



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations

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

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

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

Guide to the Digest

COMMENT ON BILLS

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

Ministerial Correspondence – Bills previously considered

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

COMMENT ON REGULATIONS

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS REPORTED ON

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

Conclusions

PART ONE - BILLS

1. ANTI-DISCRIMINATION AMENDMENT (PRIVATE EDUCATIONAL AUTHORITIES) 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. CHILD PROTECTION LEGISLATION AMENDMENT (OFFENDERS REGISTRATION AND PROHIBITION ORDERS) BILL 2013

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

Employment Rights

The Committee notes that schedule 1[1] of the Bill places further limits on the right of a person subject to a child protection prohibition order to seek employment in certain fields. However, the Committee acknowledges that where such persons engage in certain types of employment, this may be a precursor to offending behaviour, and the employment rights of such persons must be balanced against the public interest in enhancing the safety of children. For this reason, the Committee makes no further comment.

Increased Penalty

The Committee notes that schedule 1[2] of the Bill significantly increases the maximum penalty for contravening a child protection prohibition order. However, the amendment is intended to deter people who have been convicted of serious offences against children from engaging in activity that may be a precursor to further offences. The Committee also notes that the amendment aligns the maximum penalty for the subject offence with the maximum penalty for similar offences under the sections 17 and 18 of the Child Protection (Offenders Registration) Act 2000. For these reasons the Committee makes no further comment.

Lack of Clarity

The Committee notes that by listing “any Act that amends this Act” rather than listing the names of each of those amending Acts, schedule 1[9] and schedule 2[2] of the Bill are of limited clarity. The Committee prefers the name of each Act to be listed to avoid this lack of clarity. However, as schedule 1[9] and schedule 2[2] relate to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertions ensure these schedules are comprehensive, the Committee makes no further comment.

Right to Privacy

Schedule 2[1] of the Bill seeks to allow police officers to enter and inspect residential premises of a registrable person, without prior notice or a warrant, to verify information reported by that registrable person. This may impact on privacy rights. While such rights must be balanced against the public interest in securing the safety of children, the Committee is concerned about the effect this amendment may have on the privacy rights of non-registrable

persons who may be cohabiting with registrable persons. The Committee refers the matter to Parliament for consideration.

Retrospectivity

Schedule 2[3] of the Bill provides that the proposed new powers allowing police to enter and inspect residential premises of a registrable person may be exercised in respect of a registrable person even if that person's initial report was made before the commencement of these new powers. The Committee will always comment where 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 create a new offence or penalty but rather a new power which may make detection of any pre-existing offence more likely. Given no new offence or penalty is created, and the child protection objects of the Bill, 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

Delegated Power

The Committee notes that schedule 1[5] of the Bill contains insufficient criteria regarding the class of police officer to whom the Commissioner of Police can delegate the power to apply for a prohibition order or contact prohibition order against a young, registrable person. The power can be delegated to a police officer of a class "prescribed by the regulations". The limit on delegation is important as it is intended to ensure appropriate supervision and monitoring of applications relating to high-risk offenders who are under 18 years. 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.

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

Judicial Review

By permitting a contact prohibition order to be made if the Commissioner of Police and the person who is to be subject to the order both consent, schedule 1[4] of the Bill, has potential to exclude judicial review. The Committee refers this matter to Parliament for consideration.

3. CRIMES (SENTENCING PROCEDURE) AMENDMENT (STANDARD NON-PAROLE PERIODS) BILL 2013

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

4. FIREARMS AND CRIMINAL GROUPS LEGISLATION AMENDMENT BILL 2013

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

Undue Punishment

The Committee notes that the provision is based on a similar section of NSW's primary criminal statute (section 344A of the *Crimes Act 1900*), it will allow prosecution of a greater number of people dealing in illegal firearms, and does not attempt to remove judicial discretion in the sentencing of offenders. For these reasons, the Committee makes no further comment.

Increased Penalties

The Committee notes the increased penalties proposed for certain firearms offences under schedule 1 [39] of the Bill. However, given that the increased penalties focus on prohibited firearms and pistols, and are intended to deter individuals from engaging in serious gun crime, the Committee makes no further comment.

Freedom of Association – Schedule 1 of the Bill

By preventing an individual subject to a firearms prohibition order from residing at certain premises, and banning their presence at certain firearm-related venues, schedule 1 [39] of the Bill may impact the person's right to freedom of association. However, a firearms prohibition order is made where the Commissioner of Police is of the opinion that the relevant person is not fit, in the public interest, to be permitted to have possession of a firearm. Further, the affected person can generally apply to the Administrative Decisions Tribunal for a review of this decision. Therefore, the Committee makes no further comment.

Freedom of Association – Schedule 2 of the Bill

The Committee is concerned that the Bill may further criminalise association between convicted criminals. Further, there is no need to prove such individuals have committed any other offence whilst associating with each other at restricted premises (or that they have ever committed any offence other than associating with convicted criminals) for an owner/occupier of restricted premises to be subject to a significant penalty. The Bill may therefore impact unduly on the right to freedom of association. The Committee refers the matter to Parliament for consideration.

Freedom of Movement

In placing restrictions on the places at which individuals subject to a firearms prohibition order may be present, schedule 1 [39] of the Bill may impact on the person's right to freedom of movement. However, as a firearms prohibition order is made where the Commissioner of Police is of the opinion that the relevant person is not fit, in the public interest, to be permitted to have possession of a firearm (and the person can generally apply to the Administrative Decisions Tribunal for a review of this decision), and as schedule 1 [39] of the Bill only prohibits such people attending places where firearms and firearms parts are available, the Committee makes no further comment.

Reversed onus of proof

In the Committee's view, by requiring an accused person to disprove a presumption that he or she is guilty of a criminal offence, schedule 1 [39] of the Bill may violate a person's right to the presumption of innocence. Further, if an accused person is unable to disprove the presumption that he or she is guilty of the offence, the consequences are potentially very serious. The person could be sentenced to a maximum penalty of a \$5,500 fine or 12 months prison, or both. Therefore, the Committee refers this issue to Parliament for further consideration.

Search Without Warrant and Without Requirement for Reasonable Suspicion

Schedule 1 [39], proposed section 74A of the Bill provides that police can detain and search a person subject to a firearms prohibition order and search his or her premises and/or vehicle to determine whether the person has contravened a firearms prohibition order. In the Committee's view, this may impact on a person's right to be free from unreasonable search. The Committee refers the matter to Parliament for consideration.

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

Excludes judicial review

By excluding the right of a person, who is otherwise disqualified from being issued with a firearms licence or permit, to apply to the Administrative Decisions Tribunal for a review of the Police Commissioner's decision to make a firearms prohibition order against the person, schedule 1 [40] of the Bill excludes judicial review of that decision. While such a decision is required to be internally reviewed by Police, there is no longer any independent oversight of it. For this reason, the Committee refers the matter to Parliament for consideration.

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

Matter which should be set by Parliament

Schedule 1 [39] of the Bill provides that the regulations may prescribe places where a person subject to a firearms prohibition order cannot attend, and may be subject to a penalty if they do so, including possible imprisonment for 12 months. In the Committee's view, the places from which such a person is excluded should be listed in the Bill to facilitate Parliamentary oversight, not left to delegated legislation. Nonetheless, the Committee notes that 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.

5. RESIDENTIAL (LAND LEASE) COMMUNITIES BILL 2013

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

Right against self-incrimination

The Committee considers that the information required to be provided under clause 16(1) of the Bill for the purposes of the Register is not particularly sensitive or controversial. However, the Committee notes that the Commissioner of Fair Trading and the Regulations can prescribe additional particulars for inclusion in the Register. The Committee also notes that the equivalent Register that is to be repealed from the *Residential Parks Act 1998* does not contain a provision requiring a person to provide information even though it may incriminate them or make them liable to a penalty. For these reasons, the Committee refers this issue to Parliament for further consideration.

Right to privacy

The Committee notes the accountability and transparency objectives of publishing information about enforcement or disciplinary action taken against a community, its operator, or staff. However, the Committee is concerned that publishing such information on the internet, particularly in relation to staff, could impact on an individual's right to privacy, particularly if the disciplinary or enforcement action taken against a person does not constitute a criminal offence. The Committee refers this issue to Parliament for further consideration.

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

Search without a warrant

The provisions of Part 13, Division 5, of the Bill are silent as to whether an investigator requires the consent of the occupier or a search warrant to enter community premises that are not

used for residential purposes (such as administrative offices). The Committee refers this issue to Parliament for consideration.

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

Commencement by proclamation

The Committee prefers that legislation of this kind, which may impact on rights and liberties and which replaces existing legislation, commences on a fixed date or on assent.

6. STRATA SCHEMES MANAGEMENT AMENDMENT (CHILD WINDOW SAFETY DEVICES) 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. Anti-Discrimination Amendment (Private Educational Authorities) Bill 2013*

Date introduced	19 September 2013
House introduced	Legislative Assembly
Member responsible	Mr. Alex Greenwich MP
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The *Anti-Discrimination Act 1977* currently exempts private educational authorities from provisions of the Act that make it unlawful for an educational authority to discriminate against a student or prospective student on the grounds of sex, marital or domestic status, disability, homosexuality, age, or on transgender grounds. Private educational authorities include all non-government institutions at which education or training is provided, such as private schools, business and coaching colleges, and private universities.
2. The object of this Bill is to remove these exemptions for private educational authorities.

BACKGROUND

3. This Bill has been introduced following reports that students at private schools have had conditions placed on their ongoing attendance at the school, or otherwise can be legally expelled without recourse to the Anti-Discrimination Board, on one of a number of specified grounds, in particular with respect to their sexuality.
4. The Member responsible for this Bill has indicated concern about the ongoing health and welfare of these students, and the broader classes of students the exemptions affect, should the exemptions remain in force.

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.
7. Clause 3 amends the *Anti-Discrimination Act 1977* in the manner described 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.

2. Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013

Date introduced	18 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 the Child Protection Legislation Amendment (Offenders Registration and Prohibition Orders) Bill 2013 (the Bill) are as follows:
 - (a) to permit the inspection by police, without notice or a warrant, of the residential premises of persons who are registrable persons under the Child Protection (Offenders Registration) Act 2000,
 - (b) to expand the conduct that can be the subject of a child protection prohibition order under the Child Protection (Offenders Prohibition Orders) Act 2004 (the Principal Act) to include, among other things, being a contractor, subcontractor, volunteer, trainee, religious or spiritual leader or a member of a religious organisation,
 - (c) to increase the maximum penalty for the offence of failing to comply with a child protection prohibition order and to provide for such an offence to be dealt with on indictment if the prosecutor so elects,
 - (d) to permit a contact prohibition order under the Principal Act to be made if the Commissioner of Police and the person who is to be subject to the order both consent to it being made,
 - (e) to limit the persons to whom the Commissioner of Police can delegate his or her functions of applying for certain orders under the Principal Act against persons under 18 years of age.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Greg Smith, Attorney General and Minister for Justice, indicated that the Bill implements the findings of a statutory review of the *Child Protection (Offenders Prohibition Orders) Act 2004* and introduces additional measures to the *Child Protection (Offenders Registration) Act 2000* that were also considered as part of the statutory review.
3. The amendments contained in the Bill seek to improve the operation of both of the above Acts, and to strengthen the framework for monitoring and managing individuals

who are living in the community who have committed sexual or other serious offences against children, and who pose a risk to children even after they have completed their sentence. These individuals are known as ‘registrable persons’ under the *Child Protection (Offenders Registration) Act 2000*.

4. Under the *Child Protection (Offenders Prohibition Orders) Act 2004*, child protection prohibition orders and contact prohibition orders can be made. A child protection prohibition order prevents registrable persons from engaging in certain kinds of conduct that may be a precursor to their offending, for example, participating in certain kinds of employment. Contact prohibition orders prevent registrable persons from contacting co-offenders or victims.
5. Under the *Child Protection (Offenders Registration) Act 2000*, a registrable person must report certain personal information to police for set periods of time while they are living in the community, for example, their name, date of birth, address, place of work, type of vehicle driven, and details of computer usage, including details such as their internet access, internet service provider, email addresses and chat room and instant messaging user names.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Child Protection (Offenders Prohibition Orders) Act 2004 No 46

7. Schedule 1 [1] provides that child protection prohibition orders under the *Child Protection (Offenders Prohibition Orders) Act 2004* (the Principal Act) may prohibit a person from being a worker of a specified kind. This replaces a provision that referred to employment. The use of the term “worker” is the same as that used in the *Child Protection (Working with Children) Act 2012* and is broader in scope than “employee”. Worker includes employees, self-employed persons, contractors, subcontractors, volunteers, trainees, religious or spiritual leaders and other members of religious organisations.
8. Schedule 1 [2] increases the penalty for the offence of contravening a prohibition order. The maximum penalty is to increase from \$11,000 or imprisonment for 2 years (or both) to \$55,000 or imprisonment for 5 years (or both).
9. Schedule 1 [3] provides that it is a defence to the offence of contravening a prohibition order if it is established that the person charged with the offence had not received a copy of the order and was otherwise unaware of the person’s obligations under the order.
10. Schedule 1 [6] and [7] provide (in conjunction with Schedule 3) that this offence may be dealt with summarily unless the prosecutor elects to have the offence dealt with on indictment.
11. Schedule 1 [4] permits a contact prohibition order to be made under the Principal Act if the Commissioner of Police and the person who is to be subject to the order both consent to it being made. Currently a contact prohibition order can only be made if the Local Court is satisfied that there are sufficient grounds for making the order.

12. Schedule 1 [5] prohibits the Commissioner of Police from delegating certain functions unless the delegation is made to a police officer, or to police officers of a class, prescribed by the regulations.
13. The relevant functions are making an application for (or an application for a variation or revocation of) a prohibition order or contact prohibition order against a person who is registrable under the *Child Protection (Offenders Registration) Act 2000* (a registrable person) and who is under 18 years of age.
14. Schedule 1 [9] permits regulations to be made containing savings or transitional provisions consequent on the enactment of the Principal Act or any Act that amends the Principal Act.
15. Schedule 1 [12] inserts savings and transitional provisions consequent on the enactment of the proposed Act.
16. Schedule 1 [8], [10] and [11] insert a number of headings into Schedule 2 (Savings and transitional provisions) to the Principal Act.

Schedule 2 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

17. Schedule 2 [1] gives police officers the power to enter and inspect residential premises at which a registrable person generally resides for the purposes of verifying personal information reported by the registrable person. Entry and inspection may be made without prior notice or a warrant.
18. The power may be exercised in respect of any particular residential premises of a registrable person once in the 28-day period following the making of an initial report by the registrable person under Division 2 of Part 3 of the *Child Protection (Offenders Registration) Act 2000* (the Principal Act). The power may also be exercised once again in the first year following the making of the initial report and then once each year after that until the relevant reporting period of the registrable person expires.
19. A registrable person is required to allow a police officer to enter and inspect any residential premises of the registrable person and is required to co-operate with the police officer with respect to that entry and inspection. These requirements are part of a registrable person's reporting obligations. Section 17 of the Principal Act contains an offence with a maximum penalty of \$55,000 or imprisonment for 5 years (or both) if a registrable person fails to comply with the person's reporting obligations.
20. The power to enter and inspect is not exercisable in respect of any part of residential premises that is occupied exclusively by a person other than the registrable person unless the police officer exercising the power has reasonable grounds for suspecting that the part of the premises is used by the registrable person.
21. Schedule 2 [2] permits regulations to be made containing savings or transitional provisions consequent on the enactment of the Principal Act or any Act that amends that Act.
22. Schedule 2 [3] inserts a savings and transitional provision.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

23. Schedule 3 amends the *Criminal Procedure Act 1986* to provide (in conjunction with the amendments in Schedule 1 [6] and [7]) that an offence under section 13 of the *Child Protection (Offenders Prohibition Orders) Act 2004* may be dealt with summarily unless the prosecutor elects to have the offence dealt with on indictment.

ISSUES CONSIDERED BY COMMITTEE

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

Employment Rights

24. Schedule 1[1] of the Bill broadens the scope of employment that a person may be prevented from participating in, if they are subject to a child protection prohibition order, to include circumstances where the person is a contractor, volunteer, a trainee, or a religious leader. Therefore, schedule 1[1] of the Bill places further limits on the right of such individuals to seek employment in a certain fields.

The Committee notes that schedule 1[1] of the Bill places further limits on the right of a person subject to a child protection prohibition order to seek employment in certain fields. However, the Committee acknowledges that where such persons engage in certain types of employment, this may be a precursor to offending behaviour, and the employment rights of such persons must be balanced against the public interest in enhancing the safety of children. For this reason, the Committee makes no further comment.

Increased Penalty

25. Schedule 1[2] of the Bill significantly increases the maximum penalty for the offence of contravening a child protection prohibition order. The maximum penalty is to increase from \$11,000 or imprisonment for 2 years, or both, to \$55,000 or imprisonment for 5 years, or both.

The Committee notes that schedule 1[2] of the Bill significantly increases the maximum penalty for contravening a child protection prohibition order. However, the amendment is intended to deter people who have been convicted of serious offences against children from engaging in activity that may be a precursor to further offences. The Committee also notes that the amendment aligns the maximum penalty for the subject offence with the maximum penalty for similar offences under the sections 17 and 18 of the *Child Protection (Offenders Registration) Act 2000*. For these reasons the Committee makes no further comment.

Lack of Clarity

26. Schedule 1[9] and schedule 2[2] of the Bill allow regulations to be made containing savings or transitional provisions consequent on the enactment of the *Child Protection (Offenders Prohibition Orders) Act 2004* and the *Child Protection (Offenders Registration) Act 2000* respectively, or any Acts that amend these Acts.

The Committee notes that by listing “any Act that amends this Act” rather than listing the names of each of those amending Acts, schedule 1[9] and schedule 2[2] of the Bill are of limited clarity. The Committee prefers the name of each Act to be listed to avoid this lack of clarity. However, as schedule 1[9] and

schedule 2[2] relate to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertions ensure these schedules are comprehensive, the Committee makes no further comment.

Right to Privacy

27. Schedule 2[1] of the Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to allow police officers to enter and inspect residential premises at which a registrable person generally resides, to verify information reported by that registrable person. Entry and inspection may be made without prior notice or a warrant.
28. The Committee notes the limits that are placed on this proposed new power. For example, it may generally only be used once a year and only until the reporting period of the registrable person expires. Similarly, the Committee notes that reporting requirements only apply to those who have been convicted of sexual and other serious offences against children, and where a court is satisfied that the person poses a risk to the lives or sexual safety of a child or children. In addition, the proposed power would not be exercisable in respect of any part of residential premises that is occupied exclusively by a person other than the registrable person unless the police officer exercising the power has reasonable grounds for suspecting that the part of the premises is used by the registrable person.
29. Despite these safeguards, the proposed new powers may impact significantly on privacy rights.

Schedule 2[1] of the Bill seeks to allow police officers to enter and inspect residential premises of a registrable person, without prior notice or a warrant, to verify information reported by that registrable person. This may impact on privacy rights. While such rights must be balanced against the public interest in securing the safety of children, the Committee is concerned about the effect this amendment may have on the privacy rights of non-registrable persons who may be cohabiting with registrable persons. The Committee refers the matter to Parliament for consideration.

Retrospectivity

30. Schedule 2[3] of the Bill provides that the proposed new powers allowing police to enter and inspect residential premises of a registrable person, in order to verify information reported by that registrable person, may be exercised in respect of residential premises of a registrable person even if that person's initial report was made before the commencement of these new powers.

Schedule 2[3] of the Bill provides that the proposed new powers allowing police to enter and inspect residential premises of a registrable person may be exercised in respect of a registrable person even if that person's initial report was made before the commencement of these new powers. The Committee will always comment where 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 create a new offence or penalty but rather a new power which may make detection of any pre-existing offence

more likely. Given no new offence or penalty is created, and the child protection objects of the Bill, 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

Delegated Power

31. The Committee notes that schedule 1[5] of the Bill provides that the Commissioner of Police may not delegate his or her power to make an application for a child protection prohibition order or contact prohibition order against a young registrable person unless the delegation is made to a police officer of a class prescribed by the regulations.

The Committee notes that schedule 1[5] of the Bill contains insufficient criteria regarding the class of police officer to whom the Commissioner of Police can delegate the power to apply for a prohibition order or contact prohibition order against a young, registrable person. The power can be delegated to a police officer of a class “prescribed by the regulations”. The limit on delegation is important as it is intended to ensure appropriate supervision and monitoring of applications relating to high-risk offenders who are under 18 years. 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.

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

Judicial Review

32. Schedule 1[4] of the Bill permits a contact prohibition order to be made under the *Child Protection (Offenders Prohibition Orders) Act 2004* if the Commissioner of Police and the person who is to be subject to the order both consent to it being made. Currently, a contact prohibition order can only be made if the Local Court is satisfied that there are sufficient grounds.

By permitting a contact prohibition order to be made if the Commissioner of Police and the person who is to be subject to the order both consent, schedule 1[4] of the Bill, has potential to exclude judicial review. The Committee refers this matter to Parliament for consideration.

3. Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013

Date introduced	18 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP SC
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* with respect to the setting of standard non-parole periods for offences.
2. The amendments made by the Bill clarify the following aspects of the role of the standard non-parole period in sentencing, as a consequence of the High Court decision in *Muldrock v The Queen* [2011] HCA 39:
 - A standard non-parole period represents the non-parole period not for the actual offence for which an offender is to be sentenced but for an offence of the same kind that is in the middle of the range of seriousness taking into account only objective factors that affect its relative seriousness;
 - The standard non-parole period for an offence is to be taken in account in determining the appropriate sentence for an offender; and
 - In taking a standard non-parole period into account, a court is not required to make an assessment of the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.

BACKGROUND

3. The 2004 case of *Regina v Way* [2004] NSWCCA 131 was the first major decision of the Court of Criminal Appeal setting out the principles and process to be applied when sentencing offenders for standard non-parole period offences. *Way* required the courts to take a two-step approach to sentencing in these matters, which involved a consideration of whether the offence was in the mid-range of objective seriousness, by comparing it to an abstract mid-range offence, in order to determine whether the standard non-parole period should apply. The court was required to then determine whether there were reasons for departing from the standard non-parole period.
4. In *Muldrock*, the High Court determined that *Way* had been wrongly decided and set out what it considered was the correct way to approach sentencing for standard non-parole

offences. The High Court held that the correct approach was for a court to identify all the factors relevant to a sentence, including the two legislative guideposts provided by Parliament: the maximum sentence and the standard non-parole period. The court is then to make a judgement as to the appropriate sentence taking into account all the relevant factors of the case.

5. Despite this ruling, the High Court left a number of matters unclarified. This included the extent to which subjective factors can be taken into account in assessing objective seriousness of a standard non-parole period, and whether a sentencing court is required to classify a standard non-parole period offence by reference to its position in a range of objective seriousness.
6. The NSW Law Reform Commission considered these issues in its *Interim Report on Standard Non-Parole Periods*. The Commission recommended that the scheme should be retained, but that legislative amendments should be made to clarify the provisions in accordance with *Muldrock* and provide guidance on the issues that remains unsettled as result of the decision. This Bill gives effect to those recommendations.

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 to the proposed Act.
9. Schedule 1 [2] makes it clear that a standard non-parole period represents the non-parole period not for the actual offence for which an offender is to be sentenced but for an offence of the same kind that is in the middle of the range of seriousness, and that this is determined by taking into account only objective factors that affect its relative seriousness (and without reference to matters personal to a particular offender or class of offenders).
10. Schedule 1 [3] makes it clear that a standard non-parole period is a matter to be taken into account in determining the appropriate sentence for an offender (as a “legislative guidepost”). The amendment does not affect a court’s usual sentencing practice of assessing the relative seriousness of an offence taking into account objective and subjective factors and does not limit the other matters that a court is required or permitted to take into account in determining the appropriate sentence for an offender.
11. Schedule 1 [1] makes a consequential amendment.
12. Schedule 1 [4] provides that an amendment made by the proposed Act extends to an offence committed before the commencement of the amendment but does not affect any sentence imposed before that commencement.

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.

4. Firearms and Criminal Groups Legislation Amendment Bill 2013

Date introduced	17 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Firearms Act 1996* (the principal Act) as follows:
 - (a) to empower police officers without warrant to enter premises or a vehicle occupied by a person who is subject to a firearms prohibition order, and to conduct searches for firearms, firearm parts and ammunition, for the purposes of determining whether the person is complying with the order,
 - (b) in addition to the existing prohibition on possessing or using a firearm, to prohibit a person who is subject to a firearms prohibition order from acquiring or possessing firearm parts or ammunition, from residing at premises where there are firearms and from attending certain other places such as gun shops and shooting ranges,
 - (c) to make other amendments in relation to firearm prohibition orders,
 - (d) to modify existing offences in relation to the sale and purchase of firearms, firearm parts and ammunition so that they apply instead to the supply (ie the transfer of ownership by sale, gift or otherwise) and acquisition (ie accepting or receiving by supply) of those things,
 - (e) to create a new offence of giving possession (which would include lending) of a firearm or firearm part to a person who is not authorised to possess it,
 - (f) to provide that any person who attempts to commit an offence under the principal Act is liable to the penalty for that offence.
2. The Bill also amends:
 - (a) the Restricted Premises Act 1943 to increase penalties under that Act for offences relating to reputed criminals attending premises declared by the Supreme Court or the District Court under that Act and to empower police officers without warrant to enter such premises and to conduct searches for firearms, and
 - (b) the Crime Commission Act 2012 to enable the Crime Commission to investigate matters relating to the criminal activities of a specified criminal group without the need for the matter to relate specific offences or individuals.

BACKGROUND

3. In his second reading speech to Parliament, the Hon. Barry O'Farrell MP, Premier, stated that the *Firearms and Criminal Groups Legislation Amendment Bill 2013* was assembled on the advice of the NSW Police Force, and is intended to ensure that Police have the power and resources to tackle criminals with guns and, in particular, to target gun crime across Sydney.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of *Firearms Act 1996 No 46*

Firearms prohibition orders

6. At present under Part 7 of the principal Act, the Commissioner of Police may make an order prohibiting a person from possessing or using a firearm if the Commissioner is of the opinion that the person is not fit, in the public interest, to be permitted to have a firearm. Schedule 1 [39] substitutes that Part to expand the prohibitions resulting from the making of a firearms prohibition order and to make other changes in relation to such orders. Under the new Part:
 - (a) a firearms prohibition order will take effect when a copy of it is served on the person against whom it is made (referred to below as a relevant person), and
 - (b) it will be an offence by a relevant person to acquire, possess or use a firearm or to acquire or possess a firearm part or ammunition (currently it is only an offence if the relevant person possesses or uses a firearm) and the penalty for acquiring, possessing or using a firearm is increased to 14 years imprisonment if it is a pistol or prohibited firearm, and
 - (c) the existing offence of selling a firearm to a relevant person (which will become an offence of supplying under other amendments made by the proposed Act) or of giving possession of a firearm to a relevant person is extended to the supply or giving possession of firearm parts and ammunition and the penalty for supplying or giving possession of a firearm to a relevant person is, if it is a pistol or prohibited firearm, increased from 10 years imprisonment to 14 years imprisonment, and
 - (d) it will be an offence for a relevant person to reside at premises where there is a firearm, firearm part or ammunition or to attend premises such as gun shops or shooting ranges, and
 - (e) the Commissioner will be able to exempt a relevant person from any of the prohibitions that apply as a consequence of the making of a firearms prohibition order, and
 - (f) police officers will have the power, for the purposes of determining whether a relevant person is complying with a firearms prohibition order, to detain a relevant person, enter any premises occupied by a relevant person or stop and detain any vehicle

occupied by a relevant person, and search for any firearms, firearm parts or ammunition, and

- (g) the Ombudsman will be required to monitor and report on the exercise of such entry and search powers during the first 2 years of their operation.
7. Schedule 1 [17] and [18] provide for the automatic revocation of a firearms permit held by a person if the person becomes subject to a firearms prohibition order. The principal Act already provides for the automatic revocation of a firearms licence in such an event.
 8. Schedule 1 [40] provides that a person who is otherwise disqualified from being issued with a firearms licence or permit is not entitled to apply to the Administrative Decisions Tribunal for a review of a decision of the Commissioner to make a firearms prohibition order against the person. However, any such decision in the case of such a person is required to be internally reviewed by the police.
 9. Schedule 1 [41] provides that the functions of the Commissioner in relation to firearms prohibition orders may be delegated only to a commissioned police officer (ie an officer of or above the rank of inspector).
 10. Schedule 1 [43] is consequential on the substitution of section 74 of the principal Act by the proposed Act and the creation of new summary offences under that section.
 11. Schedule 1 [44] provides that the amendments made by the proposed Act extend to existing firearms prohibition orders.

Offences relating to supply, acquisition and giving possession of firearms

12. A number of existing offences under the principal Act relate to the sale or purchase of firearms, firearm parts and ammunition. Schedule 1 [1]–[9], [11]–[16], [19]–[26], [28]–[34] and [36]–[38] modify these existing offences so that they apply instead to the supply of firearms, firearm parts or ammunition or to the acquisition of those things, and make a number of consequential amendments (including new definitions). The definition of supply will cover not just selling but transferring ownership by gift or otherwise. Acquire will mean accept or receive supply of.
13. Schedule 1 [27] creates a separate offence of giving possession of a firearm or firearm part (eg by way of lending) to a person who is not authorised to possess it. Schedule 1 [42] provides that the offence may be prosecuted on indictment.

Miscellaneous

14. Schedule 1 [10] reverses the order of the expression “prohibited firearm or pistol” that is used in the principal Act to make it clear that the expression covers all pistols and not just prohibited pistols.
15. Schedule 1 [35] provides that a person who attempts to commit an offence under a provision of the principal Act will be liable on conviction to the same penalty applicable to that offence.

Schedule 2 Amendment of *Restricted Premises Act 1943 No 6*

16. Schedule 2 amends the *Restricted Premises Act 1943* as follows:

- (a) to enable the Supreme Court or the District Court, in declaring premises to be premises to which Part 2 of the Act applies (Disorderly houses), to state that the declaration is made on the basis that reputed criminals attend the premises or control or manage the premises (a reputed criminal declaration),
- (b) to provide that a reputed criminal will include a person who has been convicted of an indictable offence (including the offence of consorting with convicted offenders), is engaged in an organised criminal activity or is a controlled member of a declared organisation within the meaning of the Crimes (Criminal Organisations Control) Act 2012,
- (c) to provide that, if a reputed criminal declaration is made in respect of premises, the penalty for an offence under the Act relating to the ownership or occupation of the premises will be 150 penalty units or imprisonment for 3 years, or both (the penalty for offences relating to declared premises is currently 50 penalty units or imprisonment for 6 months, or both),
- (d) to enable police officers without warrant to enter declared premises and search for, and seize, weapons or explosives,
- (e) to require the Ombudsman to monitor and report on the exercise of such entry and search powers and on the new offence provisions relating to reputed criminal declarations.

Schedule 3 Amendment of *Crime Commission Act 2012 No 66*

- 17. Schedule 3 amends the *Crime Commission Act 2012* to provide that the Crime Commission Management Committee may refer to the Crime Commission, and that the Commission may investigate, matters relating to the criminal activities of a specified criminal group (within the meaning of the *Crimes Act 1900*) without the reference having to identify the actual offences and individuals to be investigated.

Schedule 4 Consequential amendment of *Criminal Procedure Act 1986 No 209*

- 18. Schedule 4 makes consequential amendments to provisions of the *Criminal Procedure Act 1986* that deal with the procedure for prosecuting indictable offences.

ISSUES CONSIDERED BY COMMITTEE

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

Undue Punishment

- 19. Schedule 1, item [35] of the Bill provides that any person who attempts to commit an offence under the *Firearms Act 1996* will be guilty of that offence and liable to the same penalty as if he or she had actually committed it.

The Committee notes that the provision is based on a similar section of NSW's primary criminal statute (section 344A of the *Crimes Act 1900*), it will allow prosecution of a greater number of people dealing in illegal firearms, and does not attempt to remove judicial discretion in the sentencing of offenders. For these reasons, the Committee makes no further comment.

Increased Penalties

20. Schedule 1 [39], proposed section 74(1) of the Bill proposes to increase the maximum penalty where a person subject to a firearms prohibition order possesses a prohibited firearm or pistol, from 10 years imprisonment to 14 years imprisonment. Similarly, schedule 1 [39], proposed section 74(4) of the Bill seeks to increase the maximum penalty for supplying a prohibited firearm or pistol to a person subject to a firearms prohibition order from 10 years imprisonment to 14 years imprisonment.

The Committee notes the increased penalties proposed for certain firearms offences under schedule 1 [39] of the Bill. However, given that the increased penalties focus on prohibited firearms and pistols, and are intended to deter individuals from engaging in serious gun crime, the Committee makes no further comment.

Freedom of Association – Schedule 1 of the Bill

21. Schedule 1 [39], proposed sections 74(6) and (8) of the Bill, also seek to prohibit a person subject to a firearms prohibition order from residing on premises at which a firearm, firearm part or ammunition is present; or from being present at places related to the manufacture or sale of firearms, or at gun clubs or shooting ranges. The maximum penalty for contravening these provisions is a \$5,500 fine, or imprisonment for 12 months, or both.

By preventing an individual subject to a firearms prohibition order from residing at certain premises, and banning their presence at certain firearm-related venues, schedule 1 [39] of the Bill may impact the person's right to freedom of association. However, a firearms prohibition order is made where the Commissioner of Police is of the opinion that the relevant person is not fit, in the public interest, to be permitted to have possession of a firearm. Further, the affected person can generally apply to the Administrative Decisions Tribunal for a review of this decision. Therefore, the Committee makes no further comment.

Freedom of Association – Schedule 2 of the Bill

22. Schedule 2[2] of the Bill provides the Supreme Court or District Court can declare premises to be 'restricted premises' because 'reputed criminals' attend, control or manage the premises. A 'reputed criminal' is defined by Schedule 2 [1] of the Bill to include a person who has been convicted of an indictable offence, including the offence of consorting with convicted offenders. Schedule 2 [4] and [5] of the Bill provide that after the premises has been declared 'restricted premises', the owner or occupier of the premises will be guilty of an offence, punishable by a \$16,500 fine or 3 years prison, or both, if a reputed criminal attends the premises or takes part in its control or management.

The Committee is concerned that the Bill may further criminalise association between convicted criminals. Further, there is no need to prove such individuals have committed any other offence whilst associating with each other at restricted premises (or that they have ever committed any offence other than associating with convicted criminals) for an owner/occupier of restricted premises to be subject to a significant penalty. The Bill may therefore

impact unduly on the right to freedom of association. The Committee refers the matter to Parliament for consideration.

Freedom of Movement

23. By providing that individuals who are subject to a firearms prohibition order are restricted from being present at places related to the manufacture or sale of firearms, or at gun clubs or shooting ranges, schedule 1 [39], proposed section 74(8) of the Bill may impact on the person's right to freedom of movement.

In placing restrictions on the places at which individuals subject to a firearms prohibition order may be present, schedule 1 [39] of the Bill may impact on the person's right to freedom of movement. However, as a firearms prohibition order is made where the Commissioner of Police is of the opinion that the relevant person is not fit, in the public interest, to be permitted to have possession of a firearm (and the person can generally apply to the Administrative Decisions Tribunal for a review of this decision), and as schedule 1 [39] of the Bill only prohibits such people attending places where firearms and firearms parts are available, the Committee makes no further comment.

Reversed onus of proof

24. Schedule 1 [39], proposed section 74(7) of the Bill requires an accused person to disprove a presumption that he or she is guilty of a criminal offence. It provides that it is a defence to a prosecution for residing on the same premises as a firearm, firearm part or ammunition whilst subject to a firearms prohibition order, if the accused proves that he or she did not know and could not reasonably be expected to have known that the firearm, firearm part or ammunition was on the premises, or he or she took all reasonable steps to prevent it from being on the premises.

In the Committee's view, by requiring an accused person to disprove a presumption that he or she is guilty of a criminal offence, schedule 1 [39] of the Bill may violate a person's right to the presumption of innocence. Further, if an accused person is unable to disprove the presumption that he or she is guilty of the offence, the consequences are potentially very serious. The person could be sentenced to a maximum penalty of a \$5,500 fine or 12 months prison, or both. Therefore, the Committee refers this issue to Parliament for further consideration.

Search Without Warrant and Without Requirement for Reasonable Suspicion

25. Schedule 1 [39], proposed section 74A of the Bill provides that a police officer may, without warrant, detain and search a person subject to a firearms prohibition order and search his or her premises and/or vehicle to determine whether the person has contravened a firearms prohibition order. There is no requirement for a police officer to have a reasonable suspicion that a contravention has occurred or to obtain a warrant, before exercising these powers.

Schedule 1 [39], proposed section 74A of the Bill provides that police can detain and search a person subject to a firearms prohibition order and search his or her premises and/or vehicle to determine whether the person has contravened a firearms prohibition order. In the Committee's view, this may impact on a

person's right to be free from unreasonable search. The Committee refers the matter to Parliament for consideration.

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

Excludes judicial review

26. Schedule 1 [40] of the Bill provides that a person who is otherwise disqualified from being issued with a firearms licence or permit is not entitled to apply to the Administrative Decisions Tribunal for a review of the decision by the Police Commissioner to make a firearms prohibition order against the person. However, any such decision in the case of such a person is required to be internally reviewed by the Police.

By excluding the right of a person, who is otherwise disqualified from being issued with a firearms licence or permit, to apply to the Administrative Decisions Tribunal for a review of the Police Commissioner's decision to make a firearms prohibition order against the person, schedule 1 [40] of the Bill excludes judicial review of that decision. While such a decision is required to be internally reviewed by Police, there is no longer any independent oversight of it. For this reason, the Committee refers the matter to Parliament for consideration.

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

Matter which should be set by Parliament

27. Schedule 1 [39], proposed section 74(8) of the Bill provides that a person subject to a firearms prohibition order must not without reasonable excuse attend certain places including shooting ranges and gun clubs. Proposed section 74(8)(d) of the Bill also provides such a person must not attend any other premises of a kind prescribed by the regulations. The maximum penalty for doing so is a \$5,500 fine or imprisonment for 12 months or both.

Schedule 1 [39] of the Bill provides that the regulations may prescribe places where a person subject to a firearms prohibition order cannot attend, and may be subject to a penalty if they do so, including possible imprisonment for 12 months. In the Committee's view, the places from which such a person is excluded should be listed in the Bill to facilitate Parliamentary oversight, not left to delegated legislation. Nonetheless, the Committee notes that 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.

5. Residential (Land Lease) Communities Bill 2013

Date introduced	18 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 as follows:
 - (a) to improve the governance of residential communities (such as caravan parks and manufactured home estates),
 - (b) to set out particular rights and obligations of operators of residential communities and home owners in residential communities,
 - (c) to enable prospective home owners to make informed choices,
 - (d) to establish procedures for resolving disputes between operators and home owners,
 - (e) to protect home owners from bullying, intimidation and unfair business practices,
 - (f) to encourage the continued growth and viability of residential communities in the State.
2. The Bill repeals and replaces the *Residential Parks Act 1998*.

BACKGROUND

3. The Bill arises as a result of a review of the *Residential Parks Act 1998* by NSW Fair Trading. In November 2011, NSW Fair Trading commenced the review by releasing a discussion paper. NSW Fair Trading received a number of submissions in response to the discussion paper and also consulted with key stakeholders.
4. The review found that the *Residential Parks Act 1998* is confusing and difficult to work with. It also found that the current laws create unnecessary conflicts between residents and operators.

OUTLINE OF PROVISIONS

Part 1 Preliminary

5. Part 1 (clauses 1–4) of the proposed Act provides for the following matters:
 - (a) the name of the proposed Act,

- (b) the commencement of the proposed Act on a day or days to be appointed by proclamation,
 - (c) the meaning of words and expressions used in the proposed Act, including the following.
6. The term *Commissioner* is defined to mean the Commissioner for Fair Trading, Department of Finance and Services, or if no such position exists, the Director-General of the Department of Finance and Services.
 7. The term *community* or *residential community* is defined to mean an area of land that is comprised of or includes sites on which homes are, or can be, placed, installed or erected for use as residences by individuals, being land that is occupied or made available for occupation by those individuals under an agreement or arrangement in the nature of a tenancy, and includes any common areas made available for use by those individuals under that agreement or arrangement.
 8. The term *home* is defined to mean:
 - (a) any caravan or other van or other portable device (whether on wheels or not) other than a tent, used for human habitation, or
 - (b) a manufactured home as defined in the *Local Government Act 1993*, or
 - (c) any conveyance, structure or thing of a class or description prescribed by the regulations for
 - (d) the purposes of the definition.
 9. The term *site agreement* is defined to mean an agreement under which the operator of a community grants to another person for value a right of occupation of a residential site in the community.

Part 2 Application of Act

10. Part 2 (clauses 5–13) of the proposed Act provides for the following matters:
 - (a) the communities and site agreements to which the proposed Act is to apply,
 - (b) the occupation agreements, arrangements and places to which the proposed Act does not apply,
 - (c) that the proposed Act is to bind the Crown,
 - (d) that the regulations may provide for provisions of the proposed Act not to apply to specified communities or agreements.

Part 3 Registration of communities

11. Part 3 (clauses 14–20) of the proposed Act provides for the following matters:
 - (a) the Commissioner will be required to keep a Register of Communities (the *Register*),

- (b) the Commissioner will be required to record in the Register in relation to each community certain particulars, including the particulars notified to the Commissioner under the proposed Part and particulars of any enforcement action or disciplinary action taken in respect of the community, its operator or any of its staff,
- (c) the operator of a community will be required to notify the Commissioner of certain particulars for inclusion in the Register and will be guilty of an offence if the operator fails to do so,
- (d) the Commissioner will be required to arrange for certain limited information about communities recorded in the Register to be made available to the public.

Part 4 Entering into site agreements

Division 1 Disclosure of information

12. Division 1 of Part 4 (clauses 21–25) of the proposed Act provides for the following matters:
- (a) that the operator of a community will be required to provide a person with a disclosure statement approved by the Commissioner before the operator enters into a site agreement with that person,
 - (b) the right of a person who enters into a site agreement with the operator of a community to rescind the agreement, and any collateral agreement, during a cooling-off period for the site agreement,
 - (c) that it will be an offence for the operator of a community, or a person acting on behalf of the operator, to induce a person to enter into a site agreement by a statement, representation or promise that the operator or person acting on behalf of the operator knows is false, misleading or deceptive.

Division 2 Site agreements

13. Division 2 of Part 4 (clauses 26–34) of the proposed Act provides for the following matters:
- (a) that the operator of a community will be required to ensure that site agreements for a site in the community are in writing,
 - (b) that the operator of a community will be required to ensure that the site agreement contains any terms required to be included by the proposed Act and does not contain any prohibited terms and will be guilty of an offence if the operator fails to do so,
 - (c) that regulations may be made prescribing a standard form of site agreement and prohibiting specified terms in a site agreement,
 - (d) the duration of site agreements.

Part 5 Rights and obligations

Division 1 Basic responsibilities

14. Division 1 of Part 5 (clauses 35–53) of the proposed Act provides for the following matters:

- (a) the basic responsibilities of home owners, including the responsibility to use the residential site only as a place of residence except so far as the operator of a community consents to its use for another or additional purpose,
- (b) the specific responsibilities of home owners, including the following:
 - i not to make any alterations to the exterior of the home (other than painting or minor repairs) or add a fixture to the residential site or to replace the home with another home,
 - ii not to allow, except with the written consent of the operator of a community or unless the agreement otherwise provides, additional persons to occupy the residential site,
- (c) the basic responsibilities of the operator of a community, including the responsibility to ensure that the community is reasonably safe and secure and to take reasonable steps to ensure that the home owners always have access to their residential sites and have reasonable access to the community's common areas,
- (d) the specific responsibilities of the operators of a community, including the following:
 - i not to unreasonably restrict or interfere with a home owner's right to quiet enjoyment of the residential site and the community's common areas,
 - ii to take all reasonable steps to ensure that tradespersons and service providers have access to a home in the community to provide goods and services arranged by a resident of the home,
 - iii to take all reasonable steps to ensure that emergency and home care service vehicles have access to homes in the community at all times,
 - iv not to unreasonably withhold or refuse a home owner consent to allow additional persons to occupy the residential site,
 - v to establish and maintain at the community reasonably accessible and reasonably secure mail facilities for the home owners,
 - vi to maintain all facilities and services required by the development consent for the community to be available for the life of the community,
- (e) the specific rights of home owners, including the following:
 - i to enter into a tenancy agreement for, or otherwise sub-let, the residential site or the home located on it or assign the site agreement if it is for a fixed term that has not expired,
 - ii to appoint a person as the home owner's agent for the purpose of receiving notices or other documents to be given to the home owner under a site agreement or under the proposed Act,
- (f) the right of home owners to agree to pay a special levy to enable the operator of a community to provide a specified new facility or service for the community or to

make a specified improvement to the community, and the recovery and use of that special levy by the operator.

Division 2 Conduct and education of operators

15. Division 2 of Part 5 (clauses 54–56) of the proposed Act provides for the following matters:
- (a) the rules of conduct to be observed by the operator of a community in the course of the carrying on of business or the exercise of functions as operator,
 - (b) that the operator of a community will be required to undertake an education briefing approved by the Commissioner,
 - (c) that the operator of a community or a close associate of the operator must not engage in retaliatory conduct against a home owner if the conduct reasonably appears to have taken place wholly or partly in consequence of certain actions taken by the home owner.

Part 6 Site fees

Division 1 Payment of site fees

16. Division 1 of Part 6 (clauses 57–62) of the proposed Act provides for the following matters:
- (a) the manner in which site fees are to be paid by home owners under site agreements,
 - (b) that any person who receives payment of site fees in person must give the person making the payment a receipt of the payment,
 - (c) that the operator of a community must keep, or cause to be kept, a record showing site fees received under site agreements for each community,
 - (d) the accrual and apportionment of site fees.

Division 2 Reduction of site fees

17. Division 2 of Part 6 (clauses 63 and 64) of the proposed Act provides for the following matters:
- (a) the manner in which site fees under a site agreement may be reduced,
 - (b) that a home owner may apply to the Consumer, Trader and Tenancy Tribunal (the *Tribunal*) for an order that the site fees payable under the agreement be reduced by an amount the Tribunal considers appropriate.

Division 3 Increase of site fees

18. Division 3 of Part 6 (clauses 65–68) of the proposed Act provides for the following matters:
- (a) that site fees under a site agreement may be increased either according to a fixed method or by notice otherwise than by a fixed method,

- (b) that a home owner may apply to the Tribunal for an order directing the refund of overpaid site fees on the ground that the increase of site fees did not comply with a requirement of the proposed Division.

Division 4 Compulsory mediation about increases in site fees by notice

19. Division 4 of Part 6 (clause 69) of the proposed Act provides for the following matters:

- (a) that home owners may collectively object to an increase of site fees by notice (otherwise than by fixed method), other than an increase of site fees objected to solely on the ground that the increase is substantially excessive when compared with increases for similar residential sites in the community, by lodging an application for mediation under Division 2 of Part 12 of the proposed Act,
- (b) that parties to such a mediation must use reasonable endeavours to participate in and finalise mediation before the day on and from which the increased site fees are payable.

Division 5 Applications to Tribunal about increases in site fees by notice

20. Division 5 of Part 6 (clauses 70–75) of the proposed Act provides for the following matters:

- (a) that one or more home owners affected by increases in site fees by notice (otherwise than by fixed method) may apply to the Tribunal if the home owners object to an increase in site fees and if mediation was unsuccessful,
- (b) that a home owner may apply to the Tribunal if the home owner objects to an increase of site fees on the ground that the increase is substantially excessive when compared with increases for similar residential sites in the community,
- (c) the factors that the Tribunal may have regard to when deciding whether to make an order under this Division.

Part 7 Utility and other charges

21. Part 7 (clauses 76–85) of the proposed Act provides for the following matters:

- (a) the fees, charges and deposits that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community,
- (b) the utility charges payable to the operator of a community for the use by the home owner of a utility at the residential site,
- (c) that the operator of a community may charge fees for late payment or a dishonoured payment and may apply to the Tribunal for an order requiring a home owner to pay the unpaid charge or fee (or a specified part of it) within a specified period,
- (d) that the operator of a community must give a home owner a utility costs notice in certain circumstances,
- (e) that a home owner may apply to the Tribunal for a review of the utility costs notice.

Part 8 Community rules

22. Part 8 (clauses 86–95) of the proposed Act provides for the following matters:
- (a) community rules, being written rules relating to the use, enjoyment, control and management of a community,
 - (b) the procedure for making or amending community rules,
 - (c) prohibited types of community rules,
 - (d) that the operator of a community may apply to the Tribunal for an order requiring compliance with a community rule within a specified period or terminating the resident’s site agreement or tenancy agreement,
 - (e) that a resident of a community may apply to the Tribunal for an order requiring compliance with a community rule within a specified period,
 - (f) that a resident or operator of a community may apply to the Tribunal if there is a dispute about whether a community rule complies with the proposed Part or the procedure for making a community rule has been correctly followed.

Part 9 Residents committees

23. Part 9 (clauses 96–103) of the proposed Act provides for the following matters:
- (a) the establishment of a residents committee,
 - (b) the functions, constitution and procedure of a residents committee for a community.

Part 10 Sale of homes

Division 1 Introduction

24. Division 1 of Part 10 (clause 104) of the proposed Act applies the proposed Part to a home owned by a home owner or former home owner that is located on a residential site in a community.

Division 2 Rights and obligations regarding sale of homes

25. Division 2 of Part 10 (clauses 105–111) of the proposed Act provides for the following matters:
- (a) that a home owner is entitled to sell the home while the home is located on the residential site and display a “for sale” sign in or on the home without interference caused or permitted by the operator of a community,
 - (b) that an operator must not interfere with a home owner’s right to sell the home,
 - (c) that a home owner is required to ensure that a genuine prospective home owner of the home is advised to contact the operator of the community about the proposed sale before a contract for the sale of the home is entered into, unless the home owner is aware that contact has already been made,

- (d) the circumstances in and terms on which the operator of a community is required to enter into a new site agreement if a purchaser or prospective home owner under a sale contract requests the operator of a community to do so,
- (e) voluntary sharing arrangements between a home owner and operator.

Division 3 Selling agents

- 26. Division 3 of Part 10 (clauses 112–114) of the proposed Act provides for the following matters:
 - (a) that a home owner may appoint the operator of a community or another person as a selling agent to sell, or to negotiate the sale of, the home,
 - (b) the circumstances in which a sale commission or incidental expenses are payable in connection with the sale of a home.

Division 4 Disputes

- 27. Division 4 of Part 10 (clause 115) of the proposed Act provides that a home owner, prospective home owner, operator of a community or selling agent may apply to the Tribunal for the resolution of any dispute concerning the sale of the home, the terms of the proposed site agreement or the proposed site fees.

Part 11 Termination of site agreements

Division 1 Termination generally

- 28. Division 1 of Part 11 (clauses 116–121) of the proposed Act provides for the following matters:
 - (a) the circumstances in which a site agreement terminates,
 - (b) the requirements for termination notices given by the home owner under a site agreement,
 - (c) the requirements for termination notices given by the operator of a community under a site agreement,
 - (d) the revocation of termination notices by a party,
 - (e) the circumstances in which the Tribunal may make a termination notice for a site agreement even though there is a defect in the notice or the manner of service of the notice,
 - (f) that a party may apply to the Tribunal to make an order resolving a dispute about a termination notice or declaring that a termination notice was or was not given in accordance with the proposed Part.

Division 2 Circumstances in which operator can initiate termination

- 29. Division 2 of Part 11 (clauses 122–129) of the proposed Act provides that the operator of a community may give a termination order to a home owner on the ground of serious misconduct, without the need for a termination notice to be given, or a termination notice to a home owner on the following grounds:

- (a) the home owner has seriously or persistently breached the site agreement,
- (b) the operator requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works within the residential site or the community,
- (c) the community is to be closed and used by the operator or another person for a purpose other than a residential community,
- (d) there is to be a change in use of the site,
- (e) the residential site is appropriated or acquired by compulsory process,
- (f) the residential site is not lawfully useable for the purposes of a residential site,
- (g) the home owner's residential site has not been used for the past 3 years (and a further period not exceeding 3 years agreed to by the operator and the home owner) as the home owner's place of residence or another person's place of residence (but with the prior consent of the operator).

Division 3 Termination orders and possession orders

30. Division 3 of Part 11 (clauses 130–134) of the proposed Act provides for the following matters:
- (a) that the operator of a community may apply to the Tribunal for a termination order if vacant possession of a residential site is not given by the specified date as required by a termination notice or if an application for the order can be made under the proposed Part without the need for a termination notice,
 - (b) if the Tribunal makes a termination order, it must also make an order for possession of the residential site specifying the day on which the possession order takes or took effect,
 - (c) that the owner or operator of a community must not commence proceedings against a home owner in the Supreme Court, the District Court or the Local Court to obtain recovery of possession of a residential site subject to a site agreement,
 - (d) that a person must not enter a residential site, or a home on a residential site, for the purposes of taking possession of the site or home before or after the end of a site agreement unless the person is acting in accordance with a warrant arising out of a possession order of the Tribunal or a writ or warrant arising out of a judgment or order of a court, the home owner has given vacant possession of the residential site or the Tribunal has made an order declaring that the home owner has abandoned the residential site,
 - (e) that the operator of a community in whose favour a possession order was made may apply to the Registrar of the Tribunal to issue a warrant for possession of the residential site concerned if the Registrar is satisfied that the order or a condition of suspension of the order has not been complied with.

Division 4 Termination and relocation

31. Division 4 of Part 11 (clauses 135 and 136) of the proposed Act provides for the following matters:
- (a) the relocation of a home owner under a site agreement to a different residential site by agreement between the operator of a community and the home owner,
 - (b) the relocation of a home owner under a site agreement to a different residential site at the request of the operator of a community as an alternative to issuing a termination notice under this Part.

Division 5 Purchase of home by owner or operator of community

32. Division 5 of Part 11 (clauses 137 and 138) of the proposed Act provides for the Tribunal to assist an owner or operator of a community and a home owner to come to an agreement as to the value of the home owner's home where there is a proposed sale of the home from the home owner to the owner or operator of the community.

Division 6 Compensation for termination

33. Division 6 of Part 11 (clauses 139–141) of the proposed Act provides for the following matters:
- (a) the compensation payable to a home owner (in certain circumstances) if the operator of a community gives a termination notice to the home owner and the home owner decides to relocate to another community operated by a different operator,
 - (b) the compensation payable to a home owner (in certain circumstances) if the operator of a community gives a termination notice to the home owner and the home owner does not want to relocate to another community or is unable to relocate to another community.

Division 7 Abandoned residential site and goods

34. Division 7 of Part 11 (clauses 142 and 143) of the proposed Act provides for the following matters:
- (a) that the operator of a community may apply to the Tribunal for an order declaring that a home owner abandoned a residential site on a day stated in the declaration or for possession of the residential site,
 - (b) if a site agreement for a residential site is terminated, the operator of a community must apply to the Tribunal for an order giving directions as to how the home is to be dealt with if the operator reasonably believes a home on the residential site is abandoned.

Part 12 Disputes

Division 1 Resolving disputes by internal arrangements

35. Division 1 of Part 12 (clause 144) of the proposed Act provides that the operator of a community may establish and vary arrangements for resolving disputes arising in connection with the community.

Division 2 Mediation

36. Division 2 of Part 12 (clauses 145–155) of the proposed Act provides for the following matters:
- (a) that a home owner, former home owner or operator of a community may apply to the Commissioner for mediation of a matter,
 - (b) that the parties may agree to the Tribunal referring a matter arising in proceedings before it relating to a community for mediation,
 - (c) the procedure in relation to mediation, including the appointment and duties of mediators, representation in mediation and confidentiality,
 - (d) the removal of personal liability for any matter or thing done or omitted to be done by a mediator.

Division 3 Powers of Tribunal

37. Division 3 of Part 12 (clauses 156–158) of the proposed Act makes provision for the following matters:
- (a) applications to the Tribunal by home owners, former home owners or operators of communities for the determination of certain disputes,
 - (b) the power of the Tribunal to make certain orders in relation to such applications,
 - (c) the power of the Tribunal to make certain orders to give effect to any agreement or arrangement arising out of mediation under the proposed Act.

Division 4 Powers of Commissioner in proceedings

38. Division 4 of Part 12 (clauses 159–162) of the proposed Act makes provision for the circumstances and manner in which the Commissioner may represent a person in any proceedings before the Tribunal under the proposed Act.

Part 13 Administration and enforcement

Division 1 Commissioner

39. Division 1 of Part 13 (clause 163) of the proposed Act confers certain functions on the Commissioner, including for the purpose of ascertaining whether the proposed Act and any regulations are being complied with.

Division 2 Administrators, receivers and managers

40. Division 2 of Part 13 (clauses 164–170) of the proposed Act provides for the following matters:
- (a) that the Commissioner may apply to the Supreme Court for an order appointing a specified person to take over the day-to-day operation of a community as an administrator of the community if the Commissioner is of the opinion that the well-being or financial security of the residents of the community concerned is at risk or that the operator of the community has contravened an order of the Tribunal or a court or a direction of the Commissioner,

- (b) the terms and conditions, effect and the revocation of the appointment of an administrator,
- (c) that the expenses incurred by an administrator are payable from site fees and other money that would be available to the operator for such expenses if the administrator had not been appointed,
- (d) if a receiver, or a receiver and manager, is appointed in respect of a community, the person so appointed must comply with the operator's obligations under the proposed Act as if the person were the operator,
- (e) the removal of personal liability for any matter or thing done or omitted to be done in certain circumstances by an administrator, a receiver or a receiver and manager.

Division 3 Complaints and disciplinary action

41. Division 3 of Part 13 (clauses 171–175) of the proposed Act provides for the following matters:
- (a) that the Commissioner may serve a show cause notice on a person if the Commissioner is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person,
 - (b) if the Commissioner is satisfied that there are grounds for taking disciplinary action against a person on whom a show cause notice has been served, the Commissioner may take such disciplinary action against the person as the Commissioner thinks is warranted,
 - (c) that a person against whom disciplinary action is taken may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the decision on the disciplinary action or on a review of the disciplinary action.

Division 4 Offences and associated matters

42. Division 4 of Part 13 (clauses 176–178) of the proposed Act provides for the following matters:
- (a) that offences under the proposed Act and the regulations to be dealt with summarily before the Local Court,
 - (b) the service of penalty notices by investigators for offences against the proposed Act and the regulations if those offences have been prescribed for that purpose under the regulations made under the proposed Act,
 - (c) that an individual (including an individual who is a director of a corporation or who is involved in the management of the corporation) who aids or abets another person to commit an offence under the proposed Act or the regulations is guilty of the same offence and liable to be punished accordingly.

Division 5 Powers of investigators

43. Division 5 of Part 13 (clauses 179–183) of the proposed Act provides for the following matters:

- (a) the powers of entry and inspection of investigators,
- (b) the power of investigators to obtain information, documents and evidence,
- (c) offences involving the obstruction of investigators,
- (d) an investigator taking possession of documents to be used as evidence,
- (e) the issue of search warrants for premises to investigators.

Part 14 Miscellaneous

44. Part 14 (clauses 184–187) of the proposed Act provides for the following matters:

- (a) the service of notices and documents under the proposed Act,
- (b) that the Governor may make regulations for the purposes of the proposed Act,
- (c) the repeal of the *Residential Parks Act 1998* and the *Residential Parks Regulation 2006*,
- (d) the review of the proposed Act in 5 years.

Schedule 1 Rules of conduct for operators

45. Schedule 1 sets out the rules of conduct to be observed by the operator of a community in the course of the carrying on of business or the exercise of functions as operator.

Schedule 2 Savings and transitional provisions

46. Schedule 2 contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of legislation

47. Schedule 3 amends the legislation specified in the Schedule as a consequence of the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right against self-incrimination

- 48. Clause 16(1) of the Bill requires the operator of a community to notify the Commissioner for Fair Trading about certain information relating to the community, such as details relating to the operator and owner of the community and information relating to the occupation and use of the residential sites within the community. The Commissioner may approve further particulars to be provided under clause 16(1) of the Bill or the Regulations can prescribe further particulars. This information will then be included in the register that the Commissioner is required to keep under clause 14 of the Bill.
- 49. Clause 16(6) of the Bill states that an operator is not excused from a requirement to provide information under clause 16(1) on the ground that it may incriminate that person or make them liable to a penalty.

50. The Committee notes that Part 13A of the *Residential Parks Act 1998*, which the Bill proposes to repeal, contains a similar register to that provided for in the Bill. However, Part 13A of the *Residential Parks Act 1998* does not contain a provision requiring a person to provide information even though it may incriminate them or make them liable to a penalty.

The Committee considers that the information required to be provided under clause 16(1) of the Bill for the purposes of the Register is not particularly sensitive or controversial. However, the Committee notes that the Commissioner of Fair Trading and the Regulations can prescribe additional particulars for inclusion in the Register. The Committee also notes that the equivalent Register that is to be repealed from the *Residential Parks Act 1998* does not contain a provision requiring a person to provide information even though it may incriminate them or make them liable to a penalty. For these reasons, the Committee refers this issue to Parliament for further consideration.

Right to privacy

51. Clause 19 of the Bill requires the Commissioner of Fair Trading to publish certain information on the internet. This includes particulars (as prescribed by the regulations) of enforcement action or disciplinary action taken in respect of the community, its operator or any of its staff. The Minister's second reading speech for the Bill states that this should help to improve accountability and transparency.

The Committee notes the accountability and transparency objectives of publishing information about enforcement or disciplinary action taken against a community, its operator, or staff. However, the Committee is concerned that publishing such information on the internet, particularly in relation to staff, could impact on an individual's right to privacy, particularly if the disciplinary or enforcement action taken against a person does not constitute a criminal offence. The Committee refers this issue to Parliament for further consideration.

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

Search without a warrant

52. Part 13, Division 5 of the Bill deals with the powers of investigators. In particular, clause 179(2) of the Bill provides that an investigator may enter any premises (including an office or other place for administering or managing a community) at any reasonable time to, among other things, require any person to produce documents or answer questions.
53. Clause 179(3) of the Bill provides that an investigator is not entitled to enter a part of premises used for residential purposes unless the investigator has the consent of the occupier or the authority of a search warrant. However, it does not specify whether an investigator needs the consent of the occupier or a search warrant to enter non-residential premises (such as administrative offices).

The provisions of Part 13, Division 5, of the Bill are silent as to whether an investigator requires the consent of the occupier or a search warrant to enter

community premises that are not used for residential purposes (such as administrative offices). The Committee refers this issue to Parliament for consideration.

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

Commencement by proclamation

54. Clause 2 of the Bill provides that the Bill commences on a day or days to be appointed by proclamation.

The Committee prefers that legislation of this kind, which may impact on rights and liberties and which replaces existing legislation, commences on a fixed date or on assent.

6. Strata Schemes Management Amendment (Child Window Safety Devices) Bill 2013

Date introduced	18 September 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Fair Trading

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Strata Schemes Management Act 1996* to require owners corporations of strata schemes to ensure that complying window safety devices to facilitate child safety are installed on strata buildings and to provide for the enforcement of that obligation.

BACKGROUND

2. In March this year, the Westmead Children's Hospital produced a report following a spike in child hospital admissions due to falls from buildings. The report recommended a range of measures aimed at reducing the risks to children. In its response to the report, the Government committed to a range of measures, including the listing of window safety devices in the prescribed condition report that forms part of a rental tenancy agreement.
3. This Bill includes measures that recognise while 25 per cent of the population of New South Wales live in a strata scheme today, this is forecast to rise to 50 per cent by 2030.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.
6. Schedule 1 [1] requires an owners corporation of a strata scheme to ensure that complying window safety devices are installed for windows in each building of the scheme to which the requirement applies. An owners corporation will be guilty of an offence if it fails to comply. The regulations are to specify the strata schemes and windows subject to the requirement and the requirements for complying devices. The owners corporation is to carry out work related to the devices at its own cost. An owner may install a complying window safety device. Any such owner will be required to repair any damage caused to common property and ensure that the installation is done properly and in keeping with the appearance of the building concerned.

7. Schedule 1 [2] makes it clear that the power conferred on an owners corporation to enter any part of a strata parcel to carry out work extends to work relating to window safety devices.

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.