



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

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

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# Membership

CHAIR	Mr Michael Johnsen MP, Member for Upper Hunter
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Melanie Gibbons MP, Member for Holsworthy Mr Alister Henskens SC MP, Member for Ku-ring-gai Mr David Mehan MP, Member for The Entrance Mr Shaoquett Moselmane MLC The Hon. Gregory Pearce MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2096 / 02 9230 3382
FACSIMILE	02 9230 3309
E-MAIL	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# 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*.

## 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.

# Conclusions

## PART ONE - BILLS

### 1. CRIMES AMENDMENT (OFF-ROAD FATAL ACCIDENTS) BILL 2015

Undergoing blood and urine testing for alcohol and drug use may impact upon an individual's right to personal physical integrity. However, the Committee considers that extending this power to fatal motor vehicle accidents occurring off-road will remove the ambiguity faced by police when they attend a fatal accident occurring on private property. The Committee makes no further comment.

### 2. ELECTRICITY SUPPLY AMENDMENT (ENERGY SAVINGS SCHEME) BILL 2015

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

#### *Procedural fairness*

The amendments to section 142 may impact on an individual's right to procedural fairness, which would normally be afforded by a court when considering a criminal matter but may, or may not, be afforded by the Scheme Administrator when making decisions about whether a person has committed an offence.

However, the Committee notes that a person aggrieved by the Administrator's decision can have the decision reviewed by the Civil and Administrative Tribunal. The Committee also acknowledges the comments in the Minister's Second Reading Speech about providing the Administrator with a greater range of compliance powers; making enforcement under the Act more efficient; and avoiding disproportionate responses to minor breaches. The Committee therefore makes no further comments.

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

#### *Commencement by proclamation*

The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on rights and liberties.

### 3. ENERGY LEGISLATION AMENDMENT (RETAIL ELECTRICITY AND GAS PRICING) BILL 2015

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

#### *Commencement by proclamation*

The Committee prefers legislation to commence on assent or a fixed date. In the Second Reading Speech, the Minister indicated that Schedule 6 will only commence by proclamation. The Minister indicated that the Government will only commence this provision when it is satisfied with the levels of competition in the State's gas market. In these circumstances the Committee makes no adverse comment.

### 4. LIMITATION AMENDMENT (CHILD ABUSE CIVIL ACTIONS) BILL 2015\*

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

*Retrospectivity*

The Committee notes the retrospective application of the Bill and will always be concerned where legislation of this kind occurs. However, as previously commented, given that the provisions of the Bill are for the benefit of victims and survivors of child abuse, the Committee does not consider the Bill trespasses on personal rights and liberties.

5. MINING AND PETROLEUM LEGISLATION AMENDMENT (GRANT OF COAL AND PETROLEUM PROSPECTING TITLES) BILL 2015; MINING AND PETROLEUM AMENDMENT (LAND ACCESS ARBITRATION) BILL 2015; MINING AND PETROLEUM LEGISLATION AMENDMENT (HARMONISATION) BILL 2015; PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (ENFORCEMENT OF GAS AND OTHER PETROLEUM LEGISLATION) BILL 2015; WORK HEALTH AND SAFETY (MINES AND PETROLEUM) LEGISLATION (HARMONISATION) BILL 2015

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

*Denial of Compensation*

The Committee notes that the denial of compensation for activities legally undertaken under an exploration licence that was subsequently cancelled may run counter to the rule of law and procedural fairness. In some circumstances, the committee may regard this as an undue trespass on personal rights and liberties. However, the Committee also notes that individuals are unlikely to be affected parties under this legislation, and notes the public policy imperatives by this provision in protecting national parks. The Committee makes no further comment.

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

*Commencement by proclamation*

The Committee prefers legislation to commence on assent or a fixed date. However, the Committee acknowledges that these Bills implement a new regulatory framework for coal and petroleum exploration and regulation. As such they represent significant changes to the industry and require flexibility with their commencement.

*Powers of regulations to limit application of legislation*

The Committee notes that, combined, the effect of proposed sections 7B(2) and (3) is to authorise the making of regulations that could limit or suppress the application of legislation. The Committee notes advice from the Department that these proposed amendments will allow the regulator to deal with hard and ambiguous cases and they do not amend the Act. As such, the Committee makes no further comment.

6. NATIONAL PARKS AND WILDLIFE AMENDMENT (RESERVATION OF LOT 490) BILL 2015\*

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

7. STRATA SCHEMES MANAGEMENT BILL 2015; STRATA SCHEMES DEVELOPMENT BILL 2015

*Strata Schemes Management Bill 2015*

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

*Strict liability*

The Committee notes that while the Bill introduces offences with financial implications that are strict liability offences, it is also accepted that these provisions are aimed at ensuring compliance with strata title laws in New South Wales. As such, the Committee does not consider these provisions unreasonable in the circumstances.

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

*Ill-defined and wide powers*

The Committee notes the use of terms such as unfair, unreasonable and nuisance within the Act. Without clear guidance as to what may be considered unfair, unreasonable or a nuisance, the Committee considers these wide terms may lead to inconsistent decisions. The Committee makes no further comment apart from bringing this to Parliament's attention.

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

*Commencement by proclamation*

The Committee prefers legislation to commence on a fixed date or on assent, particularly in relation to Bills such as this one, which may impact on rights and liberties. However, the Committee acknowledges that it may take some time to get the administrative processes in place to support the new legislation.

*Strata Schemes Development Bill 2015*

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

*Property rights*

The provisions in Part 10 of the Bill will impact on the property rights of individuals in freehold strata schemes who do not support the collective sale or redevelopment of their property in circumstances where 75% of the other lots vote in favour of the proposal. However, the Committee notes that the rights of a significant majority of a strata scheme need to be fairly balanced against those in the minority. The Committee also acknowledges that the Bill contains a number of safeguards to alleviate the impacts of these situations. The Committee therefore makes no further comments.

8. WORKERS COMPENSATION AMENDMENT (LUMP SUM COMPENSATION) BILL  
2015\*

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



## Part One - Bills

### 1. Crimes Amendment (Off-road Fatal Accidents) Bill 2015

Date introduced	14 October 2015
House introduced	Legislative Council
Minister responsible	The Hon Duncan Gay MLC
Portfolio	Roads, Maritime and Freight

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Crimes Act 1900 and the Road Transport Act 2013 as follows:
  - (a) to extend the existing powers of police to arrest and test any participant in a fatal road accident for alcohol and drug use (which currently apply only to accidents on roads) to motor vehicle accidents that occur off-road,
  - (b) to make related amendments to the procedural provisions dealing with evidence of intoxication in proceedings for dangerous driving offences under the Crimes Act 1900.

#### BACKGROUND

2. This Bill seeks to address the uncertainty for police when they attend a fatal motor vehicle accident that has occurred on private property.
3. In 2010, two people tragically died in a motor vehicle accident in a paddock on private property. Police were uncertain whether the accident occurred on a road or road-related area within the meaning of the Road Transport Act. This issue was subsequently highlighted by the Deputy State Coroner in her report into the deaths.
4. Following the report of the Deputy State Coroner, the former Attorney General established a judicial review of the existing offences relating to fatal car accidents on private land. The review recommended that it be made clear that motor vehicle drivers on private land can be tested for drugs and alcohol where there is or likely to be a fatal accident.

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Personal physical integrity*

5. Schedule 2 [2] of the Bill extends the power of police to arrest a participant in a fatal road accident for blood and urine testing to participants in off-road motor vehicle accidents.

**Undergoing blood and urine testing for alcohol and drug use may impact upon an individual's right to personal physical integrity. However, the Committee considers that extending this power to fatal motor vehicle accidents occurring off-road will remove the ambiguity faced by police when they attend a fatal accident occurring on private property. The Committee makes no further comment.**

## 2. Electricity Supply Amendment (Energy Savings Scheme) Bill 2015

Date introduced	13 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Mark Speakman MP
Portfolio	Environment, Heritage and Planning

### PURPOSE AND DESCRIPTION

1. The principal object of this Bill is to make amendments to the energy savings scheme in the *Electricity Supply Act 1995* (the **principal Act**). Under the scheme, electricity network operators and retailers are required to meet energy savings targets based on their liable acquisitions of electricity. They meet their targets by purchasing and surrendering energy savings certificates, that have been created by accredited certificate providers. The amendments in this Bill include amendments to enable energy savings certificates to be created for activities that involve the consumption of gas, to extend the scheme to 2025 and to increase energy savings targets.

### BACKGROUND

2. In November 2014, the NSW Government announced its intention to reform the Energy Savings Scheme (ESS) and in April 2015, the relevant Ministers released an ESS Review Report package for public consultation. The consultation sought feedback to inform the statutory review of the ESS required by the *Electricity Supply Act 1995* and to consider options for enhancing the ESS, including recognising gas efficiency measures. The Bill implements the key recommendations from the review.

### ISSUES CONSIDERED BY COMMITTEE

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

#### *Procedural fairness*

3. Under the existing section 142 of the *Electricity Supply Act 1995*, the Scheme Administrator can make an order for a person to surrender energy savings certificates to the Administrator if the individual is found guilty of contravening any condition of their accreditation, or improperly creating certificates. It is an offence to fail to comply with an order under section 142 of the Act.
4. The Bill proposes to amend section 142 so that the Scheme Administrator can make an order against an individual if the Administrator is satisfied, on the balance of probabilities on the basis of an audit conducted under the legislation or information obtained by the Administrator, that the person is guilty of either of the offences referred to in section 142(2). As such, an order could be made against an individual to surrender certificates even though they have not been convicted of the relevant offence by a court.

**The amendments to section 142 may impact on an individual's right to procedural fairness, which would normally be afforded by a court when considering a criminal matter but may, or may not, be afforded by the Scheme Administrator when making decisions about whether a person has committed an offence.**

**However, the Committee notes that a person aggrieved by the Administrator's decision can have the decision reviewed by the Civil and Administrative Tribunal. The Committee also acknowledges the comments in the Minister's Second Reading Speech about providing the Administrator with a greater range of compliance powers; making enforcement under the Act more efficient; and avoiding disproportionate responses to minor breaches. The Committee therefore makes no further comments.**

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

***Commencement by proclamation***

5. The Bill provides for commencement on a day or days to be appointed by proclamation.

**The Committee prefers legislation to commence on a fixed date or on assent, particularly where the legislation may impact on rights and liberties.**

### 3. Energy Legislation Amendment (Retail Electricity and Gas Pricing) Bill 2015

Date introduced	13 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Anthony Roberts MP
Portfolio	Industry, Resources and Energy

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to amend the *Electricity Supply Act 1995* and the *Electricity Supply (General) Regulation 2014* to update references and remove provisions as a consequence of the deregulation of retail electricity prices,
  - (b) to provide for retail gas pricing order provisions to be retained and revived in the *Gas Supply Act 1996*,
  - (c) on a future date to be proclaimed, to amend the *Gas Supply Act 1996* to remove provisions authorising regulation of retail gas prices,
  - (d) to make other consequential amendments.

#### BACKGROUND

2. In July 2014, the Government commenced the removal of price regulation for the New South Wales retail electricity market. This Bill seeks to commence the deregulation process for the retail gas market.
3. The Bill provides for the continuation of retail gas regulation for a period of time before deregulation will commence. In the Second Reading Speech, the Minister stated that:

The bill will refresh the gas pricing order provisions in the Gas Supply 1996, which had lapsed, to support the continuation of light-handed retail gas price regulation from 1 July 2016 to 30 June 2017.

#### ISSUES CONSIDERED BY COMMITTEE

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

##### *Commencement by proclamation*

4. Schedule 6 of the Bill provides for the removal of gas pricing order provisions and references to retail gas pricing from the *Gas Supply Act 1996* and the *Electricity Supply Act 1995*.

**The Committee prefers legislation to commence on assent or a fixed date. In the Second Reading Speech, the Minister indicated that Schedule 6 will only commence by proclamation. The Minister indicated that the Government will**

**only commence this provision when it is satisfied with the levels of competition in the State's gas market. In these circumstances the Committee makes no adverse comment.**

## 4. Limitation Amendment (Child Abuse Civil Actions) Bill 2015\*

Date introduced	15 October 2015
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch MP
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Limitation Act 1969* (the Act) to remove any limitation period applying under the Act to an action on a cause of action for damages that relate to death or personal injury resulting from child abuse.

### BACKGROUND

2. This Bill has identical provisions to the *Limitation Amendment (Child Abuse) Bill 2015* introduced into Parliament on 17 September 2015 by Mr David Shoebridge MLC. The Committee commented on the provisions of Mr Shoebridge's Bill in Digest No. 7/56.
3. In the Second Reading Speech, Mr Paul Lynch MP commented that this Bill flows directly from the work of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission recommended that State and Territory Governments should introduce legislation to remove any limitation period that applies to a claim for damages resulting from child abuse as soon as possible.
4. Mr Lynch indicated that Victoria has legislated on this issue and this Bill assists in achieving national consistency on this issue.

### ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity*

5. As mentioned above the provisions in this Bill are identical to those in the *Limitation Amendment (Child Abuse) Bill 2015* discussed in Digest No. 7/56. The Committee noted in that report that the exclusion of an action for damages that relate to death or personal injury resulting from child abuse extend to existing causes of action, including cases where the relevant limitation period has already expired, an action has been commenced previously on the cause of action, or judgment on the cause of action has previously been given on the ground that the action was statute barred.

**The Committee notes the retrospective application of the Bill and will always be concerned where legislation of this kind occurs. However, as previously commented, given that the provisions of the Bill are for the benefit of victims and survivors of child abuse, the Committee does not consider the Bill trespasses on personal rights and liberties.**

**5. Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015;**  
**Mining and Petroleum Amendment (Land Access Arbitration) Bill 2015;**  
**Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015;**  
**Protection of the Environment Operations Amendment (Enforcement of Gas and other Petroleum Legislation) Bill 2015; Work Health and Safety (Mines and Petroleum) Legislation (Harmonisation) Bill 2015**

Date introduced	15 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Anthony Roberts MP
Portfolio	Industry, Resources and Energy

## PURPOSE AND DESCRIPTION

### *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015*

1. The object of this Bill is to amend the *Mining Act 1992* (the Mining Act) and the *Petroleum (Onshore) Act 1991* (the Petroleum Act) to establish a new system for granting certain prospecting titles for coal and petroleum. The new system will feature a competitive selection process for the granting of an exploration licence or assessment lease in relation to certain areas under the Mining Act or an exploration licence, assessment lease or special prospecting authority under the Petroleum Act.
2. For that purpose, the Bill:
  - (a) enables the Minister to constitute an area as a controlled release area for specified minerals under the Mining Act, and
  - (b) provides that the whole State is constituted as a controlled release area for coal, and
  - (c) provides that the following prospecting titles can only be granted pursuant to a competitive selection process:
    - i an exploration licence or assessment lease under the Mining Act relating to land in a controlled release area (with certain exceptions for exploration licences granted to holders of existing mining authorities or on behalf of the Crown), and
    - ii an exploration licence, assessment lease or special prospecting authority under the Petroleum Act, and
  - (d) provides that a petroleum title is not to be granted in respect of an area unless any applicant who had an application in respect of that area expunged (by operation of



the Petroleum (Onshore) Amendment (NSW Gas Plan) Act 2014) has first been given an opportunity to participate in a competitive selection process for the grant of the title, and

- (e) provides for various matters in relation to invitations for competitive selection applications, the process for competitive selection and the consideration of applications, and
- (f) makes miscellaneous amendments relating to applications for prospecting titles under the Mining Act and the Petroleum Act.

***Mining and Petroleum Amendment (Land Access Arbitration) Bill 2015***

- 3. The object of this Bill is to amend the *Mining Act 1992* (the Mining Act) and the *Petroleum (Onshore) Act 1991* (the Petroleum Act) to give effect to the recommendations of a review undertaken by Mr Bret Walker SC in June 2014 entitled *Examination of the Land Access Arbitration Framework — Mining Act 1992 and Petroleum (Onshore) Act 1991*.
- 4. The Bill also makes other miscellaneous amendments to those Acts to make further provision with respect to that land access arbitration framework.
- 5. The Bill deals with the following matters:
  - (a) the composition of the Arbitration Panel under the Mining Act (which performs the functions of the Arbitration Panel under the Petroleum Act),
  - (b) negotiating access arrangements under the Acts,
  - (c) enabling an access code to be prescribed for the purposes of the Acts (which may include mandatory provisions that are taken to form part of access arrangements),
  - (d) mediation and arbitration of access arrangements,
  - (e) enabling the Secretary of the Department of Industry, Skills and Regional Development (the Secretary) to approve arbitration procedures for the purposes of mediations and arbitrations under the Acts,
  - (f) costs for negotiating, mediating and arbitrating access arrangements,
  - (g) the establishment of public registers of access arrangements under the Acts,
  - (h) allowing the Land and Environment Court to determine access arrangements if the court is already considering an application relating to operations near dwelling-houses, gardens or significant improvements on the land concerned,
  - (i) clarifying the extent of the general immunity of landholders from liability for other persons' acts or omissions on the landholder's land,
  - (j) excluding seismic surveys on certain roads from prohibitions of certain operations within a certain distance of dwelling-houses, gardens or significant improvements,

- (k) clarifying the operation of certain provisions relating to operations in proximity to significant improvements and enabling regulations to specify works and structures that are and are not such improvements,
  - (l) renewal of exploration licences and assessment leases under the Petroleum Act over areas of land smaller than that comprised in the application for renewal,
  - (m) clarifying the rights of holders of production leases,
  - (n) extending the access arrangement regime that applies in relation to exploration licences under the Petroleum Act to production leases under that Act,
  - (o) assessment of compensable loss suffered or likely to be suffered as a result of the exercise of rights under petroleum titles,
  - (p) savings, transitional and other miscellaneous matters.
6. The Bill also provides for the cancellation of certain petroleum exploration licences that are comprised of land within national parks.

*Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015*

7. The object of this Bill is to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* as follows:
- (a) by consolidating provisions about mining authorisations and petroleum titles into a separate Schedule of standard clauses that:
    - i allow a decision-maker to require an applicant or tenderer to furnish further information, and
    - ii require applications and tenders to be supported by a proposed work program, and
    - iii provide broader and more flexible grounds on which mining authorisations and petroleum titles may be granted, suspended or cancelled, and
    - iv require the need to conserve and protect the environment to be taken into account in considering applications, and
    - v specify other matters that may be taken into account in considering applications, including the applicant's technical and financial capability to carry out the proposed work program, compliance history and ability to meet minimum standards, and
    - vi set out a non-exhaustive list of grounds on which applications or tenders can be refused, and
    - vii provide broader and more flexible powers to impose and vary conditions, and
    - viii allow security deposit conditions to be imposed in relation to any impact that is the result of work carried out under an authorisation or title, whether or not that impact affects land over which it was granted, and

- ix provide for the modification of the amount of land to which an exploration licence that is being renewed can apply,
- (b) by requiring the holder of an exploration licence or assessment lease under either Act to obtain a further approval for prospecting activities that are not exempt development under planning legislation, and creating a power to impose terms on such activity approvals,
- (c) by requiring the lodging of reports in relation to all operations carried out under a mining authorisation or petroleum title and requiring any record created or maintained under the Act to be kept in a legible form for at least 4 years after the expiry or cancellation of the relevant authorisation or title,
- (d) by giving decision-makers the power to waive minor procedural matters if the waiver is unlikely to adversely affect any person's rights or to result in any person being deprived of information necessary for the effective exercise of those rights,
- (e) by enabling the Minister or an inspector to issue a prohibition notice to a person suspected of carrying out unauthorised activity, or a suspension notice in certain circumstances that could constitute grounds for cancellation of a mining authorisation or petroleum title, and by making a contravention of either type of direction a ground for cancelling an authorisation or title,
- (f) by creating an offence for the non-payment of any annual rental fee or annual administrative levy payable for a mining authorisation or petroleum title,
- (g) by providing for the Secretary to refund or waive payment of fees, in certain circumstances,
- (h) by making it an offence to aid, abet, counsel or conspire in the commission of an offence,
- (i) by providing that a court that is satisfied, to a civil standard, that a person has carried out unauthorised prospecting or mining may order the person to pay costs and expenses incurred in the prevention or management of any environmental impact or rehabilitating land or water or to pay compensation for loss or damage suffered,
- (j) by providing for the giving of enforceable undertakings in relation to contraventions of statutory provisions,
- (k) by providing for the ongoing effect of notices and of conditions of mining authorisations and petroleum titles,
- (l) by providing for the extraterritorial application of notices relating to investigation and enforcement action,
- (m) by prohibiting inspectors, certain member of staff of the Department and certain persons who exercise judicial or official functions under the Acts from holding a direct or indirect beneficial interest in a mining authorisation or petroleum title,

- (n) by providing for the use and disclosure of information, work programs and samples provided under the Acts, including under information sharing arrangements with other regulatory agencies,
- (o) by enabling mandatory codes of practice (including for land access), minimum standards and conditions to be adopted by regulation,
- (p) by amending the *Petroleum (Onshore) Act 1991* to permit the holder of an exploration licence or assessment lease to beneficially use gas recovered by the holder when prospecting for petroleum and to harmonise particular compliance, investigation and enforcement provisions with those of the *Mining Act 1992*, including by aligning provisions relating to audits, inspection and investigative powers, the giving of directions, enforcement and administration,
- (q) by amending the *Mining Act 1992* to require the holder of a mining authorisation to collect cores and samples,
- (r) by making other minor and consequential amendments and enacting savings and transitional provisions consequent on the enactment of the proposed Act.

***Protection of the Environment Operations Amendment (Enforcement of Gas and other Petroleum Legislation) Bill 2015***

8. The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* to confer on the Environment Protection Authority (the EPA) responsibility for investigating and instituting proceedings for offences against relevant Acts in relation to the carrying out of petroleum activities that are authorised, or required to be authorised, by the following:
  - (a) exploration licences, assessment leases, production leases and special prospecting authorities under the *Petroleum (Onshore) Act 1991*,
  - (b) development consents under Part 4 of the *Environmental Planning and Assessment Act 1979*, to the extent that they authorise the carrying out of development for the purposes of petroleum activities,
  - (c) approvals under Part 3A of the *Environmental Planning and Assessment Act 1979*, to the extent that they authorise the carrying out of projects for the purposes of petroleum activities,
  - (d) water access licences, water use approvals and water supply work approvals under the *Water Management Act 2000*, and licences in respect of bores under the *Water Act 1912*, to the extent that they authorise the taking or use of water, or the construction or use of a water supply work, for the purposes of petroleum activities.
9. The amendments will not authorise the EPA to grant or cancel any of those authorities, or to generally administer those authorities, but will authorise the EPA to provide relevant information or records to the agencies responsible for the administration of those authorities.

***Work Health and Safety (Mines and Petroleum) Legislation (Harmonisation) Bill 2015***

10. The objects of this Bill are as follows:

- (a) to regulate work health and safety at workplaces at which petroleum operations occur (petroleum sites) under the *Work Health and Safety (Mines) Act 2013* (the principal Act) rather than under the *Petroleum (Onshore) Act 1991* and to make the work health and safety regime at petroleum sites consistent with the work health and safety regime at mines,
- (b) to clarify and simplify the interaction between the principal Act and the *Work Health and Safety Act 2011* and to provide that officials under each of those Acts can exercise functions at any workplace,
- (c) to exclude certain activities from the principal Act,
- (d) to provide that geothermal energy is to be treated as if it were petroleum for the purposes of the principal Act,
- (e) to permit consultants to be appointed as government officials for the purposes of the principal Act,
- (f) to make further provision with respect to notifiable incidents,
- (g) to permit the regulator to specify where documents are to be served for the purposes of the principal Act,
- (h) to make consequential and related amendments to other Acts and instruments,
- (i) to make statute law revision amendments.

**BACKGROUND**

11. *The Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015* and cognate Bills provide a new regulatory framework for the exploration and regulation of coal and petroleum. The Bills follow a 2013 independent review of coal seam gas conducted by the Chief Scientist and Engineer, Professor O’Kane. As stated in the Second Reading Speech:

Professor O’Kane found that the technical challenges and risks posed by the coal seam gas industry can, in general, be managed. However, she noted that this management needs to occur within a clear, revised legislative framework.

The Bills mark a major milestone in delivering the regulatory framework recommended by the Chief Scientist.

**ISSUES CONSIDERED BY COMMITTEE**

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

12. The proposed schedule in the *Mining and Petroleum Amendment (Land Access Arbitration) Bill 2015* provides that an exploration licence that is comprised of land

within a national park is cancelled at the commencement of the schedule. The schedule also provides that compensation is not payable by or on behalf of the State. The denial of compensation extends to any direct or indirect consequence of the enactment or operation of the Act under which the Schedule is to operate.

13. Further, under this schedule, the State is not liable for any conduct that took place before an exploration licence's cancellation, and is indemnified from all types of civil liability whether arising in tort or contract.

**The Committee notes that the denial of compensation for activities legally undertaken under an exploration licence that was subsequently cancelled may run counter to the rule of law and procedural fairness. In some circumstances, the committee may regard this as an undue trespass on personal rights and liberties. However, the Committee also notes that individuals are unlikely to be affected parties under this legislation, and notes the public policy imperatives by this provision in protecting national parks. The Committee makes no further comment.**

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

*Commencement by proclamation*

14. The Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 and cognate Bills all commence by proclamation.

**The Committee prefers legislation to commence on assent or a fixed date. However, the Committee acknowledges that these Bills implement a new regulatory framework for coal and petroleum exploration and regulation. As such they represent significant changes to the industry and require flexibility with their commencement.**

*Powers of regulations to limit application of legislation*

15. Proposed section 7B of the *Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015* provides a comprehensive list of activities which may be considered petroleum operations under the Act.
16. Under section 7B(2), however, regulations made under the Act may declare an activity *not* to be a petroleum operation for the purposes of the Act. Further, proposed section 7B(3) provides that the regulations may create exceptions to or otherwise limit the operation of the section that gives effect to the definition of a petroleum operation.

**The Committee notes that, combined, the effect of proposed sections 7B(2) and (3) is to authorise the making of regulations that could limit or suppress the application of legislation. The Committee notes advice from the Department that these proposed amendments will allow the regulator to deal with hard and ambiguous cases and they do not amend the Act. As such, the Committee makes no further comment.**

## 6. National Parks and Wildlife Amendment (Reservation of Lot 490) Bill 2015\*

Date introduced	15 October 2015
House introduced	Legislative Council
Member responsible	Mr Walt Secord MLC
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to reserve certain Crown land as a regional park under the *National Parks and Wildlife Act 1974*. The land concerned is Crown land that is located in Kingscliff, Tweed Shire and is known locally as Lot 490.

### BACKGROUND

2. In the Second Reading Speech to the Bill, Mr Walt Secord MLC indicated that adding Lot 490 to the national park system on the North Coast will be a welcome move on recreational and cultural use levels. Mr Secord commented:

Currently, there is a population explosion in the region. The Tweed Shire Council predicts the shire population, which is now approximately 90,000 will increase to 125,953 by 2036. That is an increase of almost 30 per cent, so it is important to protect the remaining coast reserves.

### ISSUES CONSIDERED BY COMMITTEE

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

## 7. Strata Schemes Management Bill 2015; Strata Schemes Development Bill 2015

Date introduced	14 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Victor Dominello MP
Portfolio	Innovation and Better Regulation

### PURPOSE AND DESCRIPTION

#### *Strata Schemes Management Bill 2015*

1. The object of this Bill is to provide for the management of strata schemes and the resolution of disputes in connection with strata schemes.

#### *Strata Schemes Development Bill 2015*

2. The object of this Bill is to provide for matters relating to freehold strata schemes and leasehold strata schemes that are currently provided for under the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*. The main objects of the proposed Act are stated in clause 3 as being to provide for:
  - (a) the subdivision of land, including buildings, into cubic spaces to create freehold strata schemes and leasehold strata schemes, and
  - (b) the way in which lots and common property in strata schemes may be dealt with, and
  - (c) the variation, termination and renewal of strata schemes.
3. The Bill generally re-enacts, with changes, the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*. The Bill also provides for a process to facilitate the renewal of particular freehold strata schemes by way of a collective sale or a redevelopment of the schemes.

### BACKGROUND

4. Although they are separate Acts when operative, the *Strata Schemes Management Bill 2015* and the *Strata Schemes Development Bill 2015* are cognate Bills. Therefore, both Bills have been considered in the one report.
5. The *Strata Schemes Management Bill 2015* and the *Strata Schemes Development Bill 2015* are the culmination of a four year reform process of New South Wales strata title laws. Over 3 000 submissions were received during the consultation period and as stated in the Second Reading Speech, the consultation process involved online surveys, publicly released discussion and position papers, round tables, focus meetings and the opportunity to comment on the draft exposure Bill.



## ISSUES CONSIDERED BY COMMITTEE

### *Strata Schemes Management Bill 2015*

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

#### *Strict liability*

6. The Bill introduces a number of strict liability clauses in relation to offences. That is, only particular acts or omissions need to be provided to meet the criminal threshold, and the Crown is not required to demonstrate intent, negligence or recklessness on the part of the accused.
7. For example, under proposed section 16 (1) the original owner or lessor of the strata scheme must, no later than 48 hours before the first annual general meeting, deliver to the owners corporation a number of documents. The maximum penalty for failing to comply is 100 penalty units (\$11 000). Similarly, under proposed section 71 (1), a person appointed as the strata managing agent or building manager must disclose an interest to the owners corporation before that person is appointed. The maximum penalty for non-compliance is 50 penalty units (\$5 500).
8. In these and other instances, the Bill has not provided exceptions or defences for failure to comply with the statutory requirements. However, the Committee notes that these types of provisions are not uncommon in regulatory settings.

**The Committee notes that while the Bill introduces offences with financial implications that are strict liability offences, it is also accepted that these provisions are aimed at ensuring compliance with strata title laws in New South Wales. As such, the Committee does not consider these provisions unreasonable in the circumstances.**

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

#### *Ill-defined and wide powers*

9. Proposed section 72 enables the Administrative and Civil Tribunal to terminate strata managing agent and building manager agreements on a number of grounds including that the charges payable by the owners corporation under the agreement are unfair and that the agreement is otherwise harsh, oppressive, unconscionable or unreasonable.
10. Similarly, proposed section 153 provides that owners, occupiers and other persons are not to create a nuisance or hazard. Nuisance or hazard is undefined in the Bill and may encompass a range of behaviour and be open to dispute.

**The Committee notes the use of terms such as unfair, unreasonable and nuisance within the Act. Without clear guidance as to what may be considered unfair, unreasonable or a nuisance, the Committee considers these wide terms may lead to inconsistent decisions. The Committee makes no further comment apart from bringing this to Parliament's attention.**

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

### *Commencement by proclamation*

11. The *Strata Schemes Management Bill 2015* and the *Strata Schemes Development Bill 2015* both commence by proclamation.

**The Committee prefers legislation to commence on a fixed date or on assent, particularly in relation to Bills such as this one, which may impact on rights and liberties. However, the Committee acknowledges that it may take some time to get the administrative processes in place to support the new legislation.**

### *Strata Schemes Development Bill 2015*

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

### *Property rights*

12. Part 10 of the Bill introduces a new process to deal with the collective sale or redevelopment of freehold strata schemes. The Bill requires the support of at least 75% of the lots in the strata scheme before the process can be commenced to give effect to such a proposal (see for example, proposed sections 154, 176 and 178).
13. The Bill contains a number of safeguards to minimise the impacts of situations where there is not unanimous agreement by the lot holders to sell or redevelop their scheme. Some examples are highlighted below.
14. Proposals would be considered at a general meeting of the Owners Corporation and, if the owners want to consider the proposal further, a Strata Renewal Committee may be established. Before such a committee is established, possible members must disclose financial or other interests in the proposal which may result in a conflict of interest. The Strata Renewal Committee is to prepare the proposal for sale or redevelopment of the scheme, to be considered by the owners. The Strata Renewal Committee may be dissolved at any time by resolution of the Owners Corporation, if the Committee no longer maintains the support of a majority of owners (see in particular, proposed sections 158, 160, 161, 164, 165 and 167).
15. Owners will be given at least 60 days to review any collective sale or redevelopment proposal before formalising their support for it. Once there is the required level of support for a proposal of at least 75% of the lots in the strata scheme, the Owners Corporation must by general resolution, apply to the Land and Environment Court to give effect to the plan. The plan will then be considered and, in appropriate circumstances, approved by the Court (see in particular, proposed sections 174, 178, 181 and 182).
16. Proceeds of any sale will generally be divided according to unit entitlements, with the Land and Environment Court overseeing that this method is fair in the circumstances. Each lot owner's share must not be less than the compensation value of the lot, which is worked out according to the principles of just terms compensation, as set out in the *Land Acquisition (Just Terms Compensation) Act 1991* (see in particular, proposed sections 154, 171 and 182).

**The provisions in Part 10 of the Bill will impact on the property rights of individuals in freehold strata schemes who do not support the collective sale or**

**redevelopment of their property in circumstances where 75% of the other lots vote in favour of the proposal. However, the Committee notes that the rights of a significant majority of a strata scheme need to be fairly balanced against those in the minority. The Committee also acknowledges that the Bill contains a number of safeguards to alleviate the impacts of these situations. The Committee therefore makes no further comments.**

## 8. Workers Compensation Amendment (Lump Sum Compensation) Bill 2015\*

Date introduced	15 October 2015
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch MP
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Workers Compensation Act 1987* (the 1987 Act) to enable certain workers to make more than one claim for lump sum compensation for permanent impairment in respect of an injury following the decision of the NSW Court of Appeal in *Cram Fluid Power Pty Ltd v Green* [2015] NSWCA 250.
2. That decision considered the effect of a provision of the 1987 Act (inserted by the *Workers Compensation Legislation Amendment Act 2012* (the 2012 amending Act)) which restricts the making of claims for lump sum compensation to a single claim in respect of the permanent impairment that results from an injury.
3. The Court of Appeal held that the provision extended to a claim for deterioration of an injury in respect of which a claim for lump sum compensation for permanent impairment had been made before 19 June 2012 (the date on which the Bill for the 2012 amending Act was introduced into the Legislative Assembly). The Bill reverses the decision to the extent necessary to enable a worker who made a claim for lump sum compensation in respect of an injury before 19 June 2012 to make further claims for lump sum compensation in respect of the same injury.

### BACKGROUND

4. This Bill follows from the decision of the New South Wales Court of Appeal in *Cram Fluid Power Pty Ltd v Green* which determined that claims for lump sum compensation pursuant to section 66 of the *Workers Compensation Act 1987* are restricted to one claim and do not extend to claims for deterioration of an injury where a claim had been made before June 2012. Briefly, the facts of the case are as follows.
5. Mr Green, the respondent to the appeal, made a claim in 2010 for lump sum compensation under section 66 of the *Workers Compensation Act 1987*. In the following years Mr Green's condition deteriorated and he made a further claim for lump sum compensation in 2013.
6. Between the two claims for compensation, there were amendments to workers compensation legislation. In 2012, section 66(1A) was inserted into the *Workers Compensation Act 1987* which stated that only one claim can be made under the Act for permanent impairment compensation. Accordingly, the insurer declined liability for Mr Green's second claim in 2013.

7. Mr Green commenced action with the Workers Compensation Commission where an arbitrator upheld his claim. On appeal, the President of the Workers Compensation Commission upheld the arbitrator's decision. Subsequently, the Court of Appeal found in favour of the appellant.

#### 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.**

# Appendix One – 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.