premises are occupied—the occupier or person in charge of the premises, or
  - (b) if the premises are unoccupied or in relation to other property—the owner or person in charge of the premises or property.
10. This basic offence carries a maximum penalty of 4 penalty units (currently \$440).
11. Proposed section 4 (2) and (3) provide that a person is guilty of a separate offence if the person commits the basic offence in circumstances of aggravation, being circumstances where the person has intentionally marked the premises or other property:
  - (a) by means of any graffiti implement, or
  - (b) in such a manner that the mark is not readily removable by wiping or by the use of water or detergent.
12. This aggravated offence carries a maximum penalty of 20 penalty units (currently \$2,200) or imprisonment for 12 months.
13. Schedule 1 [2] and [3] make consequential amendments.
14. Schedule 1 [4] substitutes section 6 of the Principal Act as a consequential amendment. The proposed section 6 no longer deals with marking premises as this is dealt with in proposed section 4.
15. Schedule 1 [5] and [6] make consequential amendments.
16. Schedule 1 [7] makes it clear that a community clean up order may be made:
  - (a) on the application of the prosecutor or the offender, or
  - (b) on the court's own motion.
17. Schedule 1 [8] makes it clear that an application for a community clean up order may be made:
  - (a) before or at the time the court concerned imposes a fine for the graffiti offence, or
  - (b) at any other time after the fine has been imposed but before the fine has been fully paid or referred to the State Debt Recovery Office for the making of a court fine enforcement order under the *Fines Act 1996*.

18. Schedule 1 [9] makes provision regarding the maximum number of hours of community clean up work that is to be carried out under a community clean up order. Specifically, the number of hours specified in any one community clean up order must not exceed 300 hours (in the case of an adult offender) or 100 hours (in the case of a child offender).
19. Schedule 1 [10] makes it clear that regulations under the Principal Act may deal with applications for community clean up orders.
20. Schedule 1 [11] and [12] make consequential amendments.
21. Schedule 1 [13] provides that a further review of the Principal Act is to be undertaken as soon as possible after 10 December 2015 (being 3 years after the date of commencement of the *Graffiti Legislation Amendment Act 2012*).
22. Schedule 1 [14] provides for the making of savings and transitional regulations.

### **Schedule 2 Amendment of Passenger Transport Regulation 2007**

23. Schedule 2 makes a consequential amendment to the *Passenger Transport Regulation 2007*.

### **ISSUES CONSIDERED BY COMMITTEE**

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

## 7. Police Integrity Commission and Independent Commission Against Corruption Legislation Amendment (Inspectors) Bill 2013

Date introduced	12 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are to enable the Governor to appoint an Assistant Inspector for the Police Integrity Commission and an Assistant Inspector for the Independent Commission Against Corruption.
2. The Bill also enables a person to simultaneously hold office as Inspector or Assistant Inspector of the PIC and as Inspector or Assistant Inspector of the ICAC.
3. Lastly, the Bill makes related amendment to the *Police Integrity Commission Act 1996* and the *Public Interest Disclosures Act 1994* to ensure that the Ombudsman, instead of the ICAC, is responsible for dealing with complaints and carrying out investigations about the conduct of the Inspector of the PIC or the officers of the PIC Inspector.

### BACKGROUND

4. This Bill has been introduced to allow for the two part-time positions of the Inspector of the Police Integrity Commission and the Inspector of the Independent Commission Against Corruption to be performed by the same person by removing the impediments to one person holding both positions.
5. The role of the Police Integrity Commission are to detect, investigate and prevent police misconduct. Similarly, the role of the Independent Commission Against Corruption is to investigate and expose corrupt conduct in the New South Wales public sector. As with the institutions, the powers and functions of the Inspectors are comparable.

### OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Schedule 1 [2] (together with the amendment to the Independent Commission Against Corruption Act 1988 made in Schedule 2 [2]) gives effect to the objects described in

paragraphs (a) and (b) of the Overview. Schedule 1 [1], [5] and [6] make consequential amendments.

9. Schedule 1 [3] and [4] (together with the amendments to the Public Interest Disclosures Act 1994 made in Schedule 3 [2]) give effect to the object described in paragraph (c) of the Overview.
10. Schedule 1 [7] contains a savings and transitional provision consequent on the enactment of the proposed Act.
11. Schedule 2 [2] (together with the amendment to the Police Integrity Commission Act 1996 made in Schedule 1 [2]) gives effect to the objects described in paragraphs (a) and (b) of the Overview.
12. Schedule 2 [1], [3] and [4] make consequential amendments.
13. Schedule 3 [2] (together with the amendments to the Police Integrity Commission Act 1996 made in Schedule 1 [3] and [4]) gives effect to the object described in paragraph (c) of the Overview.
14. Schedule 3 [1] and [3] make consequential amendments.
15. Schedule 3 [4] contains a savings and transitional provision 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

#### *Retrospectivity*

16. Schedule 1[7] of the Bill provides that conduct of the Inspector of the Police Integrity Commission can be the subject of a complaint, inquiry, or investigation under the *Ombudsman Act 1974*, and that this extends to conduct of the Inspector or an officer of the Inspector having occurred before the commencement of this amendment.
17. Similarly, Schedule 2[4] of the Bill provides that the making of a public interest disclosure to the Ombudsman about conduct of the Inspector of the Police Integrity Commission can also be the subject of an investigation under the *Ombudsman Act 1974*, and that this too extends to conduct of the Inspector having occurred before the commencement of this amendment.

**The Schedules 1[7] and 2[4] are drafted to cover conduct by the Inspector of the Police Integrity Commission before the amendments commence. The Committee will always comment when provisions in legislation are drafted to have such retrospective effect. This is because such provisions are generally considered contrary to fairness which allows people to order their affairs according to the law of the time. Despite this, the Committee notes that these amendments only affect a limited number of specified individuals. Further, given that these specified individuals are responsible for maintaining integrity in the Police Force, the Committee recognises the public interest of the Bill, and makes no further comment**

## 8. Royal Commissions and Ombudsman Legislation Amendment Bill 2013

Date introduced	11 September 2013
House introduced	Legislative Council
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are to ensure that witnesses attending or appearing before a Royal Commission established under the *Royal Commissions Act 1923* are not excused from answering any question or producing any document, when required by the Royal Commission to do so, despite any other Act (unless the other Act specifically prohibits disclosures to a Royal Commission).
2. The Bill also makes relates amendments to the *Children and Young Persons (Care and Protection) Act 1998*, ensuring that the identity of any person who makes a report under that Act that a child or young person is at risk of significant harm may be disclosed to a Royal Commission in only limited circumstances.
3. Further, the Bill enables a Royal Commission to give directions preventing the publication of evidence, information or documents given to it and directions requiring any part of an inquiry to take place in private.
4. Lastly, the Bill enables the Ombudsman to disclose information, obtained in the course of an investigation by the Ombudsman, for the purpose of certain criminal proceedings resulting from the investigation and for the purpose of certain proceedings under the *Public Interest Disclosures Act 1994*.
5. This Bill passed Parliament on 11 September 2013, and was assented on 12 September 2013.

### BACKGROUND

6. The Royal Commission into Institutional Responses to Child Sexual Abuse was established in January this year under Letters Patent issued both under Commonwealth legislation and State legislation.
7. The provisions in this Bill provide for some amendments concerning the disclosure of evidence considered important before the Royal Commission commences its first hearing in Sydney on 16 September 2013.

### OUTLINE OF PROVISIONS

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

9. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
10. Section 17 (1) of the *Royal Commissions Act 1923 (RC Act)* provides that witnesses summoned to attend or appearing before a Royal Commission are not excused from answering questions or producing documents to the Commission on any grounds. Section 17 applies only if the Governor declares, in the letters patent establishing the Royal Commission that the section applies to the inquiry.
11. Schedule 1 [2] amends section 17 (1) of the RC Act to expressly provide that the grounds on which a person is not excused from answering questions or producing documents include any duty of secrecy or other restriction on disclosure.
12. Schedule 1 [3] ensures that a provision of any other Act or law (for example, a provision imposing a restriction on disclosure) may only override section 17 (1) of the RC Act if the provision states specifically that it applies despite section 17.
13. Schedule 1 [1] inserts proposed section 12B into the RC Act. The proposed section enables a Royal Commission to give directions preventing or restricting the publication of evidence, information or documents given to it. The proposed section also enables a Royal Commission to direct that any part of an inquiry may take place in private and to direct who may be present at that part of the inquiry.
14. Schedule 1 [4] inserts proposed section 23B, which makes it an offence to contravene any direction made under proposed section 12B.
15. Schedule 1 [5] contains savings and transitional provisions consequent on the enactment of the proposed Act.
16. Schedule 2 [2] inserts proposed section 29AA into the *Children and Young Persons (Care and Protection) Act 1998*, which ensures that the identity of a person who makes a risk of harm report, or information from which the identity of that person could be deduced, must not be disclosed to a Royal Commission, except with the consent of the person who made the report or the leave of a commissioner who is satisfied that the report is of significant importance to the inquiry. The proposed section makes it clear (as required by the amendment to section 17 of the RC Act made by Schedule 1 [3]) that this particular restriction on disclosure to a Royal Commission has effect despite section 17 of the RC Act. Schedule 2 [1] makes a consequential amendment.
17. Schedule 2 [3] enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act or any other amending Act.
18. Schedule 2 [4] contains a savings and transitional provision consequent on the enactment of the proposed Act.
19. Schedule 3 [1] and [2] (together with the amendment to the *Police Act 1990* made in Schedule 4 [1]) give effect to the object described in paragraph (d) of the Overview.
20. Schedule 3 [3] contains a savings and transitional provision consequent on the enactment of the proposed Act.
21. Schedule 4 [1] (together with the amendments to the *Ombudsman Act 1974* made in

22. Schedule 3 [1] and [2]) gives effect to the object described in paragraph (d) of the Overview.
23. Schedule 4 [2] enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act.
24. Schedule 4 [3] contains a savings and transitional provision 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

#### *Duty to Disclose*

25. Schedule 1[2] provides that a witness before a Royal Commission is to have a duty to answer any question or produce any document regardless of any duty of secrecy or other restriction on disclosure. Schedule 1[3] provides that this duty prevails over any inconsistent provision of any Act or law unless specifically stated otherwise.

**The Committee notes that the disclosure provisions of this Bill, in which secrecy is not an excuse, may compel an individual to reveal personal and sensitive information about another individual or themselves before a Royal Commission. However, given the overall public interest in gathering sufficient evidence for the purposes of the Royal Commission into Institutional Responses to Child Sexual Abuse, and the interest against protecting the revelation of criminal information, the Committee does not consider this provision unreasonable in the circumstances provided, and makes no further comment.**

#### *Retrospectivity*

26. Schedule 1[5] provides that any person who, prior to the commencement of the amendments concerning the duty to disclose, answered any questions or produced any document to the Royal Commission is taken to have been compelled to do so in accordance with the amended section.

**The Committee notes that despite the retrospective application of this provision, it is intended to protect witnesses before the Royal Commission from criminal action as a result of disclosing information that is otherwise subject to secrecy protections. The Committee does not consider this provision unreasonable in the circumstances provided, and makes no further comment.**

## 9. Skills Board Bill 2013

Date introduced	12 September 2013
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 establish the NSW Skills Board for the purposes of:
  - (a) providing the Minister with an independent, strategic perspective on the vocational education and training system in New South Wales with a view to strengthening the State's economy and skills base and promoting increased flexibility and choice for the vocational education and training industry and consumers, and
  - (b) overseeing major reform of the vocational education and training system in New South Wales.

### BACKGROUND

2. The Minister for Education initiated a review of the existing Board of Vocational Education and Training to ensure appropriate governance arrangements existed to oversee vocational education and training reforms under the Smart and Skilled Quality Framework and to meet targets under the NSW State Plan 2021.
3. The review was carried out by Professor Peter Shergold AC and involved consultation with industry and public and private training providers. The review recommended a new board with broader responsibilities and a reconstituted membership. The Bill implements the recommendations made by this review.

### OUTLINE OF PROVISIONS

#### Part 1 Preliminary

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 defines certain words and expressions used in the proposed Act.

#### Part 2 Constitution and functions of Board

7. Clause 4 constitutes the NSW Skills Board as a body corporate.
8. Clause 5 provides that the Board is to consist of not more than 8 part-time members appointed by the Minister and 1 ex-officio member, being the Chief Executive of the Office of Education, Department of Education and Communities or his or her nominee.



9. Clause 6 sets out the functions of the Board, which include the following:
- (a) providing the Minister with an independent, strategic perspective on the vocational education and training system in New South Wales,
  - (b) overseeing major reform of the vocational education and training system and its implementation,
  - (c) monitoring and advising the Minister on the performance of the vocational education and training system, including financial performance, fiscal sustainability, levels of training activity and the achievement of State priorities,
  - (d) advising the Minister on the allocation of State and Commonwealth vocational education and training funding and the New South Wales vocational education and training budget,
  - (e) collecting and analysing labour market intelligence, in particular, intelligence on skills shortages and future skills and workforce development needs in New South Wales,
  - (f) coordinating the development of strategic skills plans that reflect the priorities and directions of the New South Wales Government regarding vocational education and training,
  - (g) overseeing quality assurance in the vocational education and training system,
  - (h) ensuring the availability of accurate consumer information on vocational education and training and appropriate consumer protections,
  - (i) commissioning and conducting inquiries and research,
  - (j) advising on strategies for more effective educational pathways between secondary school, vocational training and higher education,
  - (k) consulting widely with reference groups and other representative bodies and persons in the vocational education and training industry.
10. Clause 7 enables the Board to delegate its functions.
11. Clause 8 makes the Board subject to the control and direction of the Minister.
12. Clause 9 provides for the Board to make use of the services of Department of Education and Communities staff and government facilities.

### **Part 3 Miscellaneous**

13. Clause 10 provides that the proposed Act binds the Crown.
14. Clause 11 enables the Minister to delegate his or her functions.
15. Clause 12 excludes the Board, a member of the Board or a person acting under the Board's direction from personal liability for an act or omission done in good faith for the purposes of executing the proposed Act.

16. Clause 13 enables the Governor to make regulations for the purposes of the proposed Act.
17. Clause 14 provides for the review of the proposed Act within 5 years.

### **Schedule 1 Members and procedure of Board**

18. Schedule 1 contains provisions relating to members and procedure of the Board that are standard provisions for statutory corporations.

### **Schedule 2 Savings, transitional and other provisions**

19. Schedule 2 provides for the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act. The Schedule also abolishes the New South Wales Board of Vocational Education and Training and provides for the transfer of its assets, rights and liabilities to the NSW Skills Board.

### **Schedule 3 Amendment of other legislation**

20. Schedule 3 amends the *Government Information (Public Access) Regulation 2009* and the *Public Finance and Audit Act 1983* to remove references to the New South Wales Board of Vocational Education and Training and insert references to the NSW Skills Board.

### **Schedule 4 Repeal of Board of Vocational Education and Training Act 1994 No 33**

21. Schedule 4 repeals the *Board of Vocational Education and Training Act 1994*.

### **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.