



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. ANIMAL WELFARE (POPULATION CONTROL PROGRAMS) BILL 2014*

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

Regulation-making Powers

The Committee notes that the Bill will enable the subordinate legislation of one Act to take precedence over the primary legislation of a second Act. The Committee recognises the potential confusion given the possible lack of clarity and that the provision may be an inappropriately delegated legislative power. The Committee makes no further comment.

2. CRIMES (HIGH RISK OFFENDERS) AMENDMENT BILL 2014

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

Excessive punishment

The Committee notes that the substantial increase to the maximum penalty applicable for a breach of a supervision order may be deemed an excessive punishment that is disproportionate to the offence committed. As these provisions relate to High Risk Offenders and High Risk Violent Offenders, the Committee makes no further comment.

Ex parte emergency detention orders

The Committee notes that emergency detention orders trespass on an individual's right to liberty. The Committee also notes that the provision of such orders in the absence of the individual trespass on an individual's right to a fair trial. The Committee notes that the proposed emergency detention orders are not to exceed 120 hours. Whilst the Committee notes the safeguards outlined in the legislation in relation to ex parte emergency detention orders, the Committee refers this matter to Parliament for its further consideration as a trespass on personal rights and liberties.

Privacy

Whilst the Committee notes the policy reasons for enabling agencies to share information in relation to High Risk Offenders, the Committee refers this matter to Parliament for its further consideration as a trespass on personal rights and liberties.

Retrospectivity

The Committee notes that the Bill introduces measures that impact on the rights and liberties of individuals, including punishment, ex parte emergency detention orders and privacy related issues. The Committee considers that the application of this Bill retrospectively may further impact on individual rights and liberties, and refers this matter to Parliament for its further consideration.

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

Commencement by proclamation

The Committee considers that when legislation of this kind, which impacts on rights and liberties, commences on proclamation rather than on a fixed date or on assent, this has the effect of inappropriately delegating legislative power and refers this matter to Parliament for its further consideration.

3. CRIMES LEGISLATION AMENDMENT BILL 2014

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

Retrospective Application

The Committee notes the Bill retrospectively authorises certain forensic procedures carried out by Police Officers with appropriate training. The Committee generally comments when provisions are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people knowledge of what the law is at any given time. In this instance, the provision corrects a technical oversight and does not seek to retrospectively create offences or penalties. In the circumstances, the Committee makes no further comment.

Retrospective Application II

The Committee notes the Bill makes certain drug offences that are currently indictable offences, summary offences, and that this amendment applies retrospectively to existing offences. The Committee generally comments when provisions are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people knowledge of what the law is at any given time. Nonetheless, the Second Reading Speech to the Bill indicates the amendments seek to reflect the lower level of criminality attaching to the offences, and the amendments do not retrospectively create new offences or penalties. In the circumstances, the Committee makes no further comment.

Right to Fair Trial

The Committee notes that the Bill provides that the Local Court can hear and finally determine a matter in an accused person's absence on the first return date or on a subsequent day when the matter is listed for mention or hearing. The Committee is concerned that this may impact on the person's right to a fair trial. Nonetheless, the court must be satisfied that the accused person had reasonable notice of the first return date or mention date. Similarly, annulment applications will still be available where an offender disputes a conviction handed down in his or her absence. Owing to these safeguards, the Committee makes no further comment.

Time Limit

The Committee notes that the Bill lengthens the time limit for commencing proceedings under the *Graffiti Control Act 2008* from 6 months to 2 years. In the extra time, evidence used in the defence of an accused may be lost. Nonetheless, the second reading speech to the Bill indicates that currently, offences that miss the time limit can still be charged as property damage under the *Crimes Act 1900*; and that the amendments respond to an increasing trend whereby offenders record graffiti offences using mobile phones – records which may not be discovered until more than 6 months after the offence. In the circumstances, the Committee makes no further comment.

Onus of Proof

By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence. However, the Committee notes that in this instance, as the person has reentered in contravention of a re-entry prohibition given to that person, the requirement for the defendant to prove reasonable excuse is appropriate in the circumstances. Therefore, the Committee makes no further comment.

Access to Justice

While the offence provided for by schedule 1.11 of the Bill amends the *Terrorism (Police Powers) Act* to prevent the disclosure of certain communications between a detained person and the detained person's lawyer, the amendment is part of an overall scheme that restricts a detained person's access to justice by providing that he or she can only consult a lawyer about certain matters. The Committee refers the matter to Parliament for further consideration.

4. HEALTH LEGISLATION AMENDMENT BILL 2014

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

Employment Rights

The Committee notes that this Bill merely restores an arrangement that had been in place previously, therefore the Committee makes no further comment.

5. STATE REVENUE LEGISLATION AMENDMENT (ELECTRONIC TRANSACTIONS) BILL 2014

Schedule 2 Amendment of Taxation Administration Act 1996 No 97

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

6. SUMMARY OFFENCES AMENDMENT (FULL-FACE COVERINGS PROHIBITION) BILL 2014

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

Freedom of Expression and Freedom of Religion

The Committee notes that the Bill makes it an offence to wear a face covering in a public place without reasonable excuse, and provides that a person's religious or cultural belief does not constitute a reasonable excuse. The Bill may impact on the right to freedom of expression and freedom of religion and cultural practice. The Committee refers the matter to Parliament for consideration.

Onus of Proof

By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence. However, once the prosecution has proven elements of the offence it is reasonable for the defendant to prove reasonable excuse. Therefore, the Committee makes no further comment.

7. TEACHER ACCREDITATION AMENDMENT BILL 2014

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

LEGISLATION REVIEW COMMITTEE

PART TWO – REGULATIONS

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

Part One - Bills

1. Animal Welfare (Population Control Programs) Bill 2014*

| | |
|--------------------|----------------------|
| Date introduced | 11 September 2014 |
| House introduced | Legislative Assembly |
| Member responsible | Alex Greenwich MP |
| Portfolio | N/A |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to facilitate programs for controlling the population of stray, abandoned or wild cats or other non-native animals by providing participants (and the program sponsors) with immunity from civil liability and exemptions from licensing and other requirements.
2. The programs must be sponsored by a sponsoring agency (as defined in the Bill) and must meet certain requirements. Each sponsoring agency is required to keep a register of sponsored programs, which is to include the annual reports for the programs.
3. Special provisions are included in relation to programs in national parks and other reserves and programs relating to pests. Particular programs or classes of programs may be prohibited by the regulations and other requirements or limitations may be imposed by the regulations.

BACKGROUND

4. This Bill creates a legal framework to facilitate the sponsored population control of wild cats through the trap-neuter-release program (TNR) which seeks to stabilise and reduce wild cat populations through desexing and subsequent natural attrition, as an alternative to current baiting programs. TNR programs have been taking place by volunteers at the University of New South Wales, as well as in other metropolitan localities.
5. The programs have the support of RSPCA UK and the International Society of Feline Medicine Guidelines on Population Management and Welfare of Unowned Domestic Cats.
6. The Bill rectifies a couple of issues which may be in 'legal limbo' because of existing prohibitions against abandonment of an animal under the *Prevention of Cruelty to Animals Act 1979*, as well as prohibitions against the release of non-native animals without a license under the *National Parks and Wildlife Act 1974*.

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. Clause 3 defines certain words and expressions used in the proposed Act. As a sponsoring agency, the following may sponsor a program under the proposed Act:
 - Animal Welfare League NSW,
 - The Royal Society for the Prevention of Cruelty to Animals, New South Wales,
 - a council,
 - the head of a government sector agency within the meaning of the Government Sector Employment Act 2013.
10. The regulations may allow other persons to become sponsoring agencies. The role that a sponsoring agency may take in relation to a sponsored program will vary but may include, for example, provision of supervision, funding or assistance or guidance with management, resources or expertise to the program.
11. Clause 4 provides for the sponsorship of programs for controlling the population of stray, abandoned or wild cats or other non-native animals in a specified area of the State. The programs are known in common parlance as trap-neuter-release programs, but may also involve, for example, rehousing of kittens, treatment or euthanasia of ill animals, clipping of the ears of desexed animals, implanting microchips in desexed animals and the provision of an adequate food source for a stable population. If a program affects a national park or the like, the head of the Public Service agency that administers the National Parks and Wildlife Act 1974 must be the sponsoring agency. Regulation-making power is provided to allow the government of the day to impose limitations on, or requirements to be met by, sponsored programs. The general law including the Prevention of Cruelty to Animals Act 1979 and the Veterinary Practice Act 2003 will apply in relation to animals subject to a sponsored program.
12. Clause 5 requires an annual report for a sponsored program to be prepared and provided to the sponsoring agency and the Minister responsible for the administration of the Act and to be laid before each House of Parliament. The clause sets out certain matters that must be included in each report.
13. Clause 6 requires a sponsoring agency to keep a register of sponsored programs and to make the register available on its website. The person responsible for a sponsored program must provide the sponsoring agency with information as necessary to keep the register up-to-date. If a sponsored program affects an animal that is a pest under the Local Land Services Act 2013 and the area is within Metropolitan Sydney, the sponsoring agency must notify Local Land Services of the program. This is so that the program can be taken into account for the purposes of enforcement of that Act.
14. Clause 7 provides immunity from civil liability for participants in a sponsored program arising from an act or omission in relation to an animal in the course of the program. The

clause also provides a sponsoring agency with immunity from civil liability arising out of a sponsored program.

15. Clause 8 provides that releasing an animal under a sponsored program does not constitute abandonment or liberation of the animal. Consequently, releasing an animal will not constitute an offence against section 11 of the Prevention of Cruelty to Animals Act 1979 or section 109 of the National Parks and Wildlife Act 1974.
16. Clause 9 exempts a participant in a sponsored program from the requirement to obtain a game hunting licence under the Game and Feral Animal Control Act 2002 for participation in the program.
17. Clause 10 exempts a participant in a sponsored program in a national park or other reserve from the requirement to obtain licences under the National Parks and Wildlife Act 1974. This is because the program must be sponsored by the head of the relevant Public Service agency and so appropriate management can be maintained through that mechanism.
18. Clause 11 provides for the exclusion of an area within Metropolitan Sydney that is subject to a sponsored program from any relevant pest control order under the Local Land Services Act 2013. It is noted that outside of Metropolitan Sydney the sponsored program would need to be allowed for in the relevant pest control order. Effectively, this means that outside Metropolitan Sydney the Minister and Local Land Services determine whether sponsored programs will be allowed for pests.
19. Clause 12 provides regulation-making power to include further exemptions from the application of specified Acts as necessary for the efficient operation of a sponsored program.
20. Clause 13 is an evidentiary provision allowing a sponsoring agency to certify relevant matters.
21. Clause 14 enables the Governor to make regulations for the purposes of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Regulation-making Powers

22. Section 12 of the Bill provides that the regulations may exempt a participant in a sponsored program from the application of a specified requirement or prohibition under an Act. This would include any prohibition under the proposed Act, or any other related Act. As such, this would enable the subordinate legislation of one Act to take precedence over the primary legislation of a second Act.
23. The Committee notes that it is not common to structure legislation in this way, and the Committee recognises the potential for confusion given the possible lack of clarity.
24. The Committee also notes that the purpose of this power is to ensure that the participants of a sponsored program do not get caught by unforeseen requirements or

prohibitions in legislation, and the power enables the easy making of regulations to exempt participants from the application of that requirement or prohibition.

The Committee notes that the Bill will enable the subordinate legislation of one Act to take precedence over the primary legislation of a second Act. The Committee recognises the potential confusion given the possible lack of clarity and that the provision may be an inappropriately delegated legislative power. The Committee makes no further comment.

2. Crimes (High Risk Offenders) Amendment Bill 2014

| | |
|----------------------|---|
| Date introduced | 10 September 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Brad Hazzard MP |
| Portfolio | Attorney General and Minister for Justice |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the scheme for the supervision and detention of high risk sex offenders and high risk violent offenders that is set out in the *Crimes (High Risk Offenders) Act 2006* as follows:
 - (a) by providing for the Supreme Court to make, on an ex parte basis, emergency detention orders in relation to a high risk offender the subject of an extended supervision order or an interim supervision order who, because of altered circumstances, cannot be provided with adequate supervision under the extended supervision order or interim supervision order,
 - (b) by clarifying that an interim supervision order is suspended during any period that the offender is in lawful custody,
 - (c) by supplementing the list of conditions that may be imposed on an extended supervision order (which is not exhaustive) to add conditions requiring the offender to report to police, to provide information about association with children, to comply with requirements relating to internet access and use and to provide employment and financial information to a corrective services officer,
 - (d) by increasing the penalty for failing to comply with an extended supervision order or interim supervision order,
 - (e) by establishing a High Risk Offenders Assessment Committee, the functions of which include reviewing the risk assessments of sex offenders and violent offenders for the purposes of making recommendations about the taking of action under the Act,
 - (f) by requiring agencies involved in the supervision and management of offenders to co-operate with, and provide assistance to, the Assessment Committee and each other.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Brad Hazzard MP, Attorney General and Minister for Justice, outlined that the Bill sought to enhance community safety through improved supervision and monitoring of high risk sex and violent offenders.

3. The Attorney General outlined that the provisions draw on elements of the Multi Agency Public Protection Arrangements that have been operating in the United Kingdom since 2000.

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 Crimes (High Risk Offenders) Act 2006 No 7

Term of interim supervision order

6. Schedule 1 [3] clarifies that an interim supervision order is suspended during any period that the offender is in custody.
7. Schedule 1 [4] clarifies that, when calculating the maximum 3-month period during which an offender can be supervised under an interim supervision order, any day or part of a day on which the order is suspended is not to be counted.

Additional conditions on supervision orders

8. Schedule 1 [5] adds to the existing list of specific conditions that may be imposed on an extended supervision order (which extends the period during which a high risk sex offender or a high risk violent offender may be supervised) or an interim supervision order. The additional conditions include conditions requiring the offender to:
 - (a) report to police and provide information about the conditions to which the extended supervision order or interim supervision order is subject and the residential address of the offender, or
 - (b) provide information about association with children that replicates that required by the *Child Protection (Offenders Registration) Act 2000* (the operation of that Act is suspended while an extended supervision order is in force), or
 - (c) comply with restrictions on internet access or use, or
 - (d) provide information about employment and financial affairs to a corrective services officer.

Increase in maximum penalty for failure to comply with supervision order

9. Schedule 1 [6] increases the maximum penalty for failing to comply with an extended supervision order or interim supervision order from 100 penalty units or 2 years' imprisonment (or both) to 500 penalty units or 5 years' imprisonment (or both).
10. Schedule 1 [16] makes a consequential amendment to a provision about proceedings for offences, so as to provide that the offence of failing to comply with an extended supervision order or interim supervision order will be an indictable offence triable summarily unless the prosecutor elects otherwise.

Making of emergency detention orders

11. Schedule 1 [9] inserts new provisions establishing emergency detention orders as follows:
 - (a) proposed section 18CA enables the State to apply to the Supreme Court for an emergency detention order in relation to a high risk sex offender or high risk violent offender who is the subject of an extended supervision order or an interim supervision order and who, because of altered circumstances, cannot be provided with adequate supervision under an extended supervision order or interim supervision order, and provides for the Supreme Court to hear an application in the absence of the offender,
 - (b) proposed section 18CB provides that the Supreme Court may make an emergency detention order if it appears to the Court that, because of altered circumstances, the offender cannot be provided with adequate supervision under the extended supervision order or interim supervision order and, without adequate supervision, the offender poses an imminent risk of committing a serious offence,
 - (c) proposed section 18CC identifies the matters that must be dealt with in documentation supporting the making of an application for an emergency detention order,
 - (d) proposed section 18CD provides that an emergency detention order is not to be made to have effect for longer than is reasonably necessary to enable action to be taken under the Act to ensure that the offender is provided with adequate supervision, and that the term of an emergency detention order cannot exceed 120 hours.
12. Schedule 1 [7] and [8] are consequential amendments, to reflect that persons who are the subject of applications for continuing detention orders may be detained under emergency detention orders.
13. Schedule 1 [10] provides that, on the making of an emergency detention order in respect of an offender, any interim supervision order or extended supervision order in respect of the offender is suspended and ceases to have effect until such time as the emergency detention order expires.
14. Schedule 1 [11] provides for the Supreme Court to vary or revoke an emergency detention order at any time on the application of the State or the offender, including on the ground that the circumstances have changed sufficiently to render the order unnecessary.
15. Schedule 1 [12] provides that, as soon as practicable after making an emergency detention order, the Supreme Court must issue a warrant for the committal of the offender to a correctional centre for the period specified in the order.
16. Schedule 1 [13] and [14] provide for the making of appeals against emergency detention orders.

Establishment of High Risk Offenders Assessment Committee and provision for inter-agency co-operation

17. Schedule 1 [15] establishes a High Risk Offenders Assessment Committee and provides for its membership and functions, which include the following:
 - (a) to review the risk assessments of sex offenders and violent offenders,
 - (b) to recommend to the Commissioner of Corrective Services NSW whether or not action should be taken by the State under the Act in respect of offenders.
 - (c) Schedule 1 [15] also makes provision for the relevant agencies responsible for offenders (Corrective Services NSW, the Department of Family and Community Services, the Justice Health and Forensic Mental Health Network, the Department of Justice, the NSW Police Force, the Ministry of Health and prescribed bodies) to co-operate with the Assessment Committee and each other, in the assessment and management of offenders, including by sharing information.

Other amendments

18. Schedule 1 [1] inserts definitions of terms used in the proposed provisions.
19. Schedule 1 [2] simplifies references to the State.
20. Schedule 1 [17] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendments of other Acts

21. Schedule 2.1 amends the *Crimes (Administration of Sentences) Act 1999* as a consequence of the creation of emergency detention orders. The amendments will mean that:
 - (a) Part 2 of that Act (which deals with imprisonment by way of full-time detention) will apply to a person subject to an emergency detention order (in the same way as it currently applies to a person subject to a continuing detention order or interim detention order), and
 - (b) an offender is not eligible for release on parole if the offender is the subject of an emergency detention order (in the same way as a person subject to a continuing detention order or an interim detention order is currently ineligible), and
 - (c) regulations may be made providing for the preparation and implementation of plans of management in respect of persons who are subject to emergency detention orders (in the same way the regulations can currently apply to offenders subject to extended supervision orders, continuing detention orders, interim supervision orders and interim detention orders).
22. Schedule 2.2 amends the *Criminal Procedure Act 1986* to provide that an offence of failing to comply with an extended supervision order or interim supervision order is an indictable offence triable summarily unless the prosecutor elects otherwise.
23. Schedule 2.3 amends the *Jury Act 1977* as a consequence of the creation of the category of emergency detention orders. The amendment will mean that a person

subject to an emergency detention order will be excluded from jury service (in the same way as a person subject to a continuing detention order or an interim detention order currently is).

ISSUES CONSIDERED BY COMMITTEE

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

Excessive punishment

24. Schedule 1 [6] of the Bill provides that the maximum penalty for a breach of a supervision order be increased from “100 penalty units or imprisonment for two years”, to “500 penalty units or imprisonment for five years”.

The Committee notes that the substantial increase to the maximum penalty applicable for a breach of a supervision order may be deemed an excessive punishment that is disproportionate to the offence committed. As these provisions relate to High Risk Offenders and High Risk Violent Offenders, the Committee makes no further comment.

Ex parte emergency detention orders

25. Schedule 1 [9] of the Bill proposes the insertion of a new Emergency Detention Orders Division in the Act. This Division would empower the Supreme Court to grant emergency detention orders in relation to an offender who is the subject of an extended supervision order or an interim supervision order. It also provides that an emergency detention order could be provided ex parte, which is in the absence of the offender concerned.
26. The Division proposes safeguards in relation to the operation of emergency detention orders, including those sought ex parte. These include requirements that the order be sought by the Attorney General and the provision of a supporting affidavit by the Commissioner or Assistant Commissioner of Corrective Services. The order may be made to have effect for period not exceeding 120 hours.

The Committee notes that emergency detention orders trespass on an individual’s right to liberty. The Committee also notes that the provision of such orders in the absence of the individual trespass on an individual’s right to a fair trial. The Committee notes that the proposed emergency detention orders are not to exceed 120 hours. Whilst the Committee notes the safeguards outlined in the legislation in relation to ex parte emergency detention orders, the Committee refers this matter to Parliament for its further consideration as a trespass on personal rights and liberties.

Privacy

27. Schedule 1 [15] of the Bill seeks to establish a High Risk Offenders Assessment Committee and inter-agency co-operation. Proposed subsection 24AG would enable agencies to share information in relation to offenders and any other information that may be prescribed by the regulations, without the consent of the person concerned.

Whilst the Committee notes the policy reasons for enabling agencies to share information in relation to High Risk Offenders, the Committee refers this matter

to Parliament for its further consideration as a trespass on personal rights and liberties.

Retrospectivity

28. Schedule 1 [17] of the Bill extends the amendments proposed by this Bill to offences committed before the date of commencement, to persons servicing a sentence of imprisonment that commencement before the date of commencement and to persons subject to an extended supervision order, interim supervision order, continuing detention order or interim detention order immediately before the date of commencement.

The Committee notes that the Bill introduces measures that impact on the rights and liberties of individuals, including punishment, ex parte emergency detention orders and privacy related issues. The Committee considers that the application of this Bill retrospectively may further impact on individual rights and liberties, and refers this matter to Parliament for its further consideration.

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

Commencement by proclamation

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

The Committee considers that when legislation of this kind, which impacts on rights and liberties, commences on proclamation rather than on a fixed date or on assent, this has the effect of inappropriately delegating legislative power and refers this matter to Parliament for its further consideration.

3. Crimes Legislation Amendment Bill 2014

| | |
|----------------------|---|
| Date introduced | 11 September 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Brad Hazzard MP |
| Portfolio | Attorney General and Minister for Justice |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to amend the Crimes Act 1900:
 - i to apply the statutory definition of consent to attempts to commit sexual assault offences, and
 - ii to negate consent to sexual intercourse in circumstances where consent has been given under a mistaken belief that the sexual intercourse is for health purposes, and
 - iii to make it an offence to possess a distress signal or distress flare in a public place without a reasonable excuse,
 - (b) to amend the Crimes (Domestic and Personal Violence) Act 2007 to provide a regulation-making power to prescribe the form of the application notice in respect of an application for an apprehended personal violence order,
 - (c) to amend the Crimes (Forensic Procedures) Act 2000 to deem certain members of the NSW Police Force who carried out forensic procedures under that Act before 24 December 2013 to have been appropriately qualified to carry out that forensic procedure,
 - (d) to amend the Crimes (Sentencing Procedure) Act 1999 to require a court that imposes an aggregate sentence when sentencing for two or more offences to make a written record of the sentence that would have been imposed, and the non-parole period that would have been set for any offence to which a standard non-parole period applied, for each offence had it imposed separate sentences,
 - (e) to amend the Criminal Appeal Rules to update a reference to legislation,
 - (f) to amend the Criminal Procedure Act 1986:
 - i to clarify that the Local Court can hear and finally determine a matter in an accused person's absence on the first return date or on a subsequent day when the matter is listed for mention or hearing if the accused person has been given notice of the proceedings, and

- ii to remove the requirement that a court must obtain the consent of an accused person to the summary disposal of proceedings if a scientific examination certificate is tendered by the prosecution in the proceedings,
- (g) to amend the Drug Misuse and Trafficking Act 1985:
- i to make offences involving the manufacture, production, possession or supply of Schedule 9 substances summary offences (including offences already committed), and
 - ii to provide that a substance that is represented as being a Schedule 9 substance is deemed a Schedule 9 substance,
- (h) to amend the Graffiti Control Act 2008 to specify that the limitation period for bringing proceedings under that Act is 2 years,
- (i) to amend the Inclosed Lands Protection Act 1901 to create a new offence relating to entering inclosed lands that are an event venue while an organised event is being held there in contravention of a re-entry prohibition,
- (j) to amend the definition of certifying officer in the Telecommunications (Interception and Access) (New South Wales) Act 1987 to make it consistent with the Telecommunications (Interception and Access) Act 1979 of the Commonwealth and to update certain references relating to the NSW Crime Commission,
- (k) to amend the Terrorism (Police Powers) Act 2002 to prevent the disclosure of certain communications made between a detained person and that person's lawyer.

BACKGROUND

2. In his second reading speech to Parliament, the Hon. Brad Hazzard MP, Attorney General and Minister for Justice, stated that the purpose of the Bill is to make miscellaneous amendments to criminal legislation as part of the Government's regular legislative review and monitoring program. Further, Mr Hazzard stated that the Bill amends a number of Acts to improve the efficiency and operation of the State's criminal laws.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 makes it clear that the explanatory notes contained in Schedule 1 do not form part of the proposed Act.

Schedule 1 Amendment of legislation

6. Schedule 1 makes the amendments described above in the 'Purpose and Description' section above.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospective Application

7. Schedule 1.3 of the Bill gives retrospective authorisation to certain forensic procedures that were carried out before 24 December 2013. A police officer who carried out such a forensic procedure who had, before carrying out the procedure, completed a forensic procedures training course conducted by the NSW Police Force is taken to have been appropriately qualified to carry out the procedure.

The Committee notes the Bill retrospectively authorises certain forensic procedures carried out by Police Officers with appropriate training. The Committee generally comments when provisions are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people knowledge of what the law is at any given time. In this instance, the provision corrects a technical oversight and does not seek to retrospectively create offences or penalties. In the circumstances, the Committee makes no further comment.

Retrospective Application II

8. Schedule 1.7, items 1-4 and 6, make offences involving manufacture, production, possession or supply of substances listed in Schedule 9 of the Poisons Standard, including offences that have already been committed, summary offences. They are currently indictable offences.

The Committee notes the Bill makes certain drug offences that are currently indictable offences, summary offences, and that this amendment applies retrospectively to existing offences. The Committee generally comments when provisions are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people knowledge of what the law is at any given time. Nonetheless, the Second Reading Speech to the Bill indicates the amendments seek to reflect the lower level of criminality attaching to the offences, and the amendments do not retrospectively create new offences or penalties. In the circumstances, the Committee makes no further comment.

Right to Fair Trial

9. Schedule 1.6, items 1-3 of the Bill provide that the Local Court can hear and finally determine a matter in an accused person's absence on the first return date or on a subsequent day when the matter is listed for mention or hearing.

The Committee notes that the Bill provides that the Local Court can hear and finally determine a matter in an accused person's absence on the first return date or on a subsequent day when the matter is listed for mention or hearing. The Committee is concerned that this may impact on the person's right to a fair trial. Nonetheless, the court must be satisfied that the accused person had reasonable notice of the first return date or mention date. Similarly, annulment applications will still be available where an offender disputes a conviction handed down in his or her absence. Owing to these safeguards, the Committee makes no further comment.

Time Limit

10. Schedule 1.8 of the Bill amends the *Graffiti Control Act 2008* to provide for a 2 year limitation period for commencing proceedings for offences under that Act, displacing the 6 month limitation period for commencing proceedings for summary offences imposed by section 179(1) of the *Criminal Procedure Act 1986*.

The Committee notes that the Bill lengthens the time limit for commencing proceedings under the *Graffiti Control Act 2008* from 6 months to 2 years. In the extra time, evidence used in the defence of an accused may be lost. Nonetheless, the second reading speech to the Bill indicates that currently, offences that miss the time limit can still be charged as property damage under the *Crimes Act 1900*; and that the amendments respond to an increasing trend whereby offenders record graffiti offences using mobile phones – records which may not be discovered until more than 6 months after the offence. In the circumstances, the Committee makes no further comment.

Onus of Proof

11. Schedule 1.9 of the Bill provides that a person who, without reasonable excuse, knowingly enters an event venue during an organised event in contravention of a re-entry prohibition given to the person is guilty of an offence punishable by a maximum fine of \$1,100. The onus of proving a reasonable excuse lies with the defendant.

By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence. However, the Committee notes that in this instance, as the person has reentered in contravention of a re-entry prohibition given to that person, the requirement for the defendant to prove reasonable excuse is appropriate in the circumstances. Therefore, the Committee makes no further comment.

Access to Justice

12. Schedule 1.11 of the Bill amends the *Terrorism (Police Powers) Act 2002* to prevent the disclosure of certain communications made between a detained person and the detained person's lawyer. A person who is detained under a preventative detention order is entitled to consult a lawyer, but only about certain matters relating to that order. The communication that is permitted is 'protected information'.
13. To ensure that only protected information is communicated between the detained person and the person's lawyer, the communication is monitored by a police officer. The Police officer is not permitted to disclose any protected information and commits an offence if he or she does so. To determine whether information is protected information, the police officer is entitled to consult a lawyer and a lawyer who discloses this protected information commits the offence provided for in the Bill.

While the offence provided for by schedule 1.11 of the Bill amends the *Terrorism (Police Powers) Act* to prevent the disclosure of certain communications between a detained person and the detained person's lawyer, the amendment is part of an overall scheme that restricts a detained person's access to justice by providing that he or she can only consult a lawyer about certain matters. The Committee refers the matter to Parliament for further consideration.

4. Health Legislation Amendment Bill 2014

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|----------------------|-----------------------------|
| Date introduced | 10 September 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Jillian Skinner MP |
| Portfolio | Health |

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to amend the *Health Practitioner Regulations (Adoption of National Law) Act 1009* so as to modify the *Health Practitioners Regulations National Law (NSW)* to enable the Civil and Administrative Tribunal to make prohibition orders against former registered health practitioners, and
 - (b) to amend the *Health Services Act 1997* to restore the substantive effect of certain provisions relating to the transfer of members of staff within the Health Service under the *Public Sector Employment and Management Act 2002* immediately before its repeal,
 - (c) to amend the *Private Health Facilities Act 2007* to remove the adequacy of current health services in an area as a ground for the refusal of a licence for a private health facility in that areas, and
 - (d) to amend the *Public Health Act 2010* to make it an offence for a subcontractor of a person who has been engaged to install, operate or maintain a regulation system for the control of legionella to fail to ensure that certain installation, operation or maintenance requirements are complied with.

BACKGROUND

2. This Bill makes a series of minor changes to four pieces of health-related legislation. These amendments are either to address an existing legislative loophole, or are in response to the recommendations contained in statutory reviews of a principal Act.
3. The Committee also notes that according to the Minister in her Second Reading Speech:

Prior to the *Government Sector Employment Act 2013*, local health districts and speciality health networks relied on sections 86A and 87 of the *Public Sector Employment and Management Act* to transfer staff within an agency.

While the *Government Sector Employment Act* provides for rules to be made to address transfers between agencies, it did not replicate the provisions for transfers within an agency or establish a power to make rules to do. This amendment is designed to address this oversight.

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 its date of assent.
6. Schedule 1 enables the Civil and Administrative Tribunal to make a prohibition order against a former registered health practitioner under section 149C of the Health Practitioner Regulation National Law (NSW) if the Tribunal would have made an order suspending or cancelling the practitioner's registration if he or she had been registered. A prohibition order is an order that prohibits a person from providing specified health services or imposes conditions on the provision of specified health services by a person.
7. Schedule 2 [1] restores the substantive effect of provisions relating to the transfer of members of staff within the Health Service that applied under the general government sector staff transfer provisions (sections 86A and 87) of the Public Sector Employment and Management Act 2002 immediately before its repeal by the Government Sector Employment Act 2013. The Government Sector Employment Act 2013 continued provisions relating to the transfer of staff between the services of the Crown, but left transfers within a service of the Crown (other than the Public Service) to be regulated by the separate provisions that apply to those other services. The Health Services Act 1997 does not currently contain specific provisions (other than in the case of redundancy) relating to transfers between public health organisations. Schedule 2 [2] makes a consequential amendment.
8. Schedule 3 [1] removes a current ground for the refusal of a licence for a private health facility where the approval of the application will result in more than an adequate number of health services becoming available in a particular clinical or geographic area and will undermine the provision of viable, comprehensive and coordinated health services.
9. Schedule 3 [2] enables the Governor to make regulations of a savings or transitional nature consequent on amendments made to the Act by another Act (including the proposed Act).
10. Schedule 4 makes it an offence for a subcontractor of a person who is engaged by the occupier of any premises to install, operate or maintain a regulated system for the control of legionella not to ensure that installation, operation or maintenance requirements prescribed by regulations are complied with. The maximum penalty for an offence will be:
 - (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
 - (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

ISSUES CONSIDERED BY COMMITTEE

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

Employment Rights

11. Changes under Schedule 2, proposed sections 116BA(4) of the *Health Services Act 1997* include allowing the Health Secretary to transfer a member of staff without a request or the consent of the member of staff concerned. Further changes under proposed section 116BA(5) will allow a member of staff to be transferred to any different workplace location in the State.
12. The amendments in effect maintain the power in relation to transfers of staff that previously existed, and are not new powers per se. The Committee also recognises that these transfer provisions are consistent with the powers of other Government agencies, particularly with respect to teaching and education.

The Committee notes that this Bill merely restores an arrangement that had been in place previously, therefore the Committee makes no further comment.

5. State Revenue Legislation Amendment (Electronic Transactions) Bill 2014

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|----------------------|-----------------------------------|
| Date introduced | 10 September 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Dominic Perrottet MP |
| Portfolio | Minister for Finance and Services |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Duties Act 1997 and the Taxation Administration Act 1996 to make further provision for the assessment and payment of tax by electronic means. The amendments are largely consequential on the enactment and implementation of the Electronic Conveyancing National Law (NSW) (the National Law). The amendments:
 - (a) make it clear that electronic instruments lodged under the National Law are regarded as written instruments for the purposes of the Duties Act 1997 and provide for the circumstances in which such an instrument is taken to be executed, and
 - (b) provide for special arrangements for the assessment and payment of duty in respect of those instruments, and
 - (c) permit the disclosure of information by tax officers in connection with the assessment of, and payment of duty in respect of, dutiable transactions or mortgages that are effected or partially effected electronically under the National Law, and
 - (d) allow banks and other parties to a transaction in respect of which a liability for tax arises to be approved to pay tax under a special arrangement, and
 - (e) simplify enforcement provisions relating to special arrangements, and
 - (f) provide for the registration of persons approved to pay tax under the special arrangements, and
 - (g) permit the Chief Commissioner of State Revenue (the Chief Commissioner) to direct an approval holder to pay tax in accordance with a special arrangement, and
 - (h) permit the Chief Commissioner to direct the payment of tax by electronic means, and
 - (i) provide for the phasing-out of the use of impressed stamps.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Dominic Perrottet MP, Minister for Finance and Services, indicated that the Bill is part of the Government's ongoing program of maintaining legislation that governs taxes administered by the Office of State Revenue. Mr Perrottet further stated that this Bill addresses upcoming changes in

market practice that are a result of electronic conveyancing, and that Property Exchange Australia Limited was formed in 2010 to fulfil a Council of Australian Governments initiative to deliver national electronic conveyancing to the property industry. Finally, Mr Perrottet indicated that a national electronic system for the preparation, settlement and lodgement for registration of land transactions is expected to commence in NSW in the last quarter of this year.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Schedule 1 [10] provides that a reference in the Duties Act 1997 to a written instrument or a dutiable transaction that is effected by a written instrument includes a reference to an electronic registry instrument or a dutiable transaction that is effected by an electronic registry instrument.
6. An electronic registry instrument is a registry instrument under the National Law that is in a form that enables it to be lodged electronically under that Law. The amendment merely confirms the provisions of the National Law which state that electronic registry instruments that are digitally signed under the National Law are taken to be in writing for the purposes of the laws of New South Wales.
7. Schedule 1 [9] inserts a definition of electronic registry instrument in the Duties Act 1997.
8. Schedule 1 [3] is a consequential amendment.
9. Schedule 1 [1] provides that an electronic registry instrument is taken to be first executed when it is first digitally signed by a subscriber under the National Law. Accordingly, liability for duty on a dutiable transaction that is effected under the National Law will arise when the electronic registry instrument is first digitally signed.
10. Schedule 1 [2] provides that if a single dutiable transaction is effected by more than one electronic registry instrument, only one of them is required to be stamped with the duty chargeable.
11. Schedule 1 [4] provides that an electronic registry instrument is not regarded as a counterpart for the purposes of a provision that imposes duty on counterpart instruments.
12. Schedule 1 [7] permits the Chief Commissioner to approve procedures for the payment of duty in respect of electronic registry instruments and for the endorsement or certification of those instruments in a way that indicates that duty has been paid, is payable or is not chargeable. An electronic registry instrument is taken to be duly stamped if the instrument is endorsed or certified in accordance with such a procedure. Schedule 1 [6] is a consequential amendment.

13. Schedule 1 [8] permits the disclosure of information relating to the assessment of a dutiable transaction or mortgage, or the payment of duty in respect of a dutiable transaction or mortgage, if:
 - (a) the disclosure is made in connection with a dutiable transaction or mortgage that is effected or partially effected by use of an Electronic Lodgement Network under the National Law, and
 - (b) the disclosure is made to the Electronic Lodgement Network Operator or by use of the Electronic Lodgement Network, and
 - (c) the disclosure is made in connection with the administration or execution of the Duties Act 1997.
14. Schedule 1 [5] recognises that an instrument may be stamped with a unique transaction identifier or reference number, instead of an impressed stamp. The use of impressed stamps is to be phased-out.

Schedule 2 Amendment of Taxation Administration Act 1996 No 97

15. Schedule 2 [1] permits the Chief Commissioner to approve special arrangements for the payment of tax by any specified person who is a party to a transaction or class of transactions in respect of which a liability for tax arises and who is not a taxpayer. For example, this would permit the Chief Commissioner to approve special arrangements for the payment of mortgage duty by a bank (even though the bank is not the taxpayer liable to pay the duty). The amendment also makes it clear that an agent or other person who acts on behalf of a taxpayer may be approved to pay tax under a special arrangement in relation to any taxpayers on whose behalf the agent or other person acts.
16. Schedule 2 [3] is a consequential amendment.
17. Schedule 2 [6] simplifies enforcement provisions relating to approved special arrangements.
18. Under the new provisions, it will be an offence for a person who is given approval to pay tax in accordance with the arrangements to contravene the conditions of the arrangement. The conditions will be binding only on the person who is given the approval and not on a taxpayer who is not a party to the approval. A taxpayer will still be liable for any tax not paid in accordance with the special arrangements. Schedule 2 [2], [5] and [8] are related amendments.
19. Schedule 2 [4] permits the Chief Commissioner to register a person as a person who is approved to pay tax under a special arrangement. The Chief Commissioner may, by order in writing served on the person, direct the person to pay tax to which the special arrangement applies in accordance with the special arrangement. For example, a special arrangement may provide for the payment of duty electronically and the endorsement of the instrument to indicate the payment of the duty (rather than the stamping of the instrument). If the Chief Commissioner directs an approval holder to pay duty in accordance with the special arrangement, the instrument must be endorsed under the special arrangement rather than lodged for stamping by the Chief Commissioner.

20. Schedule 2 [9] is a transitional provision.
21. Schedule 2 [7] permits the Chief Commissioner to direct that tax be paid by electronic means.

ISSUES CONSIDERED BY COMMITTEE

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

6. Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2014

| | |
|--------------------|-----------------------------|
| Date introduced | 10 September 2014 |
| House introduced | Legislative Council |
| Member responsible | Rev. the Hon. Fred Nile MLC |
| Portfolio | N/A |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make it an offence (maximum penalty of \$550) for a person, without reasonable excuse, to wear a face covering while in a public place. A face covering is defined as any article of clothing or other thing (such as a helmet) that hides the face of a person in a way that conceals the person's identity. The Bill provides that a person's religious or cultural belief does not constitute a reasonable excuse for the purposes of the proposed offence. The prohibition does not extend to the wearing of face coverings in churches or other places of worship.
2. The Bill also makes it an offence (maximum penalty of \$1,100) to compel another person, by means of a threat, to commit the proposed offence of wearing a face covering in a public place.

BACKGROUND

3. In his second reading speech to Parliament, Rev. the Hon. Fred Nile MLC indicated that a number of countries including Belgium and France have passed legislation containing provisions similar to those in the Bill, and the Bill is based on the Belgian legislation. Rev. Nile stated that the key argument behind such legislation is that face coverings prevent clear identification of a person, which is both a security risk and social hindrance within a society which relies on facial recognition and expression in communication. Rev. Nile further stated the law would apply to all citizens including men and non-Muslims and continued:

In many cases throughout the history of human civilisation those seeking to circumvent the law of the land have taken steps to conceal personal identity to avoid being caught, either prior to or post the commission of an offence. For this reason banks and other institutions have long prohibited the wearing of any item that conceals people's identity whilst within their premises. Another relatively recent development in world events is the increasing prominence of identity concealing attire being worn in public by rioters, thugs and social anarchists. Such attire is a regular feature at events such as the G7, G12 and G20 conferences, where individuals seek to avoid prosecution from criminal acts when they smash windows, usually of bank buildings, or attack those they regard as the enemy of society.

...Since 2001 there have been dozens of cases around the world where terrorists have made use of an ancient cultural item of clothing called the burqa to conceal weapons and explosives intended for murderous purposes. Terrorists have repeatedly used burqas for such purposes in Afghanistan, Pakistan, the United Kingdom, Iraq, the Gaza Strip, India, Somalia, and other countries. I want to make this clear: I am not saying that concealing attire alone makes a person a criminal or a terrorist.

In some cases individuals are required to wear concealing attire due to false cultural or religious pressures. For example, some women within Islamic society are being forced to wear the burqa in contravention of the principles of freedom and equality of sex in our society. Many Islamic clerics and political leaders have joined a worldwide chorus to have this clothing banned.

...Further impetus for the bill is provided through the recognition that we are signatories to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. We are also signatories to the Universal Declaration of Human Rights, which states: 'All human beings are born free and equal in dignity and rights'.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Schedule 1 amends the Summary Offences Act 1988 for the purposes described in the above 'Purpose and Description' section.

ISSUES CONSIDERED BY COMMITTEE

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

Freedom of Expression and Freedom of Religion

7. The Committee notes that schedule 1 of the Bill makes it an offence with a maximum penalty of a \$550 fine for a person, without reasonable excuse, to wear a face covering while in a public place, and that a person's religious or cultural belief does not constitute a reasonable excuse for the purposes of the proposed offence.

The Committee notes that the Bill makes it an offence to wear a face covering in a public place without reasonable excuse, and provides that a person's religious or cultural belief does not constitute a reasonable excuse. The Bill may impact on the right to freedom of expression and freedom of religion and cultural practice. The Committee refers the matter to Parliament for consideration.

Onus of Proof

8. The Committee notes that schedule 1 of the Bill also provides that in proceedings for the proposed offence of wearing a face covering while in a public place, the onus of proving reasonable excuse lies on the defendant.

By reversing the onus of proof that traditionally requires the prosecution to prove all elements of an offence, the Bill may impact on the presumption of innocence. However, once the prosecution has proven elements of the offence it is reasonable for the defendant to prove reasonable excuse. Therefore, the Committee makes no further comment.

7. Teacher Accreditation Amendment Bill 2014

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|----------------------|----------------------------|
| Date introduced | 10 September 2014 |
| House introduced | Legislative Assembly |
| Minister responsible | The Hon. Adrian Piccoli MP |
| Portfolio | Education |

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Teacher Accreditation Act 2004* as follows:
 - (a) to require all persons who teach in schools to be accredited under the principal Act (at present only new school teachers or persons who started or returned to teaching in schools after the principal Act commenced are required to be accredited),
 - (b) to require persons who teach in early childhood education centres to be accredited under the principal Act,
 - (c) to make it an offence for a person to teach in a school or early childhood education centre unless the person is accredited (at present, in the case of schools, only the person's employer commits an offence if the person is not accredited).
 - (d) to provide for the voluntary accreditation of certain qualified persons who do not teach but who are employed in areas related to teaching or education,
 - (e) to enable the Board of Studies, Teach and Education Standard (the Board) to accredit teachers at a provisional or conditional level and to also provisionally re-accredit persons whose accreditation has ceased or been revoked,
 - (f) to enable the Board, on application by a person who is accredited, to place the person's accreditation on hold during an extended period of absence from teaching,
 - (g) to provide that a person cannot be accredited as a teacher unless the person holds a working with children check clearance,
 - (h) to make a number of other amendments of an administrative, minor or consequential nature,
2. The Bill also makes consequential amendments to the *Board of Studies, Teaching and Educational Standards Act 2013*.

BACKGROUND

3. This Bill introduces the changes required to implement the Government's Great Teaching, Inspired Learning Blueprint for Action reforms. These reforms seek to ensure that the entire New South Wales education profession, from early childhood to secondary education, is accredited by the end of 2017.

4. The Bill also deals with the outcomes from a consultation process by the former NSW Institute of Teachers which issued a discussion paper in early 2012, engaged in stakeholder consultation and subsequently published its report.
5. Lastly, the Bill supports national developments to which New South Wales has subscribed, principally the Australian Professional Standards for Teachers.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
8. Schedule 1 [41] (proposed section 28) makes it an offence for a person to teach in a school unless the person is accredited. In the case of school teachers who are not currently required to be accredited (ie those who were employed as a school teacher before 1 October 2004 and who have remained employed as a teacher since that time), the requirement to be accredited will not apply until a later date to be appointed by proclamation (see proposed section 28 (3)).
9. Schedule 1 [3] extends the definition of teach to cover persons who undertake teaching duties in early childhood education centres. Schedule 1 [41] (proposed section 28) also makes it an offence for a person to teach in an early childhood education centre unless the person is accredited under the principal Act. However this requirement will not apply until a later date to be appointed by proclamation (see proposed section 28 (4)). Schedule 1 [1], [19]–[21] and [23]–[25] are consequential on the principal Act being extended to persons who teach in early childhood education centres.

Accreditation of persons by Board

10. Persons are currently accredited as teachers under the principal Act by teacher accreditation authorities. This includes the provisional or conditional accreditation of a person who has a relevant degree or teacher qualification but who does not meet the requirements for full accreditation in accordance with the professional teaching standards approved by the Minister. Schedule 1 [41] (proposed sections 30 and 31) modifies the accreditation process by authorising the Board to accredit persons at provisional or conditional level before progression to full accreditation by a teacher accreditation authority. Schedule 1 [41] (proposed section 33) also authorises the Board to provisionally re-accredit a person whose accreditation has been revoked or has ceased because the person has not satisfied the requirements for full accreditation within the required time (which is usually 3 years).

Schedule 1 [48] (proposed section 40A) will enable (but not require) non-teaching school counsellors and qualified teachers who are not actually teaching in schools or early childhood education centres to be accredited by the Board. The new section covers non-teaching executives (such as principals) and qualified teachers working in areas related to teaching but does not affect the requirement for those school or centre executives and school counsellors who teach to be accredited.

Schedule 1 [5] provides that the Board (or a person or body approved by the Board) will be the teacher accreditation authority for persons who teach in early childhood

education centres and also for certain qualified persons who are voluntarily accredited under proposed section 40A. Schedule 1 [6]–[8] and [26] are consequential amendments. Schedule 1 [22] makes it clear that only the Board may accredit teachers at provisional or conditional level.

Additional functions of Board

11. Schedule 1 [9] provides that the Board is to monitor, evaluate and report on the quality of the teacher education courses and programs approved by the Minister under the professional teaching standards.
12. Schedule 1 [10] provides that the Board has the function of making recommendations to the Minister as to approval by the Minister of teacher education courses and programs and persons or bodies to provide professional development for teachers. At present the Board may provide advice to the Minister in relation to these matters. Recommendations by the Board that the Minister not approve any such course or program or person or body will be subject to administrative review (see Schedule 1 [40]).
13. Schedule 1 [37] enables the Board, on application by a person who is accredited, to place the person's accreditation on hold during a period (of up to 5 years) that the person takes leave of absence from teaching. A person whose accreditation is placed on hold is not required to pay the annual accreditation fee under section 25 of the Act. Schedule 1 [33] is a consequential amendment.
14. Schedule 1 [38] enables the Board to suspend the accreditation of a person for failure to pay the annual fee to the Board under section 25 of the principal Act. Schedule 1 [31], [32], [35] and [36] are consequential amendments.

Grounds for revocation of accreditation

15. Schedule 1 [29] clarifies the grounds on which a person's accreditation may be revoked and consolidates the provisions of the principal Act under which a person's accreditation may be revoked. The grounds for revocation will include being a disqualified person under the Child Protection (Working with Children) Act 2012 (which applies mainly to persons convicted of offences involving children) or being found guilty of an offence punishable by imprisonment for 12 months or more or of an offence under the principal Act. The amendment removes the need for the regulations to prescribe the offences for which a person's accreditation may be revoked. It will be grounds for revocation if the person has been dismissed from employment as a teacher, or listed as a person who is not to be employed in the Teaching Service, because of misconduct that is of a nature that would reflect adversely on a teacher's professional standing or integrity or suitability or competence to teach. This ground replaces serious misconduct as defined by the regulations.
16. Schedule 1 [30], [45] and [47] are consequential amendments.
17. Schedule 1 [29] also provides that the Board may revoke a person's accreditation even though the person was accredited by another teacher accreditation authority. Schedule 1 [34] makes a similar amendment in relation to the suspension of a person's accreditation.

Miscellaneous amendments

18. Schedule 1 [2] omits certain definitions and inserts new definitions as a consequence of the amendments made by the proposed Act.
19. Schedule 1 [4] updates references relating to the Secretary of the Department of Education and Communities.
20. Schedule 1 [11] provides that the Quality Teaching Council is to include an additional elected member (such persons are teachers who are elected in accordance with the regulations) and an additional member appointed by the Minister. It is intended that the additional elected member will be an early childhood education teacher. Schedule 1 [54] is a consequential amendment.
21. Schedule 1 [12] provides that the additional appointed member of the Quality Teaching Council will be a person who has knowledge and expertise in early childhood education. The amendment also makes minor modifications to the membership of the Council (including updating the names of certain nominating bodies).
22. Schedule 1 [13] specifies circumstances in which a person is not to be enrolled on the electoral list of the roll of teachers maintained by the Board.
23. Schedule 1 [14] omits a superfluous note.
24. Schedule 1 [17], [18] and [44] change the terminology relating to the different levels of accreditation under the principal Act. Accreditation at professional competence level becomes proficient teacher level, accreditation at professional accomplishment level becomes highly accomplished teacher level and accreditation at professional leadership level becomes lead teacher level.
25. Schedule 1 [28] provides that the accreditation of a person is subject to conditions specified in the rules of the Board made under the Board of Studies, Teaching and Educational Standards Act 2013. Schedule 1 [27] is a consequential amendment.
26. Schedule 1 [39] provides that a person cannot be accredited as a teacher unless the person holds a working with children check clearance.
27. Schedule 1 [42] omits provisions relating to the accreditation of persons classified as “transition scheme teachers” under the principal Act (ie persons who were teaching before the commencement of the principal Act but who did not have teaching qualifications or a degree in a relevant area). When the principal Act commenced these teachers were required to be accredited at conditional level and work under supervision until such time as they became fully accredited (which was required generally within 7 years). In phasing out the transitional scheme for these teachers, Schedule 1 [56] provides that the scheme will, in the case of any such teachers who are still conditionally accredited, continue to apply until such time as they become fully accredited or their conditional accreditation ceases. Schedule 1 [14]–[16], [43], [46] and [49] are consequential on the deletion of provisions relating to the accreditation of transition scheme teachers. Schedule 1 [50] requires an employer who makes a decision to dismiss a teacher or to preclude a person from being employed in the Teaching Service to notify the Board of the decision. Schedule 1 [2] provides that dismiss includes an annulment of an appointment on probation or dispensing with the services of a person.

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28. Schedule 1 [51] enables regulations to be made in relation to the requirements for accreditation.
29. Schedule 1 [52] makes it clear that the office of an appointed or elected member of the Quality Teaching Council becomes vacant on the revocation of the member's accreditation as a teacher under the principal Act.
30. Schedule 1 [53] enables the Minister to suspend a person from office as a member of the Quality Teaching Council while the person's accreditation as a teacher is suspended.
31. Schedule 1 [55] enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act (or any other Act that amends the principal Act) and
32. Schedule 1 [56] inserts other savings and transitional provisions.
33. Schedule 2 [1] is a consequential amendment relating to the extension of the teacher accreditation scheme to persons who teach in early childhood education centres.
34. Schedule 2 [2] ensures that the premises of an early childhood education centre may be inspected by Board inspectors in connection with the accreditation of persons who teach in such centres.

ISSUES CONSIDERED BY COMMITTEE

The Committee has not identified any issues arising under section 8A(1) 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.