



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

No. 65/55 – 11 November 2014



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2014, 39p 30 cm

Chair: Mr Stephen Bromhead MP

11 November 2014

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 65 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 65 of 55

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”.

# Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
<b>PART ONE - BILLS</b>	<b>1</b>
1. FISHERIES MANAGEMENT AMENDMENT BILL 2014	1
2. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2014	14
3. VALUATION OF LAND AMENDMENT BILL 2014	24
<b>PART TWO – REGULATIONS</b>	<b>27</b>
<b>INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS</b>	<b>28</b>
<b>APPENDIX ONE – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED</b>	<b>29</b>

# Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Glenn Brookes MP, Member for East Hills Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon. Shaoquett Moselmane MLC The Hon. Dr Peter Phelps 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 2631
FACSIMILE	02 9230 3052
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>

# 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. FISHERIES MANAGEMENT AMENDMENT BILL 2014

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

### 2. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2014

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

#### *Access to Justice*

If a person cannot produce certain documents or give certain evidence in legal proceedings this may affect his or her right to access justice. Nonetheless, much of the information dealt with by the Ombudsman is of a highly sensitive nature and has been provided to the Ombudsman to enable him or her to perform his or her functions – not for use in an open court. In the circumstances, the Committee makes no further comment.

#### *Private Property Rights*

If a landlord is required to let his or her property to an occupant who has taken out an apprehended domestic violence order against his or her tenant, this limits the landlord's private property rights. However, the provision makes it less likely a domestic violence victim will become homeless after reporting a domestic violence incident by assisting the victim to remain in his or her rented home. In the circumstances, the Committee makes no further comment.

#### *Retrospectivity*

The Committee generally comments when provisions are drafted to have retrospective effect. Retrospectivity is contrary to the rule of law. However, as these provisions are of a savings or transitional nature and do not retrospectively remove rights or impose penalties the Committee makes no further comment.

#### *Parliament's right to obtain information from the Executive*

By enabling the Executive to make regulations under the *Public Interest Disclosures Act 1994* to exempt specified public authorities from requirements to provide reports to the Ombudsman and to Parliament, the Bill impacts on Parliament's right to obtain information from the Executive. However, there are still other Parliamentary processes available, for example, estimates hearings, committee hearings and questions on notice, to enable Parliament to obtain such information. Owing to these safeguards, the Committee makes no further comment.

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

#### *Making Decisions in Private*

By removing the requirement for the Minister to publish a notice declaring the law of another state or territory to be a corresponding law for the purposes of the *Parole Orders (Transfer) Act 1983*, the Bill reduces the capacity for oversight and review of the Minister's decisions. As these decisions may affect parole transfers and therefore personal rights and liberties, the Committee refers this matter to Parliament for further consideration.

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

*Matter which should be set by Parliament*

In the Committee's view, re-enactment of primary legislation or parts of it should be dealt with by Parliament, not via proclamation. The Committee refers this matter to Parliament for further consideration.

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

*Insufficiently subjects the exercise of legislative power to parliamentary scrutiny*

In the Committee's view, to allow for appropriate Parliamentary scrutiny, fees should be set by regulation, not via scheme rules. Unlike regulations, there appears to be no requirement under the *Interpretation Act 1987* for the rules to be tabled in Parliament and subject to disallowance. The Committee refers this matter to Parliament for further consideration.

### 3. VALUATION OF LAND AMENDMENT BILL 2014

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

*Retrospectivity I*

The Committee notes that the retrospective application of proposed section 21(1) of the Bill is intended to ensure the validity of all previous valuations that had been made under an earlier interpretation of the *Valuation of Land Amendment Act 1916*. It is not intended to vary the rights and liberties of individuals with retrospective effect. As such, the Committee makes no further comment.

*Retrospectivity II*

The Committee notes that the Bill will affect matters to be considered in proceedings commenced after the date of introduction into Parliament of the Bill, rather than after the date of the Bill's commencement. This means that for the period between the introduction date and the commencement date, key provisions of the Bill will be operational despite not having been formally adopted into law. As such, there will also be a brief window where the Bill will have retrospective effect. The Committee refers this matter to Parliament for its further consideration.

*Legislative Interference with Judicial Matters*

The Committee notes that the object of this Bill is to reverse the effects of a Land and Environment Court decision. However, proposed section 21(2) preserves the findings of the Court in that matter and all subsequent matters that commenced before the introduction of this Bill. As such, this Bill is unlikely to adversely affect parties to ongoing or past proceedings. The Committee makes no further comment.

**PART TWO – REGULATIONS-** The Committee does not report any Regulations in this Digest.

## Part One - Bills

### 1. Fisheries Management Amendment Bill 2014

Date introduced	4 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Minister for Primary Industries

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Fisheries Management Act 1994 (the Act) as follows:
  - (a) to allow possession limits for fish to be imposed by order of the Minister (as an addition to the current scheme which allows possession limits to be imposed by regulation),
  - (b) to permit boat limits to be imposed (that is, restrictions on the number of fish that can be held on a boat),
  - (c) to prohibit shark finning and related practices at sea,
  - (d) to allow approvals for taking and possession of fish for research and other purposes to be given by order of the Minister (as an addition to the current scheme which allows approvals to be given by permit),
  - (e) to permit determinations of total allowable fishing effort to be made (in addition to determinations of total allowable catch) and to make further provision for the allocation of total allowable catch and fishing effort,
  - (f) to permit the redefinition of a share management fishery, and other changes to be made to a share management fishery, with the majority support of shareholders in the fishery,
  - (g) to make further provision for the registration of dealings in shares in share management fisheries, including by providing for an online trading system,
  - (h) to make further miscellaneous changes to share management fisheries,
  - (i) to free-up the licensing scheme for fishing boats so that a fishing boat licence is only required for commercial fishing boat activities that are declared by the regulations to be activities for which a fishing boat licence is required,

- (j) to enable the regulations to require certain commercial fishers to make real time reports about their fishing activities,
- (k) to free-up the licensing scheme for charter fishing boats so that a charter fishing licence does not attach to a particular boat, but authorises the use of a single boat for any charter fishing activities, subject to any restrictions specified in the licence,
- (l) to make provision for the transfer of charter fishing licences and associated entitlements,
- (m) to establish a scientific observer program,
- (n) to enable the Minister to make orders that prohibit the entry into the State of anything that is or could be a declared disease, could be infected with a declared disease or could assist the spread of infection of a declared disease,
- (o) to enable the Minister to make orders requiring live abalone holders to implement specified measures to minimise the risk of transmission of a declared disease,
- (p) to make further provision for the protection of aquatic habitats,
- (q) to abolish the Management Advisory Committees for various fisheries and to instead permit the Secretary to establish advisory groups under the Act, and to permit advisory councils and groups established under the Act to be abolished by regulation,
- (r) to permit persons to appoint agents to use online facilities on their behalf under the Act and to permit service of notices electronically,
- (s) to make various other miscellaneous amendments.

## BACKGROUND

2. The Bill seeks to make the necessary legislative changes to implement reforms recommended by the 2012 Independent Review of Commercial Fisheries Policy, Management and Administration.
3. A key feature of the Bill is to introduce the necessary changes to facilitate the new administration system, FishOnline. This will enable commercial fishing and charter fishing operators to have access to their administration accounts through a computer or internet-enabled mobile device.

## 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 Fisheries Management Act 1994 No 38

### *Possession limits*

6. Schedule 1 [14] enables possession limits (also known as bag limits) for fish to be imposed by order of the Minister. At present, possession limits can only be imposed by regulation. Both methods of imposing a possession limit will now be permitted. In the event of inconsistency between a possession limit imposed by Ministerial order and a possession limit imposed by the regulations, the Ministerial order will prevail.
7. A Ministerial order that imposes a possession limit is to be notified by publication in the Gazette. However, if required urgently, a possession limit may be imposed by Ministerial order notified in one or both of the following ways:
  - (a) by causing a copy of the order to be exhibited adjacent to waters to which the order applies,
  - (b) by publishing notice of the order on the website of the Department of Trade and Investment, Regional Infrastructure and Services (the Department).

This scheme is similar to the scheme for notification of fishing closures.

8. A Ministerial order that imposes a possession limit will be a disallowable instrument, similar to a regulation.
9. Schedule 1 [15]–[18] are consequential amendments.

### *Boat limits*

10. Schedule 1 [19] enables the regulations to specify a maximum quantity of fish of a specified species or class that may be held on a boat at any time (a boat limit). Fish are taken to be held on a boat if they are on board the boat, if they are tethered to the boat or in a container tethered to the boat or in any other circumstances prescribed by the regulations.
11. A master of a boat will be guilty of an offence if the quantity of fish held on the boat exceeds the boat limit. The offence will apply whether or not the master was in possession of the fish and regardless of the period over which they were taken.
12. Schedule 1 [11], [12] and [105] are consequential amendments.
13. Schedule 1 [147] inserts a boat limit for gemfish. Gemfish is treated as a priority species of fish, so a higher penalty will apply to a contravention of the boat limit for that species of fish.

### *Shark finning*

14. Schedule 1 [20] prohibits a person from removing a fin from a shark while on board a boat in any waters or being in possession of a shark fin not attached to a shark, or any other part of a shark, while on board a boat in any waters.

### *Permitting research and other matters*

15. Schedule 1 [23] enables the Minister to approve the taking or possession of fish or marine vegetation for research, aquaculture, aquarium collection, Aboriginal cultural

fishing or other purposes by making an order that authorises the taking or possession concerned. At present, the Minister can only grant such an approval by issuing a permit that authorises the taking or possession concerned. As a result of the amendments, the Minister will be able to grant an approval by either making an order or by issuing a permit.

16. Schedule 1 [108], [112] and [141] are consequential amendments.

*Fishing limits and quotas*

17. Schedule 1 [24] contains new provisions for the setting of general fishing restrictions and their allocation.
18. At present, the Act permits the Total Allowable Catch Setting and Review Committee (the Committee) to determine the total allowable catch for any fishery in the commercial fishing sector. That determination is a TAC determination. The TAC determination is then allocated amongst commercial fishers in each affected sector by the imposition of quotas for the taking of fish.
19. The proposed amendments enable a second type of determination to be made (in addition to total allowable catch). The new determination is a determination of total allowable fishing effort (a TAE determination). A TAE determination:
- (a) may be made in relation to one or more methods of fishing, and
  - (b) may relate to one or more specified species of fish, or any specified fishery, class of shares in a share management fishery, fishing method, class of persons, area or time period.
20. TAC determinations and TAE determinations are both types of fishing determinations. Under the proposed amendments, a fishing determination may be made by either the Committee or the Secretary of the Department. If the determination is required by the regulations, it is generally made by the Committee (which is not subject to Ministerial control). However, the Minister may direct the Secretary to make the relevant determination if:
- (a) there is in existence a scientific assessment of the species of fish, fishery or fishing method concerned that, in the opinion of the Minister, is relevant, robust and sufficiently recent to allow a determination to be made, and
  - (b) to require the Committee to make the fishing determination would involve an unnecessary duplication of that assessment.
21. The method by which the Committee makes a fishing determination is not changed. That is, the Committee is required to call for public submissions on any determination that it makes.
22. The Secretary may, but need not, conduct public consultation in relation to a fishing determination made by the Secretary. In addition, the Secretary may, but need not, consult the Committee about the determination.

23. The proposed amendments permit any fishing determination that relates to commercial fishing to be allocated by the Secretary amongst commercial fishing authority holders. The regulations may make further provision for the allocation of fishing determinations.
24. A commercial fishing authority holder's allocation of a fishing determination is the commercial fishing authority holder's quota. It will be an offence for a commercial fishing authority holder to contravene the authority holder's quota.
25. Quota will be transferable in accordance with the regulations.
26. The Minister may direct that the quota or part of the quota of a commercial fishing authority holder is forfeited if the commercial fishing authority holder has failed to pay in full any fisheries management charge payable by the commercial fishing authority holder.
27. Schedule 1 [151] re-enacts an existing provision that provides for the composition of the Committee. The Committee is renamed the Total Allowable Fishing Committee because its functions will now extend to the making of TAE determinations.
28. Schedule 1 [7], [21], [56], [106], [137], [140], [148]–[150], [152] and [153] are consequential amendments.
29. Schedule 1 [158] is a saving provision.

#### *Redefinition proposals*

30. Schedule 1 [28] enables the Minister to put a redefinition proposal to shareholders in one or more share management fisheries. A redefinition proposal is a proposal to do any or all of the following:
  - (a) to change the description of one or more share management fisheries,
  - (b) to amalgamate 2 or more classes of shares in one or more share management fisheries,
  - (c) to replace one or more classes of shares in one or more share management fisheries with one or more other classes of shares.
31. The purpose of the provisions is to enable changes to be made to the description of a fishery, or to the entitlements of shareholders in a fishery, without invoking the provisions of the Act that require shares in a fishery to be cancelled, and shareholders compensated, if changes are made to a share management fishery.
32. A redefinition proposal can be implemented by the Minister only if the proposal has the majority support of shareholders in the fishery.
33. The proposed amendments provide for the following:
  - (a) the Minister is to give notice of a redefinition proposal to shareholders affected by the redefinition proposal,
  - (b) the Secretary is to arrange for the conduct of a poll of shareholders affected by the redefinition proposal,

- (c) after the poll is conducted, the Secretary is to certify the results of the poll,
  - (d) if the redefinition proposal has majority support, the Minister may implement the redefinition proposal.
34. The question of whether a redefinition proposal has majority support is to be determined in accordance with the regulations. Although each shareholder is entitled to only one vote in a poll, the regulations may provide for the weighting of votes on the basis of the number of shares held by a shareholder. The regulations may also provide that shareholders who fail to vote in a poll are to be disregarded when determining whether a proposal has majority support.
35. Schedule 1 [27] is a consequential amendment.

*Registration of share dealings*

36. Schedule 1 [58] provides for the online registration of dealings in shares, as an alternative to the current paper-based system. The amendment permits share dealings to be registered via an online trading system or facility approved by the Secretary.
37. The proposed amendment also makes it an offence to use the online trading system for the purpose of registering a dealing in shares that is prohibited (because the dealing would result in the shareholder acquiring more shares than is permitted or is otherwise prohibited by or under the Act).
38. Schedule 1 [63] permits the Secretary to take any steps necessary to rectify the Share Register and restore the integrity of the Share Register if a prohibited dealing in shares is registered. This can include cancelling the registration of a dealing. The Secretary is authorised to pay compensation to any person who is unfairly disadvantaged by such an action.
39. Schedule 1 [57], [59], [60] and [62] are related or consequential amendments.
40. Schedule 1 [61] permits the regulations to specify the types of information that are not to be made publicly available on the Share Register.

*Other changes to share management fisheries*

41. Schedule 1 [26] and [55] remove provision for category 2 share management fisheries. There are no category 2 share management fisheries. Schedule 1 [49], [145] and [146] are consequential amendments.
42. Schedule 1 [29] removes any doubt that a share management plan (which is made by regulation under the Act) can make provision for any matter for which regulations can be made under the Act.
43. Schedule 1 [31] provides that the Minister is not required to conduct public consultation in relation to an amendment to a share management plan or a supporting plan. Schedule 1 [136] is a consequential amendment.
44. Schedule 1 [32] provides that a management plan for a share management fishery does not prevail over a fishing closure. Schedule 1 [33] and [34] are consequential amendments.



45. Schedule 1 [36] and [37] make it optional for a management plan for a share management fishery to specify a minimum shareholding required to take fish in the fishery. Schedule 1 [38]–[41] are consequential amendments.
46. Schedule 1 [42] enables the regulations to make provision for the form and manner in which shareholders nominate a commercial fisher to take fish in a share management fishery.
47. Schedule 1 [44] enables the management plan for a share management fishery to make provision for the criteria for the issue of special endorsements in the fishery.
48. Schedule 1 [45] removes the maximum period for which a special endorsement may be issued.
49. Schedule 1 [46] removes provisions that require catch history for particular periods and businesses to be considered when issuing further classes of shares in a share management fishery. The criteria for the issue of further classes of shares in a share management fishery (if any) will be the criteria provided for by the management plan.
50. Schedule 1 [47] makes it clear that Division 3 of Part 3 of the Act does not apply to the issue of further classes of shares in a share management fishery. That Division requires the Minister to invite applications for shares and to issue shares initially on a provisional basis.
51. Schedule 1 [48] makes it optional for a management plan for a share management fishery to fix a maximum shareholding.
52. Schedule 1 [50] enables the Minister to retain or reissue shares that are surrendered by a shareholder (as an additional option to selling or cancelling the shares). The proposed amendment also removes the requirement that the Minister pay a percentage of the proceeds of sale of surrendered shares to the person who surrendered the shares.
53. Schedule 1 [51] makes it clear that the Minister can direct the forfeiture of shares by order made under a power conferred by the regulations.
54. Schedule 1 [53] re-enacts, with some changes, provisions that require a shareholder in a share management fishery who contravenes the shareholder's quota to pay to the Secretary the value of the fish taken in contravention of quota. If the amount payable is not paid within the time required, the Minister may direct the forfeiture of shares that are equivalent to the amount payable. The proposed amendment allows forfeited shares to be retained, cancelled, reissued or sold by the Minister. At present, forfeited shares must be sold. Schedule 1 [52] is a consequential amendment.

### *Fishing boat licences*

55. Schedule 1 [65] removes the requirement that all fishing boats used for commercial fishing must be licensed under the Act.
56. Instead, a fishing boat licence will be required only for declared commercial fishing boat activities. A declared commercial fishing boat activity is a commercial fishing boat activity declared by the regulations to be a commercial fishing boat activity for which a fishing boat licence is required.

57. A fishing boat licence will now authorise the use of a single fishing boat for all declared commercial fishing boat activities. The licence will not be specific to a particular identified boat. However, the holder of a licence must not use a boat or permit a boat to be used for a declared commercial fishing boat activity unless identification details for the boat have been provided to the Secretary.
58. Schedule 1 [64] replaces a provision (removed by Schedule 1 [65]) that requires crew members of commercial fishing boats to be registered. Under the new provision, the holder of a commercial fishing licence must not take fish for sale with the assistance of another person unless the use of a crew member to assist in taking fish is authorised by the commercial fisher's licence.
59. Schedule 1 [6], [128] and [130] are consequential amendments.

#### *Fishing reports and records*

60. Schedule 1 [74] permits the regulations to require commercial fishers or classes of commercial fishers to report to the Secretary about commercial fishing activities or proposed commercial fishing activities. The reports are different from the records and returns that fishers are already required to make because they are to be made using a real time reporting system. The real time reporting system is a system or facility approved by the Secretary that enables the making of reports by oral communication or electronic communication. It will be an offence to fail to make a report as required, or to make a false report.
61. Schedule 1 [69]–[73] require certain records that commercial fishers are required to keep or send to the Secretary under the Act to be kept or sent in a form and manner prescribed by the regulations or, subject to the regulations, approved by the Minister. It is envisaged that the regulations may require records to be kept or sent in an electronic form.

#### *Regulation of charter fishing activities*

62. Schedule 1 [80] removes the requirement that all charter fishing boats of a kind declared by the regulations must be licensed under the Act.
63. Instead, a charter fishing licence will be required only for declared charter fishing activities. A declared charter fishing activity is any charter fishing activity declared by the regulations to be a charter fishing activity for which a charter fishing licence is required.
64. A charter fishing activity is an activity that involves the use of a boat for recreational fishing activities on a commercial basis (see Schedule 1 [76]).
65. A charter fishing licence will now authorise the use of any one boat at any given time for the charter fishing activity specified in the licence. It will not be specific to a particular identified boat. However, the boat must comply with any requirements specified in the licence.
66. Special provision is made for ecotourism activities. An ecotourism activity is defined in Schedule 1 [78] as a charter fishing activity in which one or more manually operated boats are used by one or more persons, in the presence of an employed guide, for recreational fishing activities. The manually operated boat could be a kayak or a canoe. This activity differs from traditional charter fishing, in which only one boat is used for

the activity. A charter fishing licence that authorises an ecotourism activity authorises the use of a specified number of boats for the ecotourism activity.

67. New provisions in Schedule 1 [80] require the responsible person for a charter fishing activity to ensure that the boat or, in the case of an ecotourism activity, boats used for the activity are used only as authorised by a charter fishing licence. The responsible person for a charter fishing activity is the master of the boat or, in the case of an ecotourism activity, the employed guide for the activity.
68. Schedule 1 [78] also creates a concept of seats (or positions) that can be used by clients in a charter fishing activity. This will allow restrictions to be imposed on the number and class of seats used for charter fishing activities.
69. Schedule 1 [94] facilitates the transfer of charter fishing businesses and their components. Components include charter fishing licences and seats.
70. The proposed amendments permit the Secretary to determine that a business is a charter fishing business, and to determine the components of the business. A charter fishing business that is the subject of such a determination is a recognised charter fishing business. Determinations are to be registered.
71. The regulations may set out rules for the transfer of recognised charter fishing businesses and their components, including by requiring the whole of a business (and its components) to be transferred to the same person. The provisions are similar to existing provisions relating to commercial fishing businesses.
72. Schedule 1 [4], [75], [77], [79], [81]–[93], [121]–[126], [135] and [139] are related and consequential amendments.

### *Scientific observer program*

73. Schedule 1 [130] enables the Minister to establish a scientific observer program to assist in the administration of the Act.
74. The Minister may appoint scientific observers under the program. The Minister may issue an observation authority to a scientific observer that authorises the scientific observer to observe the fishing activities of a specified regulated person during a specified period.
75. Each of the following persons is a regulated person:
  - (a) a commercial fisher,
  - (b) a person who holds a fishing boat licence,
  - (c) a person who holds a charter fishing licence,
  - (d) the master of a boat that is at any time used for commercial fishing or charter fishing activities,
  - (e) an employed guide in relation to a charter fishing activity.

76. An observation authority confers power on a scientific observer to observe the fishing activities of the regulated person during the specified period, including to obtain, collect and record information that may be collected under the program.
77. The fishing activities that the scientific observer is authorised to observe include:
  - (a) any fishing activities that take place under the guidance of, supervision of or with the assistance of the person, and
  - (b) any fishing activities that take place on a boat while the person is master of the boat or on board the boat (whether or not the person is involved in the activities).
78. The scientific observer will have power to board and remain on a boat being used for the fishing activities, examine fishing gear or other equipment, examine fish taken during the fishing activities, and to require the assistance of persons engaged in those fishing activities to exercise his or her functions.
79. The scientific observer will be required to exercise his or her functions in a manner that does not unreasonably interfere with the fishing activities that he or she is authorised to observe. It will be an offence to fail to comply with a requirement made by a scientific observer in the exercise of his or her functions or to obstruct a scientific observer.
80. However, information provided to a scientific observer in compliance with a requirement made by the scientific observer will be protected information. Protected information is not admissible in criminal proceedings to prove that the person who provided the information, or any other relevant person, committed an offence (other than an offence of providing false information or an offence of obstructing the scientific observer).

*Declared diseases and related matters*

81. Schedule 1 [95] enables the Minister, if he or she reasonably suspects that a declared disease is present in any premises, place, waters or area outside the State, to make an order that absolutely or conditionally prohibits the entry or importation into the State of any thing specified in the order that, in the opinion of the Minister:
  - (a) is or could be a declared disease, or
  - (b) is or could be infected with a declared disease, or
  - (c) could assist the spread of infection of a declared disease.
82. The proposed amendments also permit the Minister to order a live abalone holder to implement specified measures in relation to waste water or other waste products of a live abalone holding facility to minimise the risk of transmission of a declared disease.

*Dredging and reclamation work*

83. Schedule 1 [97] makes it an offence for a local government authority or other person to fail to comply with an order of the Minister that requires the local government authority or other person to carry out work to rectify damage caused by the local government authority or other person in carrying out unauthorised dredging or reclamation work.

84. Schedule 1 [98] also enables a court that makes a finding of guilt against a person for unauthorised dredging or reclamation work to make an order requiring the person to rectify the damage caused by the work.

*Noxious fish and marine vegetation*

85. Schedule 1 [100] enables a fisheries officer to seize, or seize and destroy, any fish or marine vegetation that the officer suspects are noxious to determine whether they are noxious (rather than just take possession of the fish or marine vegetation). Under Schedule 1 [104] compensation will be payable for the seizure and destruction of live fish or live marine vegetation if, after the seizure and destruction, it is determined that the fish or marine vegetation were not noxious.
86. Schedule 1 [101] makes it an offence for an owner or occupier of premises at which noxious fish or noxious marine vegetation are located to fail to comply with a notice to destroy the fish or marine vegetation. Schedule 1 [102] and [103] are consequential amendments.

*Management Advisory Committees and other advisory groups*

87. Schedule 1 [116] and [157] abolish any Management Advisory Committees established by the Minister under the Act. New provisions will enable the Secretary to establish advisory groups under the Act.
88. Schedule 1 [9], [25], [30], [35], [43], [54] and [117] are consequential amendments.
89. Schedule 1 [118] makes it clear that the regulations can abolish or provide for the abolition of advisory councils or advisory groups established under the Act.
90. Schedule 1 [13], [22] and [120] enable any relevant advisory council or advisory group to be consulted on bag limit changes and other policy decisions made under the Act (rather than particular advisory councils). Schedule 1 [138] is a consequential amendment.

*Agents and online facilities*

91. Schedule 1 [143] enables any person affected by the Act to appoint a natural person as his or her agent for the purposes of the Act. The appointed agent is then permitted to access and use, on the Act.
92. Schedule 1 [142] permits notices or other instruments under the Act to be served on a person by electronic delivery to an address or location nominated by the person for electronic service of notices or other instruments.

*Miscellaneous amendments*

93. Schedule 1 [1], [5], [107], [109], [111] and [113]–[115] update references to Government Departments and employees.
94. Schedule 1 [8] provides that references in the Act to the scientific name of a species prevail (in the event of any inconsistency) over references to the common name of a species.
95. Schedule 1 [10] enables fishing closures to be published, in urgent cases, on the Department's website (replacing a provision that enables fishing closures to be

published, in urgent cases, in newspapers or by radio or television broadcast). The Minister may take any other steps the Minister considers reasonable to publicly notify a fishing closure.

96. Schedule 1 [66]–[68] provide that the annual contribution payable by participants in a restricted fishery is to be determined by the Minister, instead of as provided by the regulations. However, the contribution is not to exceed the amount prescribed by the regulations. The contribution may, but need not, be charged annually. The proposed amendments make the relevant provisions more consistent with the management charge provisions relating to share management fisheries.
97. Schedule 1 [96] requires a public authority to give the Minister at least 21 days (instead of the existing 28 days) to respond to a proposal to carry out dredging or reclamation work.
98. Schedule 1 [99] provides that the protected area (in relation to provisions that protect marine vegetation from harvesting or other harm) includes the whole of the foreshore (within the meaning of those provisions). The provisions are no longer limited to parts of the foreshore.
99. Schedule 1 [109] also makes it clear that a certificate issued by the Secretary to the effect that a proposed action is not likely to significantly affect threatened species, populations or communities, or their habitats, and that a licence is not required for the action, is a defence to the prosecution for an offence relating to harm to threatened species, populations or communities, or their habitats.
100. Schedule 1 [110] makes it clear that the Secretary may prepare a recovery plan in relation to any critically endangered ecological community (not just endangered ecological communities).
101. Schedule 1 [127] provides for the establishment of an Aboriginal Fishing Trust Fund, which is to be dedicated to the funding of measures to enhance, maintain and protect Aboriginal cultural fishing. Schedule 1 [119] is a consequential amendment.
102. Schedule 1 [129] makes it clear that a power conferred by the Act to search for a record, or require a record to be produced, includes a power to search for an electronic recording device (such as a computer) or require an electronic recording device to be produced.
103. Schedule 1 [134] requires the Secretary to keep a record of the publication of instruments published on the website of the Department the contravention of which is an offence. The purpose of the provision is to facilitate proof of the publication of the instrument, in the event of prosecution.
104. Schedule 1 [144] enables fees, charges and other amounts payable under the Act to be recovered by the Secretary as a debt due to the Crown.
105. Schedule 1 [144] also inserts a new general offence of knowingly providing any false or misleading information in connection with a requirement made under the Act. Schedule 1 [132] removes an offence that is made redundant by the new offence. Schedule 1 [131] is a consequential amendment.

106. Schedule 1 [154]–[156] provide for savings and transitional matters.
107. Schedule 1 [2] inserts definitions of new expressions used in the proposed amendments.
108. Schedule 1 [3] repeals definitions that will be made redundant by the proposed amendments.

#### **Schedule 2 Amendments to Fisheries Management Act 1994 No 38 relating to fish names**

109. Schedule 2 updates various references to fish names in the Act to reflect new naming conventions, changes to scientific names and changes to the status of some species under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

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

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

## 2. Statute Law (Miscellaneous Provisions) Bill (No 2) 2014

Date introduced	5 November 2011
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:
  - (a) to make minor amendments to various Acts and regulations (Schedule 1), and
  - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and
  - (c) to repeal various Acts and provisions of an Act and a regulation (Schedule 3), and
  - (d) to make other provisions of a consequential or ancillary nature (Schedule 4).

### BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Brad Hazzard MP, Attorney General and Minister for Justice, stated that the Bill continues the statute law revision program which has been in place for the last 30 years. He stated further that statute law Bills are an effective method for making minor policy changes, repealing redundant legislation and maintaining the quality of the NSW statute book.

### 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.
5. Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

#### Schedule 1 Minor amendments

6. Schedule 1 makes amendments to the following Acts and regulations:
  - (a) **Bail Amendment Act 2014 No 52** - The proposed amendment to the Bail Amendment Act 2014 corrects a cross-reference in a provision that refers to offences involving the use of a military-style weapon. The Firearms Act 1996, which the provision mistakenly refers to, does not contain any such offences. The relevant offences are contained in the Crimes Act 1900 (correctly referred to in the provision) and the Weapons Prohibition Act 1998.



- (b) **Combat Sports Act 2013 No 96** – Item [1] of the proposed amendments to the Combat Sports Act 2013 enables the Commissioner of Police to revoke a permit to hold a combat sport contest in certain circumstances, rather than (as is currently provided for) a police officer of the rank of Assistant Commissioner or above. The amendment will permit the Commissioner to delegate the power to revoke a permit to any police officer (under section 31 of the Police Act 1990). Items [2]–[5] make consequential amendments. Item [8] ensures that police officers can issue penalty notices under the Combat Sports Act 2013, in addition to members of the Combat Sports Authority (as is currently provided for) and authorised staff of the Office of Sport (rather than, as is currently provided for, authorised staff of the Department of Education and Communities). Item [6] corrects a reference to the head of a Department. Item [7] replaces a reference to the head of the Department of Education and Communities with a reference to the Chief Executive of the Office of Sport.
- (c) **Commercial Agents and Private Inquiry Agents Act 2004 No 70** - The proposed amendment to the Commercial Agents and Private Inquiry Agents Act 2004 corrects a reference in a list of certain offences appearing in a definition of minor offence. Currently, the definition incorrectly refers to a prohibition on the unfair practices of harassment and coercion appearing in Part 3-1 of the Australian Consumer Law (NSW) (ACL (NSW)), rather than the associated offence appearing in Part 4-1 of the ACL (NSW). The proposed amendment corrects that error.
- (d) **Conveyancers Licensing Act 2003 No 3** - The proposed amendment to the Conveyancers Licensing Act 2003 enables audits of licensees' records to be carried out by authorised audit companies and members of professional accounting bodies who hold a Public Practice Certificate. Criminal Procedure Act 1986 No 209 - Item [2] of the proposed amendments to the Criminal Procedure Act 1986 removes an uncertainty, raised by Simpson J in *JG v R* [2014] NSWCCA 138 as to whether section 130A of that Act applies to rulings on the admissibility of evidence. Electricity Supply (General) Regulation 2014.
- (e) **Electricity Supply (Safety and Network Management) Regulation 2014** - Item [1] makes a consequential amendment. Electricity Supply Act 1995 No 94 - Item [3] of the proposed amendments to the Electricity Supply Act 1995 allows the regulations under that Act to provide for payment of fees in connection with an application for accreditation, or for renewal of accreditation, to provide electrical or other services. Items [1], [2], [4], [5], [7] and [8] revise terminology to align it with terms used in the National Energy Retail Law (NSW). Items [6] and [9] update references to the operators of the rail network electricity system.
- (f) **Electricity Supply (General) Regulation 2014** - The proposed amendments to the Electricity Supply (General) Regulation 2014 revise terminology consequential on item [1] of the proposed amendments to the Electricity Supply Act 1995 in this Schedule.
- (g) **Energy Services Corporations Act 1995 No 95** - Item [3] of the proposed amendments to the Energy Services Corporations Act 1995 dissolves the Residual Business Management Corporation (RBMC) and transfers the assets, rights and liabilities of RBMC to the Crown. RBMC was constituted under the Pacific Power (Dissolution) Act 2003 to manage the residual assets, rights and liabilities of the former Pacific Power. That Act is proposed to be repealed by Schedule 3. Item [3] also enables funds held

by the SAS Trustee Corporation for the purposes of the superannuation benefits of former employees of Pacific Power to be transferred from an employer reserve of RBMC to an employer reserve of the Crown. Items [1] and [2] make consequential amendments. Other amendments to other Acts that are consequential on the dissolution of RBMC are proposed to be made in this Schedule.

- (h) **Fair Trading Act 1987 No 68** - The proposed amendment to the Fair Trading Act 1987 omits a provision that allows the Commissioner for Fair Trading, Office of Finance and Services to delegate functions imposed under the Home Building Act 1989. The provision is redundant as the Commissioner already has, under section 122 of that Act, a power to delegate those functions.
- (i) **First State Superannuation Act 1992 No 100** - The proposed amendment to the First State Superannuation Act 1992 is consequential on the dissolution of the Residual Business Management Corporation proposed to be effected by the amendments to the Energy Services Corporations Act 1995 in this Schedule.
- (j) **Health Administration Act 1982 No 135** - The proposed amendment to the Health Administration Act 1982 corrects terminology (replacing a reference to “health support services” provided by the Secretary of the Ministry of Health with the broader concept of “health services”) as a consequence of amendments made to the Health Services Act 1997 in 2010. Service is defined in the section proposed to be amended to mean a health service, including any administrative or other service related to a health service.
- (k) **Holiday Parks (Long-term Casual Occupation) Act 2002 No 88** - The proposed amendment to the Holiday Parks (Long-term Casual Occupation) Act 2002 expresses the notice period for giving a notice of termination of an occupation agreement in days, rather than months, for consistency with other notice periods in that Act.
- (l) **Law Enforcement and National Security (Assumed Identities) Act 2010 No 73** - The proposed amendment to the Law Enforcement and National Security (Assumed Identities) Act 2010 updates a reference to an officer of the New South Wales Crime Commission who may be appointed to supervise the acquisition or use of an assumed identity by an authorised civilian.
- (m) **Motor Accidents Compensation Act 1999 No 41** - The proposed amendment to the Motor Accidents Compensation Act 1999 removes the requirement for a notice of a motor accident claim given to an insurer to be verified by statutory declaration. The requirement for a statutory declaration in such circumstances is made redundant by section 307C of the Crimes Act 1900, which makes it an offence for a person to produce a false or misleading document in compliance with a law of the State (maximum penalty of 2 years’ imprisonment or a fine of 200 penalty units, or both).
- (n) **Motor Dealers and Repairers Act 2013 No 107** - Item [2] of the proposed amendments to the Motor Dealers and Repairers Act 2013 (the 2013 Act) corrects a provision dealing with limitation periods that was incorrectly transcribed from the Motor Dealers Act 1974 (the 1974 Act). (The 2013 Act is to replace the 1974 Act.) The amendment will ensure that motor dealers of certain second-hand motor cycles, other than motor cycles having a design that makes them incapable of being registered in New South Wales, are required to repair defects occurring within the

applicable limitation period (instead of being required to repair defects only if the second-hand motor cycles concerned are incapable of being registered). Item [1] corrects a heading.

- (o) **Motor Dealers and Repairers Regulation 2014** - The proposed amendment to the Motor Dealers and Repairers Regulation 2014 is consequential on the proposed amendment to section 69 (9) of the Motor Dealers and Repairers Act 2013 in this Schedule.
- (p) **Ombudsman Act 1974 No 68** - The proposed amendment to the Ombudsman Act 1974 ensures that former office holders (including the Ombudsman), experts formerly engaged to assist the Ombudsman and Australian legal practitioners appointed or formerly appointed to assist the Ombudsman cannot give evidence or produce any document in legal proceedings in respect of any information obtained in the course of office or service with the Ombudsman. At present, current office holders and experts currently engaged to assist the Ombudsman cannot give such evidence or produce such documents in legal proceedings.
- (q) **Parents and Citizens Associations Incorporation Act 1976 No 50** - The proposed amendments to the Parents and Citizens Associations Incorporation Act 1976 make it clear that: (a) a parents and citizens association of a school may vote in an election for the councillors and delegates of the Federation of Parents and Citizens Associations under Part 3A of that Act only if the association is admitted as a member of the Federation, and (b) a person is eligible to be elected as a councillor or delegate of the Federation only if the person is a member of such a parents and citizens association.
- (r) **Parliamentary Contributory Superannuation Act 1971 No 53** - The proposed amendment to the Parliamentary Contributory Superannuation Act 1971 enables the existing trustees of the Parliamentary Contributory Superannuation Fund who are appointed by the Legislative Council or Legislative Assembly to continue in office, despite ceasing to be members because of the dissolution or expiry of the Assembly before a State general election, until the Assembly or Council appoints a successor after the State general election. The Parliamentary Remuneration Tribunal has, under section 4 of the Parliamentary Contributory Superannuation Act 1971, issued a certificate approving this Bill. Such a certificate is required before Parliament can deal with a Bill that amends that Act.
- (s) **Parole Orders (Transfer) Act 1983 No 190** - Item [1] of the proposed amendments to the Parole Orders (Transfer) Act 1983 replaces the definition of corresponding law in the Act with a definition that provides for a law of another State or Territory that corresponds (or substantially corresponds) to the provisions of the Act to be treated as a corresponding law without the need for a notice to be published by the Minister declaring the law to be a corresponding law (as is currently the case). Item [2] confirms the meaning that the term corresponding law has had since the enactment of the Act and, where necessary, validates anything done (or omitted to be done) by reference to that meaning.
- (t) **Public Authorities (Financial Arrangements) Regulation 2013** - The proposed amendment to the Public Authorities (Financial Arrangements) Regulation 2013 is consequential on the dissolution of the Residual Business Management Corporation

proposed to be effected by the amendments to the Energy Services Corporations Act 1995 in this Schedule.

- (u) **Public Finance and Audit Act 1983 No 152** - The proposed amendment to the Public Finance and Audit Act 1983 is consequential on the dissolution of the Residual Business Management Corporation proposed to be effected by the amendments to the Energy Services Corporations Act 1995 in this Schedule.
- (v) **Public Interest Disclosures Act 1994 No 92** - Items [1] and [3] of the proposed amendments to the Public Interest Disclosures Act 1994 enable regulations under the Act to exempt specified public authorities (or specified classes of public authorities) from requirements to provide reports to the Ombudsman and to Parliament about the public authority's obligations under the Act. Item [2] enables an investigating authority referring, or considering whether to refer, a matter to another investigating authority to exchange information or enter into arrangements with the other investigating authority. In particular, the investigating authority may exchange information or enter into arrangements with the other authority to avoid duplication of action, to allow the efficient and effective use of both authorities' resources and to ensure that action is taken in a manner providing the most effective result.
- (w) **Residential (Land Lease) Communities Act 2013 No 97** - Item [1] of the proposed amendments to the Residential (Land Lease) Communities Act 2013 clarifies the meaning of "disclosure statement" (which is a term used in various provisions of the Act) by cross-referring to the provision of the Act that requires disclosure statements to be provided and describes their contents. Item [2] broadens the operation of section 118 of the Act to allow employees and other persons authorised by the operator of a community under a site agreement to sign a termination notice terminating the agreement with a home owner.
- (x) **Residential Tenancies Act 2010 No 42** - Item [1] of the proposed amendments to the Residential Tenancies Act 2010 ensures that a landlord cannot obtain possession of residential premises after a tenant has vacated those premises if the remaining occupant has obtained an interim or other apprehended violence order against the tenant and has not had a reasonable opportunity to obtain a final apprehended violence order and to obtain an order from the Tribunal to be recognised as a tenant of the premises. Items [2] and [5] update provisions as a consequence of the enactment of the Government Sector Employment Act 2013. Items [3] and [4] update references to principles that have been renamed by a Commonwealth Act.
- (y) **Security Industry Act 1997 No 157** - Item [1] of the proposed amendments to the Security Industry Act 1997 provides that a class 1A, class 1B, class 1C, class 1E or class 1F licence does not authorise the licensee to carry on a security activity with a dog. Item [6] is a related amendment, which makes it a condition of these classes of licence that the licensee does not carry on the security activity authorised by the licence with a dog.

Item [2] clarifies that the security activities that a class 2A or class 2B licence authorises include certain activities specified in the definition of security activity in the Act. In particular, the amendment clarifies that the authority conferred by a class 2A licence includes selling security methods or principles and that the authority

conferred by a class 2B licence includes acting as an agent, broker or intermediary in certain circumstances.

Items [3] and [4] omit provisions that require the Commissioner of Police to nominate a place where an applicant for a licence is to collect the licence, since it is the practice now for licences to be collected or posted. Items [8] and [9] make consequential amendments.

Item [5] requires class 1 and class 2 licences to contain a recent photograph of the licensee and bear the licensee's signature. Photographs and signatures can currently be required at the discretion of the Commissioner, whose practice is to require photographs and signatures for all class 1 and class 2 licences but not for master licences. Under the amended provision, the Commissioner retains the discretion to require a photograph or signature (or both) in the case of master licences.

Item [7] specifies when a licence (other than a renewed licence) comes into force, replacing a current provision stating that a licence comes into force on the day on which it is collected. In particular, the amendment provides that a master licence comes into force on the date specified in the licence, and that a class 1 or 2 licence comes into force on the day on which the licence is collected or (if the licence is posted to the licensee) 4 working days after the relevant photograph of the licensee was taken.

Item [10] enables certificate evidence to be given that a penalty notice had been issued to a specified person for a specified offence (rather than in respect of a licence, as at present, since penalty notices are not necessarily issued to licensees). The amendment also removes the requirement for the certificate to specify that the amount of the penalty had or had not been paid in the time specified by the penalty notice (to reflect the fact that a penalty notice may be paid after that time, for instance, after the person has been served with a penalty reminder notice or a penalty notice enforcement order).

- (z) **Sporting Venues Authorities Act 2008 No 65** - Items [2] and [4] of the proposed amendments to the Sporting Venues Authorities Act 2008 (the Principal Act) amend the functions of the State Sporting Venues Authority and each regional sporting venues authority (currently only Venues NSW) so as to ensure that the functions of those bodies are consistent.

Items [1], [3], [5], [6] and [9] update provisions as a consequence of the enactment of the Government Sector Employment Act 2013.

Item [6] also, as well as items [7] and [8], replaces references to the Director-General of the Department of Education and Communities with references to the Chief Executive of the Office of Sport to take account of the establishment of the Office of Sport and the transfer of parts of the Department of Education and Communities to that Office.

Item [8] also gives the Chief Executive of the Office of Sport a power to delegate the exercise of the Chief Executive's functions under section 37 of the Principal Act to a person employed in the Office of Sport. Those functions relate to the appointment of rangers under the Principal Act and the provision of identity cards to those rangers.

- (aa) **State Authorities Non-contributory Superannuation Act 1987 No 212** - The proposed amendment to the State Authorities Non-contributory Superannuation Act 1987 is consequential on the dissolution of the Residual Business Management Corporation proposed to be effected by the amendments to the Energy Services Corporations Act 1995 in this Schedule.
- (bb) **Superannuation Act 1916 No 28** - The proposed amendment to the Superannuation Act 1916 is consequential on the dissolution of the Residual Business Management Corporation proposed to be effected by the amendments to the Energy Services Corporations Act 1995 in this Schedule.
- (cc) **Tattoo Parlours Act 2012 No 32** - Items [1] and [2] of the proposed amendments to the Tattoo Parlours Act 2012 update terminology as a consequence of the enactment of the Government Sector Employment Act 2013. Consequential amendments to the Tattoo Parlours Regulation 2013 are contained in Schedule 2. Item [3] provides that, if the holder of an existing licence applies for a new licence, the existing licence remains in force until the application is determined, so long as the application is lodged at least 28 days before the existing licence is due to expire.
- (dd) **Transport Administration Act 1988 No 109** - The proposed amendment to the Transport Administration Act 1988 removes an existing limitation on the kinds of fines and penalties that RailCorp and its subsidiaries may retain. In particular, the fines and penalties need not relate to railway offences (as at present) but will extend to fines and penalties for all offences dealt with by transport officers of RailCorp or its subsidiaries (who deal with offences on all modes of public transport). The amendment also removes a reference to a repealed Act.
- (ee) **Warehousemen's Liens Act 1935 No 19** - The proposed amendments to the Warehousemen's Liens Act 1935 replace terminology with gender-neutral terminology that is more relevant to the storage industry the Act regulates Warehousemen's Liens Regulation 2014.
- (ff) **Warehousemen's Liens Regulation 2014** - The proposed amendments to the Warehousemen's Liens Regulation 2014 are consequential on the amendments proposed to be made to the Warehousemen's Liens Act 1935 by this Schedule.

### **Schedule 2 Amendments by way of statute law revision**

- 3 Schedule 2 amends certain Acts and instruments for the purpose of effecting statute law revision. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

### **Schedule 3 Repeals**

- 4 Schedule 3 repeals 6 Acts and various provisions of an Act and a regulation.
- 5 Clause 1 of the Schedule repeals 4 redundant Acts, including Acts whose amending provisions have all commenced.
- 6 Clause 2 of the Schedule repeals the Pacific Power (Dissolution) Act 2003, which is enabled by the dissolution of the Residual Business Management Corporation (constituted under that Act) by amendments to the Energy Services Corporations Act 1995 in Schedule 1.

- 7 Clause 3 of the Schedule repeals an Act and a provision of a regulation that are made redundant by proposed amendments in Schedule 2.
- 8 Clause 4 of the Schedule repeals provisions of the Marine Safety Act 1998 that are redundant because they consist of repeals or amendments that have commenced.

#### **Schedule 4 General savings, transitional and other provisions**

- 9 Schedule 4 contains savings, transitional and other provisions of general effect.
- 10 Clause 1 ensures that certain amendments, including amendments correcting errors in technical provisions (for example, headings indicating the section to be amended or directions as to where a new section is to be inserted) and rectifying minor drafting errors (for example, corrections in numbering of provisions, correction or insertion of cross-references, omission of unnecessary matter or insertion of omitted matter), will be taken to have commenced on the date the amendments to which they relate commenced.
- 11 Clause 2 ensures that the amendment or repeal of a provision will not, unless expressly provided, vitiate any act done or decision made under the provision as in force before the amendment or repeal.
- 12 Clause 3 ensures that, unless expressly provided, any instrument that is in force and made under a provision of an Act that is amended or substituted by the proposed Act will be taken to have been made under the Act as amended.
- 13 Clause 4 enables the Governor, by proclamation, to revoke the repeal by the proposed Act of any Act or any provision of an Act or instrument. The Act or provision the subject of the revocation of repeal is taken not to be, and never to have been, repealed.
- 14 Clause 5 enables the making of regulations of a savings or transitional nature having a short term effect and relating to incidental matters arising out of the proposed Act with regard to which no specific, or sufficient, provision has been made in the proposed Act.

### **ISSUES CONSIDERED BY COMMITTEE**

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

##### *Access to Justice*

19. Schedule 1.18 of the Bill provides that former office holders (including the Ombudsman), experts formerly engaged to assist the Ombudsman, and Australian legal practitioners appointed or formerly appointed to assist the Ombudsman cannot give evidence or produce any document in legal proceedings in respect of any information obtained in the course of office or service with the Ombudsman.

**If a person cannot produce certain documents or give certain evidence in legal proceedings this may affect his or her right to access justice. Nonetheless, much of the information dealt with by the Ombudsman is of a highly sensitive nature and has been provided to the Ombudsman to enable him or her to perform his or her functions – not for use in an open court. In the circumstances, the Committee makes no further comment.**

*Private Property Rights*

20. Schedule 1.26, item 1 of the Bill provides that a landlord cannot obtain possession of residential premises after a tenant has vacated those premises if the remaining occupant has obtained an interim or other apprehended violence order against the tenant and has not had a reasonable opportunity to obtain a final apprehended domestic violence order and an order from the Tribunal to be recognised as a tenant of the premises.

**If a landlord is required to let his or her property to an occupant who has taken out an apprehended domestic violence order against his or her tenant, this limits the landlord's private property rights. However, the provision makes it less likely a domestic violence victim will become homeless after reporting a domestic violence incident by assisting the victim to remain in his or her rented home. In the circumstances, the Committee makes no further comment.**

*Retrospectivity*

21. Schedule 4, clause 1 of the Bill ensures that certain amendments, including amendments correcting errors in technical provisions and rectifying minor drafting errors will be taken to have commenced on the date the amendments to which they relate commenced. Similarly, schedule 4, clause 3 of the Bill ensures that, unless expressly provided, any instrument that is in force and made under a provision of an Act that is amended or substituted by the Bill will be taken to have been made under the Act as amended.

**The Committee generally comments when provisions are drafted to have retrospective effect. Retrospectivity is contrary to the rule of law. However, as these provisions are of a savings or transitional nature and do not retrospectively remove rights or impose penalties the Committee makes no further comment.**

*Parliament's right to obtain information from the Executive*

22. Schedule 1.24, items 1 and 3 of the Bill enable regulations under the *Public Interest Disclosures Act 1994* to exempt specified public authorities (or specified classes of public authorities) from requirements to provide reports to the Ombudsman and to Parliament about the public authority's obligations under the Act.

**By enabling the Executive to make regulations under the *Public Interest Disclosures Act 1994* to exempt specified public authorities from requirements to provide reports to the Ombudsman and to Parliament, the Bill impacts on Parliament's right to obtain information from the Executive. However, there are still other Parliamentary processes available, for example, estimates hearings, committee hearings and questions on notice, to enable Parliament to obtain such information. Owing to these safeguards, the Committee makes no further comment.**

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

*Making Decisions in Private*

23. Schedule 1.21, item 1 of the Bill replaces the definition of 'corresponding law' in the *Parole Orders (Transfer) Act 1983* with a definition that allows a law of another state or



territory that corresponds (or substantially corresponds) to the provisions of the Act to be treated as a corresponding law without the need for a notice to be published by the Minister declaring the law to be a corresponding law (which is currently the case).

**By removing the requirement for the Minister to publish a notice declaring the law of another state or territory to be a corresponding law for the purposes of the *Parole Orders (Transfer) Act 1983*, the Bill reduces the capacity for oversight and review of the Minister's decisions. As these decisions may affect parole transfers and therefore personal rights and liberties, the Committee refers this matter to Parliament for further consideration.**

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

#### *Matter which should be set by Parliament*

24. Schedule 3 of the Bill repeals various Acts. However, schedule 4, clause 4 of the Bill enables the Governor, by proclamation, to revoke the repeal by the Bill of any Act or any provision of an Act or instrument.

**In the Committee's view, re-enactment of primary legislation or parts of it should be dealt with by Parliament, not via proclamation. The Committee refers this matter to Parliament for further consideration.**

### **Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

#### *Insufficiently subjects the exercise of legislative power to parliamentary scrutiny*

25. Schedule 1.7, item 3 of the Bill permits scheme rules to prescribe the required fee to accompany an application for accreditation to provide electrical or other services.

**In the Committee's view, to allow for appropriate Parliamentary scrutiny, fees should be set by regulation, not via scheme rules. Unlike regulations, there appears to be no requirement under the *Interpretation Act 1987* for the rules to be tabled in Parliament and subject to disallowance. The Committee refers this matter to Parliament for further consideration.**

### 3. Valuation of Land Amendment Bill 2014

Date introduced	4 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Finance and Services

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill is to reverse the effect of the decision of the Land and Environment Court in *Fivex Pty Ltd v Valuer-General* [2014] NSWLEC 27 by making it clear that, in determining the value of land, the assumptions required to be made about the continuance of the land's present use and improvements that may be continued or made to allow the present use to continue must be made in every case and not just in a case where the present use represents a higher order of use than other uses to which the land may be put.
2. The Bill also makes it clear that it is to be assumed that the improvements required in order to enable the present use of land to continue include the improvements presently on the land.

#### BACKGROUND

3. State property land values are used as a basis for determining local council rates and land tax. The Valuer-General is responsible for making these valuations and ensuring their integrity, according to procedures detailed in the *Valuation of Land Act 1916*.
4. In order to achieve this, the Valuer-General has established a process of making valuations and developed a set of principles for valuing land that have been applied over many years.
5. The recent court decision of *Fivex Pty Ltd v Valuer-General* has caused uncertainty regarding the Valuer-General's longstanding practice in the valuation of land where the current use of the land, having regard to existing improvements, is a higher use than would be allowed under the current environmental planning controls.
6. This Bill restores the law as to what was before Court's decision and seeks to confirm, rather than change, the practices and functions of the Valuer-General.

#### OUTLINE OF PROVISIONS

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

9. Schedule 1 [1] amends section 6A (Land value) of the Valuation of Land Act 1916 (the Act) to achieve the object set out in paragraph (b) of the Overview.
10. Schedule 1 [2] amends section 6A of the Act to achieve the object set out in paragraph (a) of the Overview.
11. Schedule 1 [3] and [4] amend section 7B (Land value of strata) of the Act in a way that corresponds to the amendments to section 6A since the approach to land value of strata mirrors, in the relevant aspects, the approach to land value of land.
12. Schedule 1 [5] and [6] amend Schedule 2 (Savings, transitional and other provisions) to the Act to ensure that, while the amendments are to have retrospective effect so as to confirm the validity of land valuations already made, a decision in any proceedings commenced before introduction of the Bill will be unaffected.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity I*

13. Proposed section 21(1) of the Bill provides that the amendments made by the *Valuation of Land Amendment Act 2014* are taken to have applied, and always to have applied, to any land valuation made before the commencement of this clause.
14. The Committee notes that the effect of this provision would apply retrospectively to any land valuation made before the commencement of this clause. The Committee generally expresses its concern about provisions that are applied with retrospective effect as contrary to the rule of law to ensure individuals subject to the law are aware of the laws as they apply at the time.
15. However, the Committee also notes that the intent of the amendment is to give legislative certainty to what had been a longstanding interpretation by the Valuer-General of how the *Valuation of Land Act 1916* was to apply with respect to the valuing of land that has been lawfully developed above existing planning controls. As such, the amendment ensures the established practices of the Valuer-General, and confirms the validity of all previous valuations made under this practice.

**The Committee notes that the retrospective application of proposed section 21(1) of the Bill is intended to ensure the validity of all previous valuations that had been made under an earlier interpretation of the *Valuation of Land Amendment Act 1916*. It is not intended to vary the rights and liberties of individuals with retrospective effect. As such, the Committee makes no further comment.**

#### *Retrospectivity II*

16. Proposed section 21(2) of the Bill provides that the retrospective application of amendments under this Bill will not affect any decision made by a court in proceedings commenced before the date of introduction into Parliament of this Bill.

**The Committee notes that the Bill will affect matters to be considered in proceedings commenced after the date of introduction into Parliament of the Bill, rather than after the date of the Bill's commencement. This means that for**

**the period between the introduction date and the commencement date, key provisions of the Bill will be operational despite not having been formally adopted into law. As such, there will also be a brief window where the Bill will have retrospective effect. The Committee refers this matter to Parliament for its further consideration.**

*Legislative Interference with Judicial Matters*

17. The object of this Bill is to reverse the effects the Land and Environment Court's decision in *Fivex Pty Ltd v Valuer-General*. In this respect, the Government is seeking to overturn the findings of the Court.
18. Ordinarily, the Committee may regard this as a legislative interference with judicial matters, and unfair on parties to proceedings before the Land and Environment Court.
19. However, the Committee notes that the effect of proposed section 21(2) is to preserve the findings of the Court in *Fivex Pty Ltd v Valuer-General* and, in doing so, protects the successful party in that matter from having their valuations voided as a result of this Bill.

**The Committee notes that the object of this Bill is to reverse the effects of a Land and Environment Court decision. However, proposed section 21(2) preserves the findings of the Court in that matter and all subsequent matters that commenced before the introduction of this Bill. As such, this Bill is unlikely to adversely affect parties to ongoing or past proceedings. The Committee makes no further comment.**

## Part Two – Regulations

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

# Index of Ministerial Correspondence on Bills

**The Committee does not report on any Ministerial Correspondence on Bills in this Digest.**

## Appendix One – 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.