PARLIAMENT OF NEW SOUTH WALES

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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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. ADOPTION LEGISLATION AMENDMENT (OVERSEAS ADOPTION) BILL 2013

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

2. COAL SEAM GAS PROHIBITION (SYDNEY WATER CATCHMENT SPECIAL AREAS) BILL 2013*

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

3. COMPANION ANIMALS AMENDMENT BILL 2013

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

Increased Penalties

The Committee notes the Bill increases the maximum penalties that may be imposed in relation to a number of offences under the *Companion Animals Act 1998.* While the increases are significant, they are part of an overall scheme to encourage responsible pet ownership and increase community safety following dog attacks on people that have resulted in serious injury and death. For this reason, the Committee makes no further comment.

New Offences

The Committee notes the Bill creates two new offences that subject dog owners, and those in charge of dogs, to significant penalties if the dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not injury results and the incident occurs as a result of a reckless act or omission by the owner or person in charge. The Committee notes the maximum penalties for these offences, including terms of imprisonment, are severe. Nonetheless, they are part of an overall scheme to encourage responsible pet ownership and increase community safety. For this reason, the Committee makes no further comment.

Increased Limitation Period

The Committee notes that this Bill decreases the certainty of people who will potentially be accused of criminal activity. However, this concern must be balanced against the public interest in providing councils with adequate time to pursue more complex dog attack cases. As the provision could be said to strike an appropriate balance, the Committee makes no further comment.

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

Excludes Judicial Review

The Committee notes that no appeal will lie to the Local Court against a declaration by an authorised council officer that a dog is a menacing dog. If a dog is declared a menacing dog its owner is burdened with extra responsibilities and costs including a requirement to de-sex the

dog, enclosure requirements and a requirement that the dog be muzzled and kept on a lead if away from its place of residence. Failure to comply opens the owner to the possibility of a maximum $16,500 fine. The Committee notes a right of appeal does lie to the Local Court in respect of a *dangerous* dog declaration, under section 41 of the Act. 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.

4. EXPLOSIVES AMENDMENT BILL 2013

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

Search without warrant

Permitting the police to search persons without a warrant and then seize and detain items found could impact on a person's right to be free from an unreasonable search. However, the Committee notes that offences under Part 2 of the *Explosives Act 2003* can pose a significant risk to public safety. The Committee also notes that a police officer can only carry out such a search if they have a reasonable suspicion that the person is in possession or control of an item used, or to be used, in the commission of an offence. For these reasons, the Committee makes no further comment.

5. FINES AMENDMENT BILL 2013

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

Right to Privacy

The Committee notes fine defaulters' privacy rights are protected by confidentiality requirements of the *Fines Act 1996*, it is unclear if their privacy rights will be protected in the same way once their personal information is disclosed to officers in other jurisdictions who may be bound by different requirements. Nonetheless, the provision facilitates a beneficial scheme to allow other States and Territories to enforce NSW fines in other jurisdictions and vice versa. Given the nature of cooperative federalism, and the fact that the information disclosed is necessary to assist in the collection of debts from persons who have defaulted, the Committee makes no further comment.

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

Matters which should be set by Parliament

The Bill delegates matters which should be set by Parliament (including the class of persons to whom the new system is to apply), to the Executive. However, the Committee notes that regulations are subject to disallowance by the Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, and the fact that the new system is only of a trial nature, the Committee makes no further comment.

Henry VIII Clause

The Bill provides that the regulations may make further provision for the enforcement of victims restitution orders (under the trial proposed by the Bill), including by modifying the

operation of the *Fines Act 1996* in relation to restitution orders enforceable under the trial, and by modifying the operation of the *Victims Rights and Support Act 2013* in relation to those restitution orders. In the Committee's view this may be an inappropriate delegation of legislative power – amendments to primary legislation should be effected by Parliament, not by the Executive making an amendment to a regulation. The Committee refers the matter to Parliament for its consideration.

6. INDUSTRIAL RELATIONS AMENDMENT (INDUSTRIAL COURT) BILL 2013

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

Right to a Fair Hearing

The Bill provides that certain types of matters that are currently required to be heard before a Full Bench (usually of three Members) will only be heard before a single judge following commencement of the Act. This may impact on the outcomes of various cases, and be considered unfair to the defendant in certain criminal matters. However, the Committee also notes that single-judge hearings are commonplace for these types of matters in other New South Wales courts. The Committee makes no further comment.

7. SNOWY HYDRO CORPORATISATION AMENDMENT (SNOWY ADVISORY COMMITTEE) BILL 2013

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

8. WORK HEALTH AND SAFETY AMENDMENT BILL 2013

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

Legislative Interference of Judicial Matters

The proposed amendments place beyond doubt the jurisdiction of the District Court in certain proceedings, together with clarifying the ability of an Australian legal practitioner to institute certain proceedings. As these matters are currently under challenge before the Courts, the amendments appear to be a legislative fettering of a judicial process, the effect of which would be prejudicial to one party over another. However, given the intent of the Bill is to clarify the initial intent of the Act, together with the fact that legislation routinely affects the outcome of judicial proceedings, the Committee does not find these amendments unreasonable in the circumstances.

Repeated Prosecutions, Retrospectivity

The proposed amendments provide that certain proceedings for an offence that were terminated because they were not validly instituted may recommence. Given the amendment merely seeks to correct a possible technical error in the legislation, together with the overall public interest considerations of the Bill, the Committee makes no further comment.

PART TWO – REGULATIONS

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

Part One - Bills

1. Adoption Legislation Amendment (Overseas Adoption) Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to enable New South Wales residents who adopt a child overseas to have that adoption registered and have a post-adoption birth certificate issued for the adopted child, provided that the adoption is recognised under NSW law and was arranged by the Department of Family and Community Services. The foreign countries in which adoptions are recognised are countries that are party to the Hague Convention on Intercountry Adoption and countries prescribed under Commonwealth regulations providing for intercountry adoption bilateral arrangements.

BACKGROUND

2. At present, children adopted from overseas can be issued with a NSW post-adoption birth certificate as long as the adoption is finalised in NSW. However, children whose adoptions are organised by the Department of Family and Community Services, but completed overseas, are not eligible for a NSW birth certificate.

3. While such adoptions may be recognised under the *Adoption Act 2000*, the Supreme Court does not make any orders in relation to the adoption and the Registry of Births, Deaths and Marriages has no trigger for registering the adoption. This means that the Registry cannot issue a post-adoption birth certificate that records the child's birth details and their legal parents in the one document.

4. The Minister's second reading speech highlighted that the current situation creates difficulties for some children who are adopted from overseas, particularly those who are adopted from China, whose identity and adoption documents refer to their 'abandonment'. The Minister noted that this can cause embarrassment for adoptees when they are required to produce such papers for enrolment in school or for employment. He also highlighted that it can potentially create a risk of discrimination.

5. These concerns have also been raised by adoptive parents and a Commonwealth House of Representative Standing Committee inquiry into overseas adoption.

6. The amendments proposed by the Bill address these issues.

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 the date of assent.

Schedule 1 Amendment of Adoption Act 2000 No 75

9. Schedule 1 [1] requires the Director-General of the Department of Family and Community Services to notify the Registrar of Births, Deaths and Marriages of the details of a recognised foreign country adoption if the adoption was organised by or under the authority of the Director-General. Proposed amendments to the *Births, Deaths and Marriages Registration Act 1995* will result in the Registrar being required to register the adoption in the Births, Deaths and Marriages Register and issue a post-adoption birth certificate.

10. Schedule 1 [2] provides for the making of savings and transitional regulations consequent on the enactment of any Act that amends the *Adoption Act 2000*.

11. Schedule 1 [3] extends the new requirement for the notification of a recognised foreign country adoption to adoptions completed before the commencement of the proposed Act, but only if a written request is made by the adoptive parents or the adopted child (if over 18). Notification will be automatic for recognised foreign country adoptions finalised after the commencement of the amendments.

Schedule 2 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

12. Schedule 2 [1] and [2] extend the current duty to register adoptions to include recognised foreign country adoptions organised by or under the authority of the Director-General of the Department of Family and Community Services.

13. Schedule 2 [3] corrects a cross-reference.

14. Schedule 2 [4] makes a consequential amendment.

15. Schedule 2 [5] requires the Registrar of Births, Deaths and Marriages to issue a single certificate (an adopted person's birth record) certifying particulars contained in an entry relating to the birth of a person and particulars relating to an adoption notified under the proposed amendments to the *Adoption Act 2000*.

Schedule 3 Amendment of Adoption Regulation 2003

16. Schedule 3 [1] and [2] make consequential amendments to the *Adoption Regulation 2003*.

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.

2. Coal Seam Gas Prohibition (Sydney Water Catchment Special Areas) Bill 2013*

Date introduced	17 October 2013
House introduced	Legislative Assembly
Minister responsible	Mr John Robertson MP
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The object of this Bill is to cancel petroleum titles relating to coal seam gas, and prohibit the grant or renewal of such titles, in relation to the Sydney Catchment Authority's special areas.

BACKGROUND

2. The Bill seeks to permanently ban coal seam gas activity from the water catchment areas of Sydney and the Illawarra that supply drinking water to parts of the State. The Bill does this by cancelling existing petroleum titles relating to coal seam gas and preventing future titles from being approved.

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 defines expressions used in the proposed Act. ***Petroleum title relating to coal seam gas*** means an exploration licence, assessment lease, production lease or special prospecting authority under the *Petroleum (Onshore) Act 1991* in relation to coal seam gas and ***Sydney water catchment special area*** means an area of land declared to be a special area under section 44 of the *Sydney Water Catchment Management Act 1998*.

6. Clause 4 cancels any petroleum title relating to coal seam gas that authorises activities in any Sydney water catchment special area.

7. Clause 5 prohibits the granting or renewal of any petroleum title relating to coal seam gas that authorises activities in any Sydney water catchment special area.

8. Clause 6 provides that the proposed Act operates despite any authorisation or approval under the *Petroleum (Onshore) Act 1991*.

9. Clause 7 provides that the State is not liable for any compensation as a result of the proposed Act.

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.

3. Companion Animals Amendment Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Donald Page MP
Portfolio	Minister for Local Government

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Companion Animals Act 1998* (the Principal Act) as follows:

(a) to enable certain dogs to be declared by the Local Court or council officers to be menacing dogs and to provide for special controls and higher offence penalties to apply in relation to those dogs,

(b) to increase penalties for certain offences relating to the failure to register a companion animal and the control of dogs,

(c) to shorten the period within which an owner of an unregistered companion animal who is given a notice by a council officer must register the animal and allow subsequent registration notices to be given more frequently,

(d) to extend the period within which proceedings for certain offences relating to dog attacks may be brought to within the period of 12 months after the date on which the offence is alleged to have been committed,

(e) to clarify the circumstances in which a council officer may seize a dog that is the subject of a proposed dangerous or menacing dog declaration,

(f) to enable the Local Court to order that the owner of a dog undertake responsible pet ownership training in specified circumstances,

(g) to provide that the Local Court must, except in exceptional circumstances, make a destruction order in relation to a dog on conviction of the owner of the dog of an offence involving the serious injury or death of a person caused by the dog,

(h) to make a number of miscellaneous, savings and transitional amendments.

2. The Bill also makes a number of amendments to the Companion Animals Regulation 2008 and a consequential amendment to the *Criminal Procedure Act 1986.*

BACKGROUND

3. In his Second Reading Speech to Parliament, the Hon. Donald Page MP, Minister for Local Government, stated the object of the Bill is to strengthen companion animal management in NSW to promote responsible pet ownership, to better protect the

community and reduce dog attacks. In this regard, the Minister noted recent dog attacks in NSW that have resulted in serious injury or death.

4. The Minister further informed Parliament that the Bill is the outcome of work initiated by the Government in September 2011 with the establishment of the Companion Animals Taskforce to deal with community concerns about companion animals. The Taskforce produced two reports with 38 recommendations and the reports were released for public consultation during April and May 2013, after which 5,300 public submissions were received.

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, except for Schedule 2 [2], [3], [6] and [13] which are to commence on 1 January 2014.

Schedule 1 Amendment of Companion Animals Act 1998 No 87

Amendments relating to menacing dogs

7. The Principal Act and the regulation under that Act contain special provisions relating to the control of dangerous dogs and provide for higher penalties for offences where the offence relates to a dangerous dog. Under that Act, in certain circumstances, an authorised officer of a council or the Local Court may declare a dog to be a dangerous dog.

8. Schedule 1 [26] inserts proposed section 34 (1A) into the Principal Act to enable an authorised officer of a council to declare a dog to be a menacing dog if the authorised officer is satisfied that:

(a) the dog is menacing, or

(b) the dog is of a menacing breed or kind of dog (or a cross-breed of a menacing breed or kind of dog), or

(c) the dog has been declared a menacing dog under a law of another State or a Territory that corresponds with the Principal Act.

9. No appeal will lie to the Local Court under section 41 of the Principal Act against a declaration by an authorised officer of a council that a dog is a menacing dog or against a refusal by a council to revoke a declaration that the dog is a menacing dog.

10. Schedule 1 [39] inserts similar provisions to enable the Local Court to also make menacing dog declarations in the same circumstances.

11. Schedule 1 [25] provides that a dog is menacing if it:

(a) has displayed unreasonable aggression towards a person or animal (other than vermin), or

(b) has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.

12. Schedule 1 [25] also enables regulations under the Principal Act to declare a breed or kind of dog to be a menacing breed or kind of dog. The Minister administering the Principal Act is not to recommend the making of such a declaration in a regulation unless the Minister is satisfied that the breed or kind of dog concerned displays characteristics associated with menacing behaviour.

13. Schedule 1 [1]–[3], [10], [17]–[24], [27]–[28], [31]–[33], [35], [37]–[39], [42]–[43], [45]–[46],and [49] make a number of consequential amendments.

14. A number of amendments are made to provisions of the Principal Act that currently apply to declared dangerous dogs to apply those provisions to declared menacing dogs (including providing for higher maximum penalties for offences in relation to a menacing dog).

15. Schedule 1 [44] provides for special control requirements for menacing dogs. In general the control requirements for dangerous dogs apply to menacing dogs. However, a menacing dog is required to be enclosed on the property on which the dog is ordinarily kept only where the dog is not under the effective control of a person of or above the age of 18 years. Similarly, the control requirement relating to keeping a menacing dog on a lead and muzzled applies only when the dog is outside the property on which it is ordinarily kept (rather than whenever the dog is outside its enclosure as is the case for dangerous dogs).

16. Schedule 1 [34] amends section 39 (2) of the Principal Act to provide that a council may revoke a dangerous dog or menacing dog declaration but only if satisfied that it is appropriate to do so and, if the council determines that it is necessary, the dog has undergone appropriate behavioural training.

17. Schedule 1 [50] provides that an authorised officer may seize a dangerous dog if the control requirements referred to in section 51 (1) (c), (c1) or (e) of the Principal Act are not complied with in relation to the dog on any occasion (rather than on at least 2 separate occasions over any period of 12 months as is currently the case). Schedule 1 [50] also provides that an authorised officer may seize a menacing dog if the requirements referred to in proposed section 51 (1A) (b) or (c) of the Principal Act are not complied with in relation to the dog on at least 2 separate occasions over any period of 12 months.

18. Schedule 1 [51] provides that:

    (a) a declaration that a dog is a dangerous dog is taken to revoke any declaration that the dog is a menacing dog, and

    (b) a declaration that a dog is a menacing dog is taken to revoke any declaration that the dog is a dangerous dog, and

    (c) a declaration that a dog is a dangerous or menacing dog does not prevent the issuing of a nuisance dog order in relation to the dog.

Amendments relating to offences and penalties

19. Schedule 1 [4], [8], [11]–[16] increase the maximum penalties that may be imposed in relation to a number of offences under the Principal Act. Specifically, the offences that are to carry higher maximum penalties are the offences against the following provisions:

(a) section 9 (1)—relating to a failure to register a companion animal from the time the animal is 6 months old,

(b) section 10—relating to a failure to register a companion animal when otherwise required under the Principal Act,

(c) section 10B (2)—relating to a failure to comply with a notice requiring a companion animal be registered,

(d) section 16 (1)—relating to a dog rushing at, attacking, biting, harassing or chasing any person or animal (other than vermin),

(e) section 16 (1A)—relating to a dog attack or bite of a person occurring as a result of the owner's failure to comply with specified requirements of the Principal Act,

(f) section 17 (1)—relating to setting or urging a dog to attack, bite, harass or chase any person or animal.

20. Schedule 1 [12] also creates 2 new offences that provide that the owner or person in charge of a dog (if that person is of or above the age of 16 years) is guilty of an offence if the dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not any injury is caused to the person or animal and the incident occurs as a result of a reckless act or omission by the owner or that other person. One offence relates to dangerous, menacing and restricted dogs (proposed section 16 (1AB)) and the second offence relates to other dogs (proposed section 16 (1AA)). The offence relating to dangerous, menacing and restricted dogs will carry a higher penalty.

21. Schedule 1 [15] makes a consequential amendment.

22. Schedule 1 [16], which increases penalties for the offence under section 17 of the Principal Act, similarly splits the offence. The new offences under proposed sections 16 (1AB) and 17 (1A) and the offence under section 16 (1A) are to be made indictable offences—see Schedule 1 [52] and [53] and Schedule 3.

23. Schedule 1 [5] amends section 9 of the Principal Act (which contains the requirement that a companion animal be registered from the time the animal is 6 months old) to make it clear that a person is taken to commit a separate offence under this section on every day the companion animal remains unregistered. However, a person:

(a) may not be convicted for the commission of more than one offence in relation to the failure to register a companion animal during any single calendar month, and

(b) may be convicted only once in relation to any failure to register a companion animal that occurred before that failure came to the notice of the council of the area in which the animal is ordinarily kept.

24. Schedule 1 [6] omits section 10A of the Principal Act.

25. Schedule 1 [54] provides that proceedings for an offence under section 16 (Offences where dog attacks person or animal) or 17 (Dog must not be encouraged to attack) of the Principal Act may be brought within the period of 12 months of the date on which the offence is alleged to have been committed, rather than 6 months as is currently the case.

Amendments relating to notices requiring companion animal to be registered

26. Schedule 1 [7] amends section 10B (1) of the Principal Act to provide that the notice a council may give to the owner of a companion animal requiring the owner to register the animal is to require that the registration take place within 14 days, rather than the current 28 days.

Miscellaneous amendments

27. Schedule 1 [29] amends section 36 (1) (b) of the Principal Act to clarify that if an owner of a dog is given notice of an intention to make a dangerous or menacing dog declaration by an authorised officer of a council, the owner must register the dog (if it is not already registered) within 7 days, regardless of the dog's age.

28. Schedule 1 [30] amends section 36 (3) (b) of the Principal Act to clarify that an authorised officer may seize an unregistered dog that is the subject of a proposed dangerous or menacing dog declaration without having to wait until that 7 day period for registration has expired.

29. Schedule 1 [47] and [48] make parallel amendments to those in Schedule 1 [29] and [30] in relation to proposed restricted dog declarations.

30. Schedule 1 [40] amends section 47 of the Principal Act to enable the Local Court to order an owner of a dog to undertake responsible pet ownership training in specified circumstances, being:

    (a) in proceedings for an offence under section 16, 17, 49, 51 or 56 of the Principal Act, or under section 35A (Causing dog to inflict grievous bodily harm or actual bodily harm) of the Crimes Act 1900, or

    (b) on an appeal against the declaration by an authorised officer of a council that a dog is a dangerous dog or a menacing dog or against a council's refusal to revoke such a declaration, or

    (c) on the Court declaring the dog to be a dangerous or menacing dog.

31. Schedule 1 [41] amends section 48 of the Principal Act to provide that the Local Court must, except in exceptional circumstances, make a destruction order in relation to a dog on conviction of the owner of the dog of an offence involving the serious injury or death of a person caused by the dog.

32. Schedule 1 [9] amends section 10B (3) of the Principal Act to provide that a second or subsequent notice may be given 3 months after the previous notice, rather than 6 months as is currently the case.

33. Schedule 1 [55] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Companion Animals Regulation 2008

34. Schedule 2 [1] removes an exemption from the prohibition on the sale of unidentified companion animals that applies to a sale by a recognised breeder to a pet shop if, at the time of the sale, the animals is less than 12 weeks old.

35. Schedule 2 [2] increases certain registration fees.

36. Schedule 2 [3] and [13] provide for the annual indexation of those registration fees.

37. Schedule 2 [4]–[5], [7]–[9] and [11] make consequential amendments following on from the amendments made by Schedule 1.

38. Schedule 2 [6] increases the maximum fee for issuing a certificate of compliance in relation to a prescribed enclosure for a dangerous dog.

39. Schedule 2 [10] and [12] increase penalty notice amounts for certain offences.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

40. Schedule 3 makes a consequential amendment.

ISSUES CONSIDERED BY COMMITTEE

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

Increased Penalties

41. Schedule 1, items 4, 9, and 11 to 16 of the Bill increase the maximum penalties that may be imposed in relation to a number of offences under the *Companion Animals Act 1998*. For example, the maximum fine payable for not registering a dangerous or restricted dog is currently $5,500 and will rise to $6,600. Similarly, the maximum penalty for urging a dangerous or restricted dog to attack will rise from a $22,000 fine or imprisonment for 2 years or both, to a $77,000 fine or imprisonment for 5 years or both.

> **The Committee notes the Bill increases the maximum penalties that may be imposed in relation to a number of offences under the *Companion Animals Act 1998.* While the increases are significant, they are part of an overall scheme to encourage responsible pet ownership and increase community safety following dog attacks on people that have resulted in serious injury and death. For this reason, the Committee makes no further comment.**

New Offences

42. Schedule 1, item 12 of the Bill creates two new offences that provide that the owner or person in charge of a dog is guilty of an offence if the dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not injury results and the incident occurs as a result of a reckless act or omission by the owner or that other person. One offence relates to dangerous, menacing and restricted dogs for which there will be a maximum penalty of a $55,000 fine or imprisonment for 4 years or both. The other relates to other dogs for which there will be a maximum penalty of $22,000 or imprisonment for 2 years or both.

> **The Committee notes the Bill creates two new offences that subject dog owners, and those in charge of dogs, to significant penalties if the dog rushes**

at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not injury results and the incident occurs as a result of a reckless act or omission by the owner or person in charge. The Committee notes the maximum penalties for these offences, including terms of imprisonment, are severe. Nonetheless, they are part of an overall scheme to encourage responsible pet ownership and increase community safety. For this reason, the Committee makes no further comment.

Increased Limitation Period

43. Schedule 1, item 54 of the Bill provides that proceedings for certain dog attack offences under the *Companion Animals Act 1998* can be brought within a period of 12 months of the date on which the offence is alleged to have occurred rather than 6 months, which is currently the case.

The Committee notes that this Bill decreases the certainty of people who will potentially be accused of criminal activity. However, this concern must be balanced against the public interest in providing councils with adequate time to pursue more complex dog attack cases. As the provision could be said to strike an appropriate balance, the Committee makes no further comment.

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

Excludes Judicial Review

44. The Committee notes that no appeal will lie to the Local Court under section 41 of the *Companion Animals Act 1998* against a declaration under schedule 1, item 26 of the Bill by an authorised officer of a council that a dog is a menacing dog.

The Committee notes that no appeal will lie to the Local Court against a declaration by an authorised council officer that a dog is a menacing dog. If a dog is declared a menacing dog its owner is burdened with extra responsibilities and costs including a requirement to de-sex the dog, enclosure requirements and a requirement that the dog be muzzled and kept on a lead if away from its place of residence. Failure to comply opens the owner to the possibility of a maximum $16,500 fine. The Committee notes a right of appeal does lie to the Local Court in respect of a *dangerous* dog declaration, under section 41 of the Act. The Committee makes no further comment.

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

Commencement by Proclamation

45. Clause 2 of the Bill provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for schedule 2, items 2, 3, 6 and 13 which are to commence on 1 January 2014.

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

4. Explosives Amendment Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Minister for Finance and Services

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

(a) to amend the *Explosives Act 2003* (the Principal Act) as follows:

i to require security clearances to be held by natural persons who handle explosives or explosive precursors and by licence holders, and to provide for the grant, suspension and cancellation of security clearances (Schedule 1 [1]–[6], [9]–[21] and [28]),

ii to enable regulations to be made authorising the disclosure of information obtained in the administration or execution of the Act to persons or bodies, or persons or bodies of a class, prescribed by the regulations (Schedule 1 [26]),

iii to enable the regulatory authority under the Act to communicate (subject to any conditions or limitations prescribed by the regulations) to persons or bodies and persons or bodies of a class prescribed by the regulations, any information which comes to its knowledge in the exercise of its functions with respect to licences and security clearances and holders of licences and security clearances (Schedule 1 [27]),

iv to enable the Commissioner of Police, at the request of the regulatory authority, to report under section 13 of the Act on whether there is any available information with respect to the participation of an applicant for a licence or security clearance or holder of a licence or security clearance in any criminal activity and any available information concerning any such conviction that the Commissioner considers to be relevant to the application or continued holding of the licence or security clearance, on whether the applicant or holder is a fit and proper person to hold a licence or security clearance and whether it is contrary to the public interest for the person to do so (Schedule 1 [7]),

v to remove the ability of the Commissioner of Police to make such a report in relation to whether the applicant or holder has a good reason for holding such a licence or can be trusted to handle explosives in the manner authorised by the licence without danger to the public safety or the peace (Schedule 1 [7]),

vi to ensure that any part of such a report that could disclose the existence or content of a criminal or security intelligence report or other confidential criminal information is not disclosed by the Administrative Decisions Tribunal in giving

reasons for its decisions, or in proceedings before it, without the approval of the Commissioner of Police (Schedule 1 [8] and [23]),

vii to provide for the internal review of decisions concerning licences and security clearances that are reviewable decisions under the *Administrative Decisions Tribunal Act 1997* by removing a provision that currently prevents such a review (Schedule 1 [22]),

viii to enable inspectors appointed under the *Explosives Act 2003* to exercise the kind of information-gathering powers set out in section 155 of the *Work Health and Safety Act 2011* (Schedule 1 [24]),

ix to provide for the making of savings and transitional regulations and to enact certain savings provisions (Schedule 1 [29]–[31]), and

(b) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable police officers to seize, retain and destroy explosives, explosive precursors or certain dangerous goods (Schedule 2.2 and Schedule 1 [25]).

BACKGROUND

2. The Bill follows a recent statutory review of the *Explosives Act 2003* that was carried out by WorkCover. As part of the review, WorkCover consulted with businesses, employers and union groups and also called for submissions from the public.

3. The review found that the policy objectives of the Act to protect workers and the public from harm that may result from illegal and/or unsafe use of explosives remained valid, subject to minor amendments.

4. The Bill implements many of the review's recommendations, as well as making some other amendments identified as necessary.

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 Explosives Act 2003 No 39

7. Schedule 1 contains the amendments to the Principal Act described in paragraph (a) of the Purpose and Description above.

Schedule 2 Amendment of other legislation

8. Schedule 2.1 makes amendments to the *Explosives Regulation 2013* that are consequential on the amendments to the Principal Act described in paragraph (a) (i) of the Purpose and Description above.

9. Schedule 2.2 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* as described in paragraph (b) of the Purpose and Description above. It amends section 20 of that Act so that the powers for police officers under Division 1 of Part 4 of that Act to search persons and seize and detain things without warrant will apply if a police officer

suspects on reasonable grounds that a person has in his or her possession any explosive, explosive precursor or dangerous good to which section 31 of the Principal Act applies used or intended to be used in connection with an offence under Part 2 of the Principal Act. It also amends section 211 of the *Law Enforcement (Powers and Responsibilities) Act 2002* so that seized explosives, explosive precursors and dangerous goods may be forfeited and destroyed (if not returned).

ISSUES CONSIDERED BY COMMITTEE

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

Search without warrant

10. Schedule 2.2[1] of the Bill amends section 20 of the *Law Enforcement (Powers and Responsibilities) Act 2002* so that a police officer may, without a warrant, search and detain a person if the police officer suspects on reasonable grounds that the person is in possession or control of anything used or intended to be used in the commission of an offence against Part 2 of the *Explosives Act 2003*. A police officer can then seize and detain any such item found.

11. Offences under Part 2 of the *Explosives Act 2003* include handling an explosive without a licence; not taking necessary precautions when conveying an explosive to prevent unauthorised access to the explosive; negligent handling of explosives; and supplying an explosive to a minor.

> **Permitting the police to search persons without a warrant and then seize and detain items found could impact on a person's right to be free from an unreasonable search. However, the Committee notes that offences under Part 2 of the *Explosives Act 2003* can pose a significant risk to public safety. The Committee also notes that a police officer can only carry out such a search if they have a reasonable suspicion that the person is in possession or control of an item used, or to be used, in the commission of an offence. For these reasons, the Committee makes no further comment.**

5. Fines Amendment Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Minister for Finance and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Fines Act 1996* (the Act) as follows:

(a) to abolish the State Debt Recovery Office (the SDRO) and provide for the appointment of a Commissioner of Fines Administration to exercise its functions,

(b) to provide for the suspension of visitor driver privileges as a means of enforcing payment of fines,

(c) to establish a trial for the enforcement (as fines) of amounts payable by offenders under restitution orders,

(d) to establish a scheme for the enforcement in this State of interstate fines that are not subject to the enforcement scheme provided for by that *Service and Execution of Process Act 1992* of the Commonwealth,

(e) to authorise the Commissioner of Fines Administration to utilise interstate laws and Commonwealth laws to enforce New South Wales fines,

(f) to make changes related to the interstate fine enforcement scheme established in 2010 by Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth,

(g) to permit the enforcement of a fine or penalty notice amount, before its due date, where a person agrees to a combined payment arrangement (an arrangement for the payment of the fine or penalty notice amount in conjunction with other fines payable by the person),

(h) to permit any fine overpayments made by a person to be reallocated towards the payment of other fines payable by the person,

(i) to make other minor and consequential amendments.

BACKGROUND

2. During his Second Reading Speech to Parliament, the Hon. Andrew Constance MP, Minister for Finance and Services stated the Bill introduces a number of amendments that aim to more efficiently enforce fines and recover State debt in NSW.

3. The Minister advised the House that the State Debt Recovery Office is a statutory body corporate with functions relating to penalty notices, enforcement of fines and recovery

of debts due to the State. It is currently part of the Office of State Revenue in the Department of Finance and Services. Since coming to Government, the O'Farrell Government has overseen the merger of the Office of State Revenue debt recovery functions in relation to fines, taxes and benefits into a single debt management business unit using the name State Debt Recovery.

4. The debt recovery functions relating to fines are the statutory responsibility of the State Debt Recovery Office, while the Chief Commissioner of State Revenue has responsibility in relation to taxes and benefits; and the Executive Director of the Office of State Revenue is the Chief Commissioner of State Revenue and the Director of the State Debt Recovery Office.

5. The Bill abolishes the State Debt Recovery Office and vests its statutory functions in a new position: the Commissioner of Fines Administration. It also contains amendments to further integrate all of the debts administered by the Office of State Revenue to enhance is capability to provide debt management services to other state agencies.

6. In addition, the Bill makes a range of further miscellaneous amendments aimed at more efficiently enforcing fines and recovering State debt in NSW including allowing arrangements with other States and Territories to enforce NSW fines in other jurisdictions (and vice versa); amendments to remove procedural delay affecting enforcement of some fines; and suspending the NSW driver privileges of interstate and international visitors if they are subject to two or more enforcement orders relating to traffic or parking offences, until they pay their fines.

7. In addition, the Bill facilitates a trial relating to enforcement amounts payable under Victims Restitution Orders. The Auditor-General noted in his report to Parliament that, at 30 June 2012, of $310 million in restitution debts owed by offenders to victims under the Victims Compensation Scheme, only $19.7 million was likely to be recovered. The amendments proposed by the Bill will allow the Commissioner of Fines Administration to recover amounts awarded to victims. This is expected to result in an improved recovery rate for victims because a wider range of enforcement action would be available to the Commissioner of Fines than is available under the Victims Compensation Scheme.

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 1 December 2013, or the date of assent to the proposed Act, whichever is later.

Schedule 1 Amendment of *Fines Act 1996 No 99*

Abolition of SDRO

10. Schedule 1 [45] provides for the appointment of a Commissioner of Fines Administration (the Commissioner). The functions of the Commissioner are substantially the same as the functions of the SDRO (which is to be abolished).

11. New provisions will enable the Commissioner to use the name "State Debt Recovery" in the exercise of functions under the Act and to authorise the use of that name for other

purposes. It will be an offence to take proceedings under that name, or to carry on any other activity under that name, unless authorised to do so by or under the Act.

12. The amendments also provide for the following:

(a) the employment of persons in the Public Service to assist the Commissioner,

(b) delegation of the Commissioner's functions,

(c) authorisation to exercise enforcement functions,

(d) personal liability of the Commissioner.

13. Schedule 1 [56] (proposed clause 29 of Schedule 3) abolishes the SDRO and provides for the transfer of assets, rights and liabilities of the SDRO to the Crown.

14. Schedule 1 [1], [3], [5], [8], [10], [12], [13], [16], [26]–[33], [35], [36], [41], [44], [46], [48], [50] and [51] make consequential amendments.

15. The amendments to other legislation in Schedule 2 (other than the amendments specifically mentioned below) are also consequential on the abolition of the SDRO and the appointment of the Commissioner.

Suspension of visitor driver privileges

16. Schedule 1 [20] and [22] permit the enforcement of a fine by means of suspension of a person's visitor driver privileges.

17. A visitor driver privilege is any exemption under road transport legislation that confers authority on a visiting driver (such as a resident of another State) to drive a motor vehicle in New South Wales, even though the visiting driver does not hold a New South Wales driver licence.

18. The amendments require Roads and Maritime Services to suspend visitor driver privileges if directed to do so by the Commissioner.

19. Such enforcement action is to be taken only if the fine defaulter is liable for 2 or more fines and the fines relate to traffic offences.

20. Schedule 1 [24] permits the interim restoration of visitor driver privileges if a fine, or the conviction or sentence to which it relates, is the subject of a challenge.

21. Schedule 1 [21] makes a consequential amendment.

22. Schedule 2.14 contains consequential amendments to the Road Transport (Driver Licensing) Regulation 2008.

Trial for enforcement of restitution orders

23. Schedule 1 [53] establishes a trial for the enforcement under the Act of restitution orders made under the *Victims Rights and Support Act 2013* (or under the former Act, the *Victims Support and Rehabilitation Act 1996*).

24. At present, a restitution order (an order for the payment of restitution by an offender) is enforceable as if it were an order made in civil proceedings for the payment of a debt to the Commissioner of Victims Rights.

25. Under the trial, the amount payable under the order will be enforceable under the Act as if it were a fine imposed by a court.

26. The trial period will run for 12 months (or a longer period prescribed by the regulations). It will apply only to restitution orders confirmed before or during the trial period that the Commissioner of Victims Rights and the Commissioner of Fines Administration agree should be enforced under the trial.

27. The amendments modify the application of the Act, as it applies to restitution orders, and also suspend the operation of various enforcement provisions under the *Victims Rights and Support Act 2013* (or the former Act, the *Victims Support and Rehabilitation Act 1996*) in relation to restitution orders that are enforced under the trial.

Enforcement in NSW of interstate fines

28. Schedule 1 [43] (see, in particular, Division 2 of proposed Part 5A) establishes a scheme for the enforcement of interstate fines in New South Wales.

29. Under the scheme, the Commissioner is given power to make an order (an interstate fine enforcement order) for the enforcement of an interstate fine in New South Wales.

30. An interstate fine enforcement order may be made at the request of the originating jurisdiction for the fine (the jurisdiction in which the fine was imposed). The interstate fine enforcement order has the same effect, with some modifications, as a fine enforcement order made in respect of a NSW fine (a fine for which New South Wales is the originating jurisdiction).

31. Accordingly, the Commissioner can take enforcement action under the Act in relation to the interstate fine, in the same way as for a NSW fine. Any money recovered in New South Wales under the interstate fine enforcement order is to be applied, firstly, towards payment of New South Wales enforcement costs and fines. The remainder is to be paid to the originating jurisdiction.

32. The scheme will not apply to fines that fall within the enforcement scheme provided for by Part 7 of the *Service and Execution of Process Act 1992* of the Commonwealth (the SEP Act). The SEP Act permits a fine that is imposed by a court of one State to be registered, in certain circumstances, in another State. The fine then becomes enforceable in the registering State as if it had been imposed by a court of the registering State. Accordingly, an enforcement scheme for interstate fines that are court imposed already exists under that Act.

33. As the new enforcement scheme provided for by the amendments will not apply to SEP Act fines, it will principally apply to administrative type fines, such as fines payable under penalty notices.

34. Schedule 1 [47] permits the disclosure of information obtained under the Act in connection with a request for the enforcement of, or the enforcement of, an interstate fine enforcement order.

35. Schedule 1 [49] permits guidelines to be made under the Act with respect to the issue of interstate fine enforcement orders.

36. Schedule 2.7 [1] makes a consequential amendment to the *Fines Regulation 2010*.

Enforcement of NSW fines in other jurisdictions

37. Schedule 1 [43] (see, in particular, Division 3 of proposed Part 5A) makes further provision for the enforcement of NSW fines in other jurisdictions.

38. The amendments permit the Commissioner to request enforcement action or to exercise other functions under the legislation of other jurisdictions (including the SEP Act) for the purpose of enforcing the payment of NSW fines.

39. The Commissioner can enter into arrangements with other jurisdictions for the payment of amounts recovered in those jurisdictions in the enforcement of NSW fines.

40. Enforcement action in NSW is not permitted if the Commissioner has requested enforcement action in another jurisdiction.

41. Schedule 1 [47] permits the disclosure of information obtained under the Act in connection with a request for the enforcement of, or the enforcement of, a fine enforcement order in another jurisdiction.

Further amendments relating to SEP Act

42. Schedule 1 [4] makes it clear that a fine includes any fine to which Part 7 of the SEP Act applies.

43. Schedule 1 [7] (proposed section 14 (1)) permits the Commissioner to make a court fine enforcement order in respect of an interstate fine that is registered in New South Wales under Part 7 of the SEP Act, without the need for the fine to be referred by the court to the Commissioner for enforcement. Under the SEP Act, once an interstate fine is registered in New South Wales it is enforceable in New South Wales as if it had been imposed by a court of New South Wales.

44. Schedule 1 [19] makes it clear that imprisonment cannot be used as an enforcement mechanism in respect of a fine registered in New South Wales under the SEP Act. This is consistent with section 114 of the SEP Act.

Combined payment arrangements

45. Schedule 1 [6], [7] and [14] permit a fine enforcement order to be made, before the due date for the fine or penalty notice amount, if the person liable to pay the fine or penalty notice amount seeks from the Commissioner a time to pay order that provides for a combined payment arrangement.

46. A time to pay order is an order that extends the time for payment of a fine or allows a fine to be paid by instalments. A time to pay order may be made only after a fine enforcement order has been made. Accordingly, the amendments will permit a time to pay order that provides for a combined payment arrangement to be made in respect of a fine or penalty notice amount before the amount is due.

47. Schedule 1 [9] is a consequential amendment.

48. Schedule 1 [34], [37] and [38] provide for combined payment arrangements. A combined payment arrangement is an arrangement for the payment of a fine or penalty notice amount in conjunction with another fine payable by the same person. For example, a time to pay order could permit the payment by instalment of all the relevant fines or penalty notice amounts payable by the person.

49. Schedule 2.7 [3] makes a consequential amendment to the Fines Regulation 2010.

Allocation of overpayments

50. Schedule 1 [52] permits the Commissioner to reallocate any overpayment made by a person under a fine enforcement order towards payment of amounts payable under other fine enforcement orders that are in force in relation to the person, instead of refunding the overpayment.

51. At present, the Act permits such a reallocation only if the overpayment is made as a result of the withdrawal or annulment of the fine enforcement order. The amendment will permit inadvertent overpayments (an overpayment otherwise than as a result of the withdrawal or annulment of a fine enforcement order) to be reallocated.

52. However, the Commissioner is required to refund an inadvertent overpayment if the person who made the overpayment applies for a refund.

53. Schedule 1 [11], [15], [17] and [18] are consequential amendments.

Other amendments

54. Schedule 1 [39] makes the Director-General of the Department of Finance and Services a member of the Hardship Review Board, instead of the Chief Commissioner of State Revenue.

55. Schedule 1 [23] updates a reference to the title of an Act.

56. Schedule 1 [2] inserts new definitions that are related to the above amendments.

57. Schedule 1 [40] is a consequential amendment.

58. Schedule 1 [25] updates a provision that confers power to issue an examination summons, so that it instead confers power to issue an order for examination. The new terminology is consistent with the terminology used in the Uniform Civil Procedure Rules 2005.

59. Schedules 1 [42] and 2.7 [4] are consequential amendments.

60. Schedule 1 [54] updates a Schedule to the Act that lists the penalty notice provisions in other Acts that are enforceable under the *Fines Act 1996* to include various recently enacted Acts.

61. Schedule 1 [55] enables savings and transitional regulations to be made as a consequence of any amendment to the Act.

62. Schedule 1 [56] provides for savings and transitional matters.

ISSUES CONSIDERED BY COMMITTEE

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

Right to Privacy

63. Schedule 1, item 47 of the Bill permits the Commissioner of Fines Administration to disclose personal information about a fine defaulter, obtained under the *Fines Act 1996* in connection with enforcement of an interstate enforcement order, to an officer of an agency of a participating jurisdiction, or to an interstate fine enforcement authority. A participating jurisdiction is another jurisdiction in which NSW fine enforcement orders are enforceable under the laws of that jurisdiction.

64. This may affect the privacy rights of fine defaulters whose details are so provided. While fine defaulters' privacy rights are protected by confidentiality requirements of the *Fines Act 1996*, it is unclear if privacy rights will be protected in the same way once information about fine defaulters is disclosed to officers in other jurisdictions who may be bound by different requirements.

> **The Committee notes fine defaulters' privacy rights are protected by confidentiality requirements of the *Fines Act 1996*, it is unclear if their privacy rights will be protected in the same way once their personal information is disclosed to officers in other jurisdictions who may be bound by different requirements. Nonetheless, the provision facilitates a beneficial scheme to allow other States and Territories to enforce NSW fines in other jurisdictions and vice versa. Given the nature of cooperative federalism, and the fact that the information disclosed is necessary to assist in the collection of debts from persons who have defaulted, the Committee makes no further comment.**

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

Matters which should be set by Parliament

65. Schedule 1, item 53 of the Bill establishes a trial for the enforcement under the *Fines Act 1996* of restitution orders made under the *Victims Rights and Support Act 2013*, or under its predecessor, the *Victims Support and Rehabilitation Act 1996*. Further, schedule 1, item 53 (proposed sections 133 and 134 respectively) provide that the trial period will run for 12 months, or a longer period prescribed by the regulations, and it will apply only to restitution orders confirmed before or during the trial period that the Commissioner of Victims Rights and the Commissioner of Fines Administration agree should be enforced under the trial.

> **The Bill delegates matters which should be set by Parliament (including the class of persons to whom the new system is to apply), to the Executive. However, the Committee notes that regulations are subject to disallowance by the Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, and the fact that the new system is only of a trial nature, the Committee makes no further comment.**

Henry VIII Clause

66. As above, Schedule 1, item 53 of the Bill establishes a trial for the enforcement under the *Fines Act 1996* of restitution orders made under the *Victims Rights and Support Act 2013*, or under its predecessor, the *Victims Support and Rehabilitation Act 1996*.

Further, schedule 1, item 53, proposed section 136 of the Bill provides that the regulations may make further provision for the enforcement of restitution orders under the trial, including by modifying the operation of the *Fines Act 1996* in relation to restitution orders enforceable under the trial, and modifying the operation of the *Victims Rights and Support Act 2013* in relation to those restitution orders. In short, proposed section 136 would allow the regulations (subordinate legislation) to amend Acts of Parliament in respect of certain matters.

The Bill provides that the regulations may make further provision for the enforcement of victims restitution orders (under the trial proposed by the Bill), including by modifying the operation of the *Fines Act 1996* in relation to restitution orders enforceable under the trial, and by modifying the operation of the *Victims Rights and Support Act 2013* in relation to those restitution orders. In the Committee's view this may be an inappropriate delegation of legislative power – amendments to primary legislation should be effected by Parliament, not by the Executive making an amendment to a regulation. The Committee refers the matter to Parliament for its consideration.

6. Industrial Relations Amendment (Industrial Court) Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to amend the *Industrial Relations Act 1996* to provide for the Industrial Relations Commission in Court Session (also called the Industrial Court) to be constituted only by a single judicial member and not by a Full Bench.

2. The Bill also provides for the various existing functions of such Full Benches to be distributed between the Supreme Court, the Industrial Court constituted by a single judicial members and the Industrial Relations Commission (other than in Court Session), and to enable certain Judges of the Supreme Court to act as judicial members of the Industrial Court.

3. The Bill will also amend the *Supreme Court Act 1970* to enable judicial members of the Industrial Court to act as Judges of the Supreme Court. Amendments to the *Supreme Court Act 1970* will limit proceedings that are assigned to the Court of Appeal on appeals from, or for judicial review of, decisions of the Industrial Relations Commission to those involving decisions of the Industrial Court or a judicial member.

4. The Bill amends the *Criminal Appeal Act 1912* to provide for appeals to the Court of Criminal Appeal in respect of convictions for offences by the Industrial Court and for cases stated in criminal appeals before the Industrial Court.

BACKGROUND

5. The Australian workplace relations system has undergone significant changes in the past decade. The introduction of WorkChoices in 2006, and the subsequent referral of powers to the Commonwealth by various state governments in 2009, resulted in the transfer of almost all private sector workers to the Federal industrial relations system.

6. As a result of these changes, the reforms significantly reduced the number of workers falling within the remit of the New South Wales Industrial Relations Commission. As a result, the Commission experienced a significant decline of workload, including up to 50% between 2003 and 2011. Meanwhile, the workload drop-off for the Industrial Court has reduced by more than 70%.

7. The Court has advised the Government that there would now only be sufficient judicial matters to warrant one full-time judge by the end of 2013.

8. As a result, following the retirement of the remaining four judges, from 2014 onward there will only be one judge of the Industrial Court.

9. To facilitate these changes, the Bill amends various Acts that enable a reshuffling of responsibilities between the Industrial Relations Commission, the Industrial Court, and the Supreme Court. The Bill also amends certain requirements of the Industrial Court in order to facilitate its ability to operate with only one judge.

OUTLINE OF PROVISIONS

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

11. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

12. Schedule 1 [1] and [7] provide that the Commission in Court Session may not be constituted by a Full Bench of judicial members, but only by a single judicial member. Schedule 1 [9]–[13], [16], [17], [18] and [27] make consequential amendments.

13. Schedule 1 [2] enables certain Judges of the Supreme Court to act as judicial members in proceedings of the Industrial Court.

14. Schedule 1 [3] transfers the jurisdiction of a Full Bench of the Industrial Court with respect to the cancellation of the registration of industrial organisations to the Industrial Relations Commission.

15. Schedule 1 [8] provides for the manner in which the Commission is to be constituted for the purposes of exercising those transferred functions. Schedule 1 [28] makes a consequential amendment.

16. Schedule 1 [4] omits a reference to a repealed provision of the Superannuation Administration Act 1996.

17. Schedule 1 [6] transfers the jurisdiction of a Full Bench of the Industrial Court to deal with contempt to a single judicial member of the Court. Schedule 1 [14] makes a consequential amendment.

18. Schedule 1 [23]–[26] transfers the jurisdiction of a Full Bench of the Industrial Court to hear appeals under section 197 (Appeals from Local Court) and 197B (Appeals on questions of law in relation to public sector promotional and disciplinary matters) of the Industrial Relations Act 1996 to a single judicial member of the Court.

19. Schedule 1 [29] transfers the jurisdiction of a Full Bench of the Industrial Court to hear appeals from the Industrial Court constituted by a single judicial member to the Supreme Court.

20. Schedule 1 [5], [15] and [19]–[22] make consequential amendments.

21. Schedule 1 [30] enables former members of the Industrial Relations Commission (including the

22. Industrial Court) to complete matters that were unfinished by them when they ceased to be members.

23. Schedule 1 [31] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of an Act that amends the Industrial Relations Act 1996 (including the proposed Act).

24. Schedule 1 [32] inserts savings and transitional provisions consequent on the enactment of the proposed Act concerning the determination of pending proceedings before a Full Bench of the Industrial Court.

25. Schedule 2 Amendment of other Acts

26. Schedule 2.1 amends the Criminal Appeal Act 1912 to provide for appeals to the Court of Criminal Appeal in respect of convictions for offences by the Industrial Court and for cases stated in criminal appeals before the Industrial Court.

27. Schedule 2.2 amends the Police Act 1990:

(a) to provide for a member of the Industrial Relations Commission who is an Australian lawyer to constitute the Commission for the purposes of conducting reviews under Divisions 1A and 1C of Part 9 of that Act of decisions of the Commissioner of Police, and

(b) to provide for an appeal from the decision of the Commission on a review under Division 1C of Part 9 of that Act to be conducted before a Full Bench of the Commission constituted by 1 Presidential Member who is a judicial member and 2 other members who are Australian lawyers, and

(c) to make certain consequential or related amendments.

28. Schedule 2.3 amends the Supreme Court Act 1970:

(a) to enable judicial members of the Industrial Court to act as Judges of the Supreme Court in proceedings of the Supreme Court, and

(b) to limit proceedings that are assigned to the Court of Appeal on appeals from, or for the judicial review of, decisions of the Industrial Relations Commission to those involving decisions of the Industrial Court or a judicial member.

29. Schedule 2.4 makes amendments to the Transport Appeal Boards Act 1980 that are consequential on the amendments made by Schedule 1 to the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right to a Fair Hearing

30. Schedule 1[1] and [7] provide that the Industrial Court may not be constituted by a Full Bench of judicial members, but only by a single judicial member. According to the Attorney during his Second Reading Speech, this means that certain types of matters that are currently required to be heard before a Full Bench will only be heard before a single judge following commencement of the Act. This includes proceedings for contempt, appeals from the Local Court, and promotional and disciplinary appeals.

31. The Committee notes that the drawing down of judicial members from a Full Bench (usually of three Members), to a single judge may affect the outcome of judicial proceedings. In particular, whereas a successful judgement required at least the concurrence of a second judge, following these reforms, the court's decision is left to the discretion of a single judge. This may be considered unfair in certain circumstances, for example to the defendant in proceedings for contempt.

32. However, the Committee also notes that single-judge hearings are already commonplace for these types of matters in other New South Wales courts, and therefore such matters being heard before a single judge would not ordinarily be considered unusual.

> **The Bill provides that certain types of matters that are currently required to be heard before a Full Bench (usually of three Members) will only be heard before a single judge following commencement of the Act. This may impact on the outcomes of various cases, and be considered unfair to the defendant in certain criminal matters. However, the Committee also notes that single-judge hearings are commonplace for these types of matters in other New South Wales courts. The Committee makes no further comment.**

7. Snowy Hydro Corporatisation Amendment (Snowy Advisory Committee) Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Snowy Hydro Corporatisation Act 1997* to establish the Snowy Advisory Committee to advise the Water Administration Ministerial Corporation each year on the timing and pattern for the release of water for environmental reasons under the Snowy water licence. The Snowy Advisory Committee replaces the Snowy Scientific Committee, which is to be dissolved by the proposed Act.

BACKGROUND

2. This Bill has been introduced to allow the new committee's arrangements to be consistent with other environmental water advisory committees across New South Wales, which include both community and government representatives.

OUTLINE OF PROVISIONS

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

4. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

5. Schedule 1 [2] constitutes the Snowy Advisory Committee and makes provision in relation to the Committee's function, membership and procedure. The Committee is subject to the control and direction of the Minister.

6. Schedule 1 [4] dissolves the Snowy Scientific Committee and provides that members of that Committee cease to hold office and are not entitled to any remuneration or compensation on ceasing to hold office.

7. Schedule 1 [1] is consequential on the dissolution of the Snowy Scientific Committee.

8. Schedule 1 [3] enables savings or transitional regulations to be made as a consequence of the proposed Act.

9. Schedule 2 omits uncommenced amendments relating to the Snowy Scientific Committee that will be redundant as a result of the proposed Act.

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.

8. Work Health and Safety Amendment Bill 2013

Date introduced	16 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Finance and Services

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to include in the *Work Health and Safety Act 2011* provisions of the regulations under that Act that establish savings and transitional arrangements relating to proceedings for offences under the *Occupational Health and Safety Act 2000* alleged to have been committed before the repeal of that Act

2. The Bill also makes it clear that proceedings for an offence against the *Work Health and Safety Act 2000* or the *Occupational Health and Safety Act 2000* may be brought and prosecuted by an Australian legal practitioner who represents a person authorised to bring the proceedings.

3. The Bill puts beyond doubt the validity of acts or omissions under provisions transferred from the regulations and of prosecutions by legal practitioners acting on behalf of authorised prosecutors.

4. The Bill also clarifies that restrictions on the power to make savings and transitional regulations under the *Work Health and Safety Act 2011* that deem provisions of that Act to be amended did not apply to certain provisions of the regulations.

5. Lastly, the Bill permits proceedings for offences under the *Occupational Health and Safety Act 2000* to be recommenced if the original proceedings were terminated for invalidity but would have been validated by this Bill, even if the time for commencing those proceedings has expired.

BACKGROUND

6. The *Work Health and Safety Act 2011* gives effect to a nationally harmonised scheme for work health and safety legislation, and has been implemented across most Australian jurisdictions.

7. Upon its commencement on 1 January 2012, the *Work Health and Safety Act 2011* repealed and replaced the previous *Occupational Health and Safety Act 2000.* Transitional arrangements allowed for prosecutions to continue under the repealed Act in relation to incidents that occurred while that Act was in force.

8. Recent legal challenges in *Empire Waste Pty Ltd and Dean Baldwin v District Court of New South Wales* and *Inspector Steven Brock* and *Australian Native Landscapes Pty Ltd v Inspector Nathan McDonald and District Court of New South Wales* have sought to

challenge the jurisdiction of the District Court. The Bill addresses the issues raised in these appeal proceedings for the purpose of clarity and avoidance of doubt.

9. Further, the Bill also addresses a further technical argument concerning the filing of prosecutions in *Attorney General for the State of New South Wales v Built New South Wales Pty Ltd and Air Conditioning Engineering Services Pty Ltd* to clarify that a legal practitioner may sign initiating process on behalf of a prosecutor and validating such actions from 1 January 2012.

OUTLINE OF PROVISIONS

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

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

12. Schedule 1 [1] provides that proceedings for an offence against the WHS Act may be brought by an Australian legal practitioner who is authorised in writing to represent a person authorised to bring the proceedings.

13. Schedule 1 [2] provides for the making of savings and transitional regulations consequent on the enactment of the WHS Act or any Act that amends that Act.

14. Schedule 1 [3] makes it clear that savings and transitional provisions of the regulations under the WHS Act that did not deem provisions of that Act to be amended were not limited by restrictions that would otherwise prevent them from having effect after 31 December 2012.

15. Schedule 1 [4] transfers to the WHS Act savings and transitional provisions relating to proceedings for offences against the OHS Act or the regulations under that Act that are alleged to have been committed before the repeal of that Act.

16. Schedule 1 [4] also inserts provisions that:

    (a) put it beyond doubt that proceedings for an offence under the OHS Act alleged to have been committed before the repeal of that Act can be brought by an Australian legal practitioner representing a person authorised to bring the proceedings, and

    (b) validate matters (including criminal proceedings) that would have been valid if the provisions inserted by the proposed Act had been in force as part of the WHS Act.

17. Schedule 1 [5] inserts provisions that provide that:

    (a) the amendments made by the proposed Act dealing with the authority to prosecute WHS Act offences extend to proceedings before the commencement of the proposed Act (with existing proceedings validated on that basis),

    (b) proceedings for OHS Act offences can be recommenced even if the time for commencing those proceedings has expired, if the original proceedings were not validly instituted but would be validated by the amendments made by the proposed Act,

(c) existing court decisions are not invalidated by the amendments made by the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Legislative Interference of Judicial Matters

18. The proposed amendments to Schedule 4, Part 2A of the *Work Health and Safety Act 2011* place beyond doubt that the District Court and the Local Court have jurisdiction to hear proceedings brought under the previous *Occupational Health and Safety Act 2000.*

19. The Committee notes that the intent of the Bill is to clarify the initial legislative intent of the Act, and that the current challenges on foot are largely on unintended technical grounds. The Committee also notes that Bills are routinely enacted which can affect the outcome of judicial proceedings on foot at the time of a Bill's passage.

> **The proposed amendments place beyond doubt the jurisdiction of the District Court in certain proceedings, together with clarifying the ability of an Australian legal practitioner to institute certain proceedings. As these matters are currently under challenge before the Courts, the amendments appear to be a legislative fettering of a judicial process, the effect of which would be prejudicial to one party over another. However, given the intent of the Bill is to clarify the initial intent of the Act, together with the fact that legislation routinely affects the outcome of judicial proceedings, the Committee does not find these amendments unreasonable in the circumstances.**

Repeated Prosecutions, Retrospectivity

20. Schedule 4, s26 provides that proceedings for an offence under the *Occupational Health and Safety Act 2000* that were terminated before the date of assent to the amending Act because they were not validly instituted may be recommenced.

21. The effect of this Bill is to give the prosecution the ability to recommence proceedings against a defendant that had previously been stayed, dismissed or withdrawn.

22. The Committee notes that this Bill does not affect proceedings which were finally determined, and does not seek to affect existing court decisions. The Committee is also aware that the intent of the Bill is not to grant retrospective effect to the instituting of court proceedings per se, but merely to clarify a legislative provision that is subject to current challenges on largely technical grounds. Lastly, the Committee is also aware of the overall public interest considerations in maintaining the ability to prosecute workplace health and safety offences, and the public interest against a prosecution faltering on technical grounds.

> **The proposed amendments provide that certain proceedings for an offence that were terminated because they were not validly instituted may recommence. Given the amendment merely seeks to correct a possible technical error in the legislation, together with the overall public interest considerations of the Bill, the Committee makes no further comment.**

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.