



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations

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

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

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

Guide to the Digest

COMMENT ON BILLS

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

Ministerial Correspondence – Bills previously considered

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

COMMENT ON REGULATIONS

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

**APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS
REPORTED ON**

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

Conclusions

PART ONE - BILLS

1. CITY OF SYDNEY AMENDMENT (CENTRAL SYDNEY TRAFFIC AND TRANSPORT COMMITTEE) BILL 2012

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

Protecting officials from liability

The Committee notes that the clause requires that any person acting under the direction of the CSTTC is only protected from liability to the extent to which they act in good faith and in accordance with relevant legislation. For this reason, the Committee does not make an adverse comment in relation to this issue.

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

Commencement by proclamation

In this instance, the Committee can appreciate that appropriate administrative arrangements may need to take place prior to the commencement of these provisions and that it would not seem that the commencement by proclamation of these provisions is an inappropriate delegation of legislative power.

Matters which should be regarded by Parliament

As the extent of the land encompassing the Sydney Business District has a significant impact on the operation of the Bill, the Committee refers to Parliament whether allowing the map to be amended by regulation is an inappropriate delegation of legislative powers.

2. ENERGY LEGISLATION AMENDMENT (NATIONAL ENERGY RETAIL LAW) BILL 2012

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the national nature of the scheme that the Bill seeks to implement and recognises the degree of flexibility that the commencement of the scheme will require. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEMOLITION ORDERS) BILL 2012*

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

Property

The Committee will always be concerned to comment in circumstances where an instrument of the state, such as a local council, is provided with the power to destroy private property. However, the Committee notes the inclusion of this ground is consistent with the existing grounds on which a local council may order the demolition of a building. Providing 10 working

days notice to an affected individual of a demolition order introduces a new timeframe into the Act, and the Committee refers to Parliament whether this is a reasonable timeframe in the circumstances.

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

Ill and widely-defined power

The Committee is concerned where a local council is given the power to order the demolition of an unoccupied building in circumstances where the local council itself determines whether the unoccupied building is unsightly and detracts significantly from the amenity of the neighbourhood. The Committee refers to Parliament whether providing a local council with the power to determine what is unsightly and detracting significantly from the amenity of the neighbourhood constitutes an ill and widely-defined power.

4. HEALTH SERVICES AMENDMENT (NATIONAL HEALTH REFORM AGREEMENT) BILL 2012

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

Privacy; Access to Information

The Committee recognises that the application of Commonwealth legislation with respect to privacy and the access to information – to the exclusion of NSW legislation – may impact on these personal rights, although the Committee does not comment as to whether these rights are weakened, strengthened or if there is no material difference. The Committee also recognises the nature of cooperative federalism will at times require Commonwealth legislation to take precedence over NSW legislation for operational purposes. The Committee makes no further comment.

5. INSPECTOR OF CUSTODIAL SERVICES BILL 2012

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

Right to Privacy

The Committee will always be concerned when a person is given unfettered access to another person's health records. However, the Committee understands that such a breach of privacy with respect to a person in custody at a correctional service may be necessary to enable the Inspector to perform their work, which effectively protects rights and liberties of all people in custody. Given the outcome, the Committee does not consider this to be an undue trespass on personal rights and liberties.

The Committee will always seek to comment when a provision has the effect of limiting an individual's right to seek redress for civil wrongs in the common law division of the Courts. The Committee notes that the immunity only exists in relation to acts or omissions done in good faith in performing statutory requirements and as such does not make an adverse comment with respect to this issue.

The Committee will always be concerned when a person is compelled by a government official to answer questions that may be incriminating. However, the Committee understands that this clause only requires employees or officers to appear before the Inspector to answer questions but does not compel employees or officers to provide answers to those questions. Therefore, the Committee makes no adverse comments in relation to this issue.

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the delay in commencement is to allow for the significant administrative arrangements to be put in place in order to establish the inspectorate. As such, the Committee does not consider there to be an inappropriate delegation of legislative power in this instance.

The Committee is concerned that the delegation powers contained in this Bill may be too wide and ill-defined, and refers to Parliament its concerns.

6. NATIONAL ENERGY RETAIL LAW (ADOPTION) BILL 2012

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

Retrospectivity

Whilst the Committee is concerned when retrospective clauses are included in legislation, the Committee notes that the particular effect of this clause is to validate a decision or instrument that may have been made before the application of the new law, but does not have the effect of validity until after the law has commenced. As such, the Committee does not make any further comment in relation to this issue.

The Committee is concerned when a regulation may be made to take effect from a date prior to the commencement of the Act and prior to the making of the regulation. The Committee notes that subsection 13(3) of the Bill outlines that such a regulation may not affect a person prejudicially or impose liabilities on someone, and as such does not make a further comment with respect to this issue.

Fair trial

The Committee notes that the effect of creating summary offences is to deny a defendant a trial by jury. In circumstances where the offence does not attract a penalty greater than 100 penalty units, the Committee makes no further comment in relation to this issue.

Confidential professional communication

The Committee is always concerned when an Act authorises the disclosure of information that is provided in confidence. The Committee is also concerned when an Act purports to provide blanket immunity with respect to an action undertaken with respect to civil and criminal wrongs, breach of contract and breach of duty of confidence. As such, the Committee refers this section to Parliament for its consideration.

Right to privacy

The Committee refers to Parliament whether the provision of customers' personal information to a retailer of last resort constitutes a breach of privacy.

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the national nature

of the scheme that the Bill seeks to implement and recognises the degree of flexibility that the commencement of the scheme will require. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

Application of law in another jurisdiction

The Committee will always seek to comment in circumstances where an Act seeks to vest legislative power in an alternative jurisdiction. However, the Committee notes the importance of National Law initiatives and the administrative convenience of National Law being provided in one Act with other jurisdictions applying that law. The Committee also notes that whilst the Bill adopts the South Australian law, this is subject to modifications outlined in Schedule 1. Consequently, the Committee makes no further comment in relation to this issue.

Conferral of power on bodies from another jurisdiction

The Committee is keen to comment in circumstances where a Bill has the effect of providing a Commonwealth body with power in the jurisdiction of New South Wales in circumstances where it would not otherwise have that power. However, as this Bill implements National Law, the Committee considers it appropriate that Commonwealth bodies with express powers in the agreed National Law be provided with the necessary access in New South Wales, and as such makes no further comment in relation to this issue.

Henry VIII clause

The Committee refers to Parliament its serious concern in relation to section 12 of the Bill which provides that Schedule 1 of the Bill may be amended by regulation. The Committee also refers to Parliament clause 11 of Schedule 1 to the Bill which outlines that the regulations may exempt any area or person from any or all of the provision of the National Energy Retail Law. The Committee considers this an inappropriate delegation of legislative power.

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

Exclusion of Subordinate Legislation Act 1989

The Committee is concerned when the operation of the *Subordinate Legislation Act 1989* is excluded, as this may have the effect of minimising the proper review of regulations made in New South Wales. However, in these circumstances the Committee notes the exhaustive, national process that has been undertaken with respect to the preparation of the National Energy Retail Law – which includes thorough public consultation. As such, the Committee makes no further comment in relation to this issue.

7. PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT
(PROCUREMENT OF GOODS AND SERVICES) BILL 2012

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

Commencement by proclamation

The Committee notes that the Bill delegates to the Government the power to commence the Act by proclamation. Given the nature of the administrative processes the Bill proposes, including the formation of the NSW Procurement Board, the Committee considers that in these circumstances there has been no inappropriate delegation of legislative powers.

Regulations

The Committee notes that the Bill enables further functions of the NSW Procurement Board and the details of an offence involving a term of imprisonment to be prescribed by the regulations. The Committee refers to Parliament whether this is an inappropriate delegation of legislative powers.

Part One - Bills

1. City of Sydney Amendment (Central Sydney Traffic and Transport Committee) Bill 2012

Date introduced	24 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon Donald Page MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *City of Sydney Act 1988* (the *Principal Act*) to establish a committee (the Central Sydney Traffic and Transport Committee or *CSTTC*) consisting of representatives of the State government and the Sydney City Council. The *CSTTC* is to provide for effective co-ordination of transport and traffic management in so much of the City of Sydney as comprises the Sydney Central Business District (the *Sydney CBD*), the boundaries of which are shown on the Central Sydney Traffic and Transport Committee Operational Area Map.
2. The Bill requires certain roads authorities to notify the *CSTTC* of decisions and actions they propose to take with respect to public roads and road related areas in the Sydney CBD that may have a substantial impact on transport and traffic, and certain parking authorities to notify the *CSTTC* of decisions and actions that may significantly alter the availability of on-street parking in the Sydney CBD. It gives the *CSTTC* broad powers to direct roads authorities and parking authorities to vary, defer or not undertake road work or traffic control work or vary, defer or not establish or operate parking schemes, respectively.
3. The Bill also requires the Central Sydney Planning Committee to consult with the *CSTTC* before the Planning Committee exercises a function under Part 4 of the *Principal Act* that will result in the making of a decision that will require, or that might reasonably be expected to require, the carrying out of road works or traffic control works in the Sydney CBD that are likely to have a significant impact on traffic and transport in the Sydney CBD.
4. In exercising its functions, the *CSTTC* is required to consider the potential impact of traffic and transport management decisions and actions on the future economic welfare and development of Sydney and the State and the efficient functioning of businesses, the maintenance of access for freight, the efficiency and traffic safety of the public transport network and the needs of commuters, residents, pedestrians and visitors in the whole or any part of the Sydney CBD.

BACKGROUND

5. In the second reading speech to the Bill, the Premier explained:

This bill amends the City of Sydney Act 1988 because the City of Sydney is unique and is not just another local government area... The bill seeks to establish the Central Sydney Traffic and Transport Committee to oversee and coordinate the management of traffic and transport in the Sydney central business district because of the impact that the Sydney central business district has on the State's economic activity and international competitiveness.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act (except for specified provisions that are to commence on a day or days to be appointed by proclamation).

Schedule 1 Amendment of City of Sydney Act 1988 No 48

8. Schedule 1 [6] inserts a new Part 4A (proposed sections 51A–51Q) into the Principal Act. The proposed Part 4A establishes the CSTTC and describes its membership, status, functions and powers.
9. Schedule 1 [7] inserts a new Schedule 2 into the Principal Act. It contains provisions relating to the membership and procedures of the CSTTC.
10. Schedule 1 [2] and [3] amend section 3 of the Principal Act to make it clear that proposed Part 4A prevails to the extent of any inconsistency over various Acts.
11. Schedule 1 [5] inserts proposed section 4A into the Principal Act to define Sydney CBD and provide for the map delineating that area to be amended or replaced.
12. Schedule 1 [1] and [4] contain consequential amendments to the Principal Act.

ISSUES CONSIDERED BY COMMITTEE

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

Protecting officials from liability

13. Schedule 1, clause 7 provides that 'No matter or thing done by the CSTTC, any member or any person acting under the direction of CSTTC, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects the member or person so acting personally to any action, liability, claim or demand.'

The Committee notes that the clause requires that any person acting under the direction of the CSTTC is only protected from liability to the extent to which they act in good faith and in accordance with relevant legislation. For this reason, the Committee does not make an adverse comment in relation to this issue.

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

Commencement by proclamation

14. Clause 1 of the Bill provides that 'so much of Schedule 1 [6] as inserts sections 51L, 51M and 51N into the City of Sydney Act 1988 commences on a day or days to be appointed by proclamation.' Sections 51L, 51M and 51N relate to the requirement for Sydney CBD road authorities to notify CSTTC of: proposals to carry out road work and traffic control work; certain parking schemes; and planning proposals having significant impact on traffic and transport in the Sydney CBD.

In this instance, the Committee can appreciate that appropriate administrative arrangements may need to take place prior to the commencement of these provisions and that it would not seem that the commencement by proclamation of these provisions is an inappropriate delegation of legislative power.

Matters which should be regarded by Parliament

15. The Bill provides that the *Sydney Business District* means the land shown on an Area Map, as presented to the Speaker when the Minister introduced the Bill. Clause 5 provides that 'the declaration that a map amends or replaces the Central Sydney Traffic and Transport Committee Operational Area Map is to be made by the regulations.'

As the extent of the land encompassing the Sydney Business District has a significant impact on the operation of the Bill, the Committee refers to Parliament whether allowing the map to be amended by regulation is an inappropriate delegation of legislative powers.

2. Energy Legislation Amendment (National Energy Retail Law) Bill 2012

Date introduced	23 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

- The object of this Bill is to amend the following Acts to make amendments consequential on the enactment of the proposed *National Energy Retail Law (Adoption) Act 2012* which applies, as a law of New South Wales, the National Energy Retail Law:
 - the *Electricity Supply Act 1995*,
 - the *Gas Supply Act 1996*,
 - the *National Electricity (New South Wales) Act 1997*,
 - the *National Gas (New South Wales) Act 2008*.
- This Bill is cognate with the *National Energy Retail Law (Adoption) Bill 2012*.

BACKGROUND

- In 2004, the Commonwealth, State and Territory governments entered into the Australian Energy Market Agreement. Revisions to the agreement made in 2006 underpin the 2012 Bills, which are the current and final component of the national energy retail market reforms.
- The new, national energy retail law will replace current State-based electricity and gas retail licensing with a national authorisation regime, administered by one regulator – the Australian Energy Regulator.
- This Bill makes consequential changes to existing New South Wales statutory instruments. The cognate Bill, *National Energy Retail Law (Adoption) Bill 2012*, applies the national energy retail law in New South Wales.
- These cognate Bills will establish a national uniform scheme for the regulation of electricity and gas retail markets in New South Wales. The Bills will give effect to the national energy market reform programme in this State. These reforms began under the Council of Australian Governments and aim to streamline regulatory requirements for energy retailers across the national energy market.

OUTLINE OF PROVISIONS

- 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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Electricity Supply Act 1995 No 94

Amendments relating to regulation of electricity retailers, distributors and customers by National Law

9. Schedule 1 [1] and [2] remove objects of the *Electricity Supply Act 1995* (the *Electricity Supply Act*) that relate to the retail market in electricity, as these matters are to be regulated under the *National Energy Retail Law (NSW)* (the *National Law*).
10. Schedule 1 [5] omits a provision conferring a right to connection to electricity distribution systems, as this is to be covered by the National Law.
11. Schedule 1 [7] and [8] make consequential amendments.
12. Schedule 1 [6] amends the provision enabling connection of small renewable energy generators to the network of a distribution network service provider so that it applies to regulated offer customers rather than small retail customers. Regulated offer customers under the National Law are the equivalent to the current category of small retail customers and are customers whose electricity tariffs are regulated by determinations of the Independent Pricing and Regulatory Tribunal (the *Tribunal*).
13. Schedule 1 [9], [11], [120] and [155] make consequential amendments.
14. Schedule 1 [13] re-enacts the effect of current section 34A (repealed by
15. Schedule 1 [22]), which requires credits to be paid for renewable energy to a customer who is generating electricity that is fed into the distribution network.
16. Schedule 1 [12] and [14] make consequential amendments.
17. Schedule 1 [16] omits a provision that imposes a licence condition relating to the provision of connection services, as this is to be covered by the National Law.
18. Schedule 1 [17] omits provisions relating to connection contracts, as this is to be covered by the National Law.
19. Schedule 1 [122] makes a consequential amendment.
20. Schedule 1 [19] omits a provision relating to contributions to distribution systems by customers, as this is to be covered by the National Law.
21. Schedule 1 [20] omits an unnecessary reference to a customer connection contract.
22. Schedule 1 [22] omits provisions relating to the retail supply of electricity, including supply contracts, as this is to be covered by the National Law. It also omits redundant provisions enabling retailers to recoup contributions to the Climate Change Fund from customers. Schedule 1 [21] and [158] make consequential amendments.
23. Schedule 1 [25] updates a note to refer to the obligation imposed under the National Law on retailers to comply with pricing determinations for regulated offer customers.

24. Schedule 1 [26], [27] and [71] replace references to “standard retail suppliers” with references to “regulated offer retailers” (to reflect the new terms in the National Law) in provisions relating to the Tribunal’s powers in determining regulated retail tariffs.
25. Schedule 1 [28], [49], [74], [98], [109], [113], [114] and [119] omit provisions imposing licence conditions on retailers, as licences and licence conditions for retailers will be dealt with by the National Law.
26. Schedule 1 [46] omits provisions enabling the Minister to make market operations rules about matters that will be covered by the National Law.
27. Schedule 1 [47] makes a consequential amendment.
28. Schedule 1 [51] omits a provision providing for the appointment of a metrology co-ordinator, as this is to be dealt with under the National Law.
29. Schedule 1 [52] omits provisions dealing with the marketing of electricity, as these matters will be dealt with under the National Law.
30. Schedule 1 [94] and [96] make consequential amendments.
31. Schedule 1 [59] omits provisions regulating the unlicensed retail supply of electricity, as this is to be dealt with under the National Law.
32. Schedule 1 [62] makes a consequential amendment.
33. Schedule 1 [64] and [67] remove references to licence endorsements, as the Electricity Supply Act will now only licence distribution network service providers. Such licences are not subject to endorsements.
34. Schedule 1 [76] omits provisions relating to the appointment of customer consultative committees by retailers, as this is to be dealt with under the National Law.
35. Schedule 1 [78] makes a consequential amendment.
36. Schedule 1 [77] removes the power of a customer consultative committee appointed by a distribution network service provider to advise on the form and content of customer connection contracts.
37. Schedule 1 [79] omits the provision that enables the determination of who is a small retail customer, as this is to be dealt with under the National Law.
38. Schedule 1 [81] omits a provision relating to internal reviews of complaints by small retail customers, as this is to be dealt with under the National Law.
39. Schedule 1 [84] makes a consequential amendment.
40. Schedule 1 [82] and [85] apply the energy ombudsman scheme to regulated offer customers and small customers under the National Law.
41. Schedule 1 [86] confers the right to apply to the energy ombudsman about an applicable complaint or dispute on small customers, regulated offer customers and retailers to whom gas is supplied or who supply gas.

42. Schedule 1 [87] revises the categories of matters that may be the subject of an approved energy ombudsman scheme. The new categories include matters under the National Law, disputes with exempt sellers under the National Law and other persons exempted from that Law, matters involving small customers and regulated retail customers in relation to the supply of electricity and gas and matters relating to regulated retail tariffs.
43. Schedule 1 [89]–[91], [95], [97] and [100] make consequential amendments.
44. Schedule 1 [93] updates the matters that the energy ombudsman is to report on under an approved energy ombudsman scheme.
45. Schedule 1 [101] makes it an offence for a retailer or exempt person to fail to comply with an applicable decision of the energy ombudsman.
46. Schedule 1 [111] omits a provision that requires the Tribunal to monitor compliance by retailers with certain licence conditions.
47. Schedule 1 [121] omits a provision that makes electricity supply arrangements unenforceable by a supplier unless authorised by a licence, as this is to be dealt with under the National Law.
48. Schedule 1 [106], [116] and [134] make consequential amendments.
49. Schedule 1 [124] omits provisions relating to retail price disclosure and competition, as this is to be dealt with under the National Law.
50. Schedule 1 [127] removes references to last resort arrangements, as these matters are to be dealt with under the National Law.
51. Schedule 1 [129] removes power to make regulations about matters that are covered under the National Law.
52. Schedule 1 [136] makes a consequential amendment.
53. Schedule 1 [130] enables regulations to be made with respect to distributor service standards for distributors and the enforcement of such standards.
54. Schedule 1 [132] enables regulations to be made with respect to the Government’s social programs for electricity.
55. Schedule 1 [140]–[146] omit provisions relating to the licensing of retail suppliers from the Schedule relating to licences.

Amendments related to interpretation

56. Schedule 1 [3] provides that words and expressions used in the Electricity Supply Act are to have the same meanings as they have in the National Law.
57. Schedule 1 [4], [10], [15], [32]–[44], [48], [50], [53], [55]–[58], [63], [80], [102], [103], [105], [107], [108], [110], [112], [115], [117], [118], [126], [133], [139] and [156] replace references to “retail suppliers” with references to “retailers” (the National Law term for retail suppliers of energy).

58. Schedule 1 [15], [18], [45], [54], [60], [92], [147]–[149], [154] and [163] update references.
59. Schedule 1 [83], [88], [99] and [131] update references to the electricity industry ombudsman scheme to reflect its new name, that is, the energy ombudsman scheme.
60. Schedule 1 [151] inserts a definition of *approved energy ombudsman scheme*.
61. Schedule 1 [152] and [161] update definitions to reflect changed terminology.
62. Schedule 1 [153] omits definitions that will no longer be required as a consequence of the proposed Act.
63. Schedule 1 [160] inserts a definition of *National Electricity Rules*.
64. Schedule 1 [162] inserts a definition of *regulated retail tariff*.

Amendments relating to auditing functions of Tribunal

65. Schedule 1 [65] replaces the Tribunal's current function of monitoring and reporting on retailers' compliance with licence conditions with a function of monitoring and reporting on the compliance of regulated offer retailers with their obligation to ensure that regulated offer prices for electricity comply with the determinations of the Tribunal.
66. Schedule 1 [66] omits provisions requiring the Tribunal to monitor and report on compliance by retailers with licence conditions relating to regulated retail tariffs.
67. Schedule 1 [70] and [73] make consequential amendments.
68. Schedule 1 [68] requires the Minister to provide the Tribunal with information relating to compliance with regulated offer obligations.
69. Schedule 1 [69] maintains the obligation of retailers to contribute to the cost of Tribunal audits.
70. Schedule 1 [72] maintains the obligation of retailers to provide information to the Tribunal for its audits.
71. Schedule 1 [75] replaces the Tribunal's current function of reporting annually to the Minister on retailers' compliance with licence conditions with a function of reporting on the compliance of regulated offer retailers with their obligation to ensure that regulated offer prices for electricity comply with the determinations of the Tribunal.

Other amendments

72. Schedule 1 [23], [24], [30], [31], [104], [123], [157] and [159] replace references to the *National Electricity Code* with references to the *National Electricity Rules*.
73. Schedule 1 [29] repeals provisions relating to the Electricity Tariff Equalisation Fund. Schedule 1 [125] makes a consequential amendment.
74. Schedule 1 [61] makes it clear that an order of the Local Court which permits disconnection or discontinuation of electricity supply after a finding that a person is guilty of electricity offences has effect despite any other law.

75. Schedule 1 [128] provides for the tabling of reports to Parliament, made under the Electricity Supply Act, at times when Parliament is not sitting.
76. Schedule 1 [135] removes references to provisions repealed by the proposed Act.
77. Schedule 1 [137] and [138] repeal spent provisions.
78. Schedule 1 [150] enables regulations containing savings and transitional provisions to be made consequent on the enactment of Acts amending the Electricity Supply Act and of the proposed *National Energy Retail Law (Adoption) Act 2012*.

Schedule 2 Amendment of Gas Supply Act 1996 No 38

Amendments relating to regulation of gas retailers, distributors and customers by National Law

79. Schedule 2 [1] amends the objects of the *Gas Supply Act 1996* (the *Gas Supply Act*) to remove a reference to customer choice in gas supply, as this is to be regulated under the National Law. Schedule 2 [2] omits a provision conferring duties on suppliers of gas, as this is to be covered by the National Law.
80. Schedule 2 [3] requires the Gas Supply Act to be construed in a way that is consistent with the National Law.
81. Schedule 2 [5] omits a prohibition on the supply of natural gas by means of a distribution pipeline without an authorisation under the Gas Supply Act. Suppliers are to be authorised under the National Law.
82. Schedule 2 [6], [8]–[12] and [55] make consequential amendments.
83. Schedule 2 [7] omits provisions relating to the effect of a supplier's authorisation.
84. Schedule 2 [13] makes it a condition of a gas reticulator's authorisation that the authorisation holder be a member of the energy ombudsman scheme established under the Electricity Supply Act and comply with the decisions of the energy ombudsman.
85. Schedule 2 [14] omits provisions that require the costs to the State of retail competition implementation in the gas industry to be taken into account in determining authorisation fees.
86. Schedule 2 [15] enables the Tribunal to make gas pricing orders for tariffs for regulated offers under regulated offer contracts. This reflects the new terms under the National Law. Currently, gas pricing orders relate to small retail customers under standard form customer supply contracts.
87. Schedule 2 [16], [17] and [19] make consequential amendments.
88. Schedule 2 [18], [32] and [43] omit provisions imposing conditions on authorisations for gas suppliers, as authorisations and conditions of authorisations for suppliers will be dealt with by the National Law.
89. Schedule 2 [21] provides that the provisions relating to regulated retail tariffs will cease to have effect on 30 June 2013 or on such earlier or later day as may be prescribed by

the regulations. This is consistent with the date provisions relating to regulated tariffs under the Electricity Supply Act will cease to have effect.

90. Schedule 2 [23] omits provisions relating to the authorisation of gas suppliers and the right to be supplied with gas, as this is to be covered by the National Law. The amendment also omits provisions relating to the gas industry ombudsman scheme, which is to be replaced by the energy ombudsman scheme as a result of amendments made to the Electricity Supply Act by the proposed Act.
91. Schedule 2 [22], [24], [25] and [53] make consequential amendments.
92. Schedule 2 [27] omits provisions enabling the making of market rules about supply agreements, the transfer of customers between suppliers and market activities, as these matters are to be dealt with by the National Law.
93. Schedule 2 [29] makes a consequential amendment.
94. Schedule 2 [31] provides that a market rule is not to be inconsistent with the National Law and the regulations made under that Law.
95. Schedule 2 [34] omits provisions dealing with the marketing of gas and ancillary matters, as this is to be dealt with under the National Law.
96. Schedule 2 [35] omits a provision excluding gas network operators from liability for supply failures, as this is to be dealt with under the National Law.
97. Schedule 2 [44] provides that regulations under the Gas Supply Act must not be inconsistent with the National Law and the regulations made under that Law.
98. Schedule 2 [45] omits regulation making powers relating to market participants and obligations as to the collection of information about customers, as this is to be dealt with under the National Law. The amendment also enables regulations to be made with respect to distributor service standards for distributors and the enforcement of such standards.
99. Schedule 2 [46] omits the regulation making power to prescribe procedures to be adopted by regulators and suppliers of gas for the resolution of customer complaints.
100. Schedule 2 [47] enables regulations to be made with respect to the Government's social programs for gas.
101. Schedule 2 [48] removes the power to make regulations about matters relating to the supply of gas by retailers, as this is to be covered under the National Law.

Amendments related to interpretation

102. Schedule 2 [4] provides that words and expressions used in the Gas Supply Act are to have the same meanings as they have in the National Law.
103. Schedule 2 [20], [28], [30], [33], [36], [38] and [39] replace references to "suppliers" with references to "retailers" (the National Law term for retail suppliers of energy).
104. Schedule 2 [26] removes an unnecessary definition.

105. Schedule 2 [52] omits definitions that will no longer be required as a consequence of the proposed Act.
106. Schedule 2 [54] updates a reference to the Department of Trade and Investment, Regional Infrastructure and Services.

Amendments relating to auditing functions of Tribunal

107. Schedule 2 [42] replaces the Tribunal's current function of reporting annually to the Minister on retailers' compliance with supplier authorisations under the Gas Supply Act with a function of monitoring and reporting on the compliance of regulated offer retailers with their obligation to ensure that regulated offer prices for gas comply with the determinations of the Tribunal. The amendment also provides for the tabling of the report to Parliament at times when Parliament is not sitting.
108. Schedule 2 [40] and [41] make consequential amendments.

Other amendments

109. Schedule 2 [37] makes it clear that an order of a court which permits disconnection or discontinuation of gas supply after a finding that a person is guilty of a gas offence has effect despite any other law.
110. Schedule 2 [49] and [50] omit provisions relating to previous amendments to Acts and instruments.
111. Schedule 2 [51] enables regulations containing savings and transitional provisions to be made consequent on the enactment of Acts amending the Gas Supply Act and of the proposed *National Energy Retail Law (Adoption) Act 2012*.

**Schedule 3 Amendment of National Electricity (New South Wales) Act 1997
No 20**

112. Schedule 3 [1] inserts proposed Part 2A. The proposed Part:
 - (a) enables regulations to be made by the Governor for purposes contemplated by the Act that applies the National Electricity Law to New South Wales, and
 - (b) enables the Australian Energy Regulator to make appointments and other decisions in anticipation of the commencement of the changes to the National Electricity Law on the commencement of the National Law, and
 - (c) excludes the application of an amendment made to the National Electricity Law so as to preserve the existing power of distributors to limit liability to small customers for electricity power failures (consistent with amendments made to the National Energy Retail Law).
113. Schedule 3 [2] inserts a general regulation-making power.
114. Schedule 3 [3] enables regulations containing savings and transitional provisions to be made as a consequence of the proposed Act and the proposed *National Energy Retail Law (Adoption) Act 2012*.

115. Schedule 3 [4] provides that the savings and transitional provisions of such regulations may have effect despite the *National Electricity Rules*.

Schedule 4 Amendment of National Gas (New South Wales) Act 2008 No 31

116. Schedule 4 [1] inserts proposed Part 3A. The proposed Part:
- (a) enables regulations to be made by the Governor for purposes contemplated by the Act that applies the National Gas Law to New South Wales, and
 - (b) enables the Australian Energy Regulator to make appointments and other decisions in anticipation of the commencement of the changes to the National Gas Law on the commencement of the National Law.
117. Schedule 4 [2] enables regulations containing savings and transitional provisions to be made as a consequence of the proposed Act and the proposed *National Energy Retail Law (Adoption) Act 2012* and also enacts a transitional provision.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

118. Section 2 of the Bill outlines that the Act will commence on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the national nature of the scheme that the Bill seeks to implement and recognises the degree of flexibility that the commencement of the scheme will require. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

3. Environmental Planning and Assessment Amendment (Demolition Orders) Bill 2012*

Date introduced	24 May 2012
House introduced	Legislative Assembly
Member	Ms Sonia Hornery MP
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979*:
 - (a) to enable a local council or other relevant consent authority to give an order to demolish or remove an unoccupied building if it is unsightly and significantly detracts from the amenity of the neighbourhood, and
 - (b) to provide that representations in relation to a proposed demolition order are to be made within the period of 10 working days following the date on which notice of the order is given, and
 - (c) to provide that a demolition order may specify a compliance period of not less than 10 working days.

BACKGROUND

2. Ms Sonia Hornery MP has identified buildings in the Newcastle CBD, including the Star Hotel site and the former Salvation Army building at Wallsend, noting that the *Environmental Planning and Assessment Act 1979* currently provides that a local council must wait until a building is considered dangerous before ordering its demolition.
3. The introduction of this Bill follows an election promise by Ms Hornery.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Schedule 1 amends the *Environmental Planning and Assessment Act 1979* to give effect to the object set out in the Purpose and Description above.

ISSUES CONSIDERED BY COMMITTEE

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

Property

7. Section 121B of the *Environmental Planning and Assessment Act 1979* provides councils with the power to order the demolition or removal of a building that was erected without consent or approval, is – or is likely to become – a danger to the public or so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood.
8. Clause 1 of Schedule 1 to the Bill seeks to include buildings that are unoccupied and unsightly and detracting significantly from the amenity of the neighbourhood as a ground for demolishing a building.
9. Clause 2 of Schedule 1 provides that an affected individual must be provided with at least 10 working days notice of such an order.

The Committee will always be concerned to comment in circumstances where an instrument of the state, such as a local council, is provided with the power to destroy private property. However, the Committee notes the inclusion of this ground is consistent with the existing grounds on which a local council may order the demolition of a building. Providing 10 working days notice to an affected individual of a demolition order introduces a new timeframe into the Act, and the Committee refers to Parliament whether this is a reasonable timeframe in the circumstances.

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

Ill and widely-defined power

10. As outlined above, clause 1 of Schedule 1 to the Bill seeks to include buildings that are unoccupied and unsightly and detracting significantly from the amenity of the neighbourhood as a ground for demolishing a building.

The Committee is concerned where a local council is given the power to order the demolition of an unoccupied building in circumstances where the local council itself determines whether the unoccupied building is unsightly and detracts significantly from the amenity of the neighbourhood. The Committee refers to Parliament whether providing a local council with the power to determine what is unsightly and detracting significantly from the amenity of the neighbourhood constitutes an ill and widely-defined power.

4. Health Services Amendment (National Health Reform Agreement) Bill 2012

Date introduced	23 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Health Services Act 1997* to make provision for the funding of health services in accordance with the National Health Reform Agreement between the Commonwealth and the States and Territories that was agreed to by the Council of Australian Governments on 2 August 2011.
2. Full text of the Agreement is available at the following link
http://www.coag.gov.au/docs/national_health_reform_agreement.pdf

BACKGROUND

3. This Bill implements a major component of the National Health Reform Agreement struck by the Council of Australian Governments in August 2011. It is intended that the Bill will establish the legislative framework for new national funding arrangements scheduled to commence on 1 July 2012.
4. This Agreement relates to the establishment of a single national health funding pool comprising separate State pool accounts; the payment of all Commonwealth and State activity-based funding for public hospitals into the pool; the establishment of a national system of activity-based funding; transparent accounting, reporting and auditing of pool accounts; the appointment of a single administrator; and other miscellaneous items.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Schedule 1 [5] inserts provisions relating to the National Health Funding Pool and Administration, which are set out in proposed Schedule 6A.
8. Part 1 of proposed Schedule 6A defines words and expressions used in the proposed Schedule and contains other interpretative provisions.
9. Proposed Part 2 establishes the office of Administrator of the National Health Funding Pool, provides for the appointment (and suspension and termination of appointment) of the Administrator, and provides for his or her functions.

10. Proposed Part 3 provides for the establishment of a State Pool Account and the payments into and from the Account under the National Health Reform Agreement. The State Pool Account, and the State Managed Fund, will be established by the Director-General of the Ministry of Health.
11. Proposed Part 4 provides for the financial management and reporting duties of the Administrator, auditing requirements and the exchange of information between the Administrator and the Minister for Health.
12. Proposed Part 5 disapplies certain NSW legislation and applies equivalent Commonwealth legislation to or in respect of the Administrator and contains other machinery provisions.
13. Schedule 1 [3] provides that the Minister is to have regard to the National Health Reform Agreement in determining the amount of subsidies paid from the Consolidated Fund to local health districts, statutory health corporations and affiliated health organisations under existing financial provisions of the *Health Services Act 1997*.
14. Schedule 1 [4] makes it clear that those provisions do not affect the operation of the provisions in proposed Schedule 6A that relate to health funding arrangements under the National Health Reform Agreement.
15. Schedule 1 [1], [2] and [6] are minor, consequential amendments.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy; Access to Information

16. Part 5 of the Bill provides that certain Acts otherwise applicable in NSW are to be excluded for functions undertaken by this Bill. These Acts include the *Government Information (Public Access) Act 2009*, the *Health Records and Information Privacy Act 2002* and the *Privacy and Personal Information Protection Act 1998*. In its place, the Bill provides that equivalent Commonwealth legislation is to cover the field, specifically, the *Freedom of Information Act 1982* and the *Privacy Act 1988*.
17. The Committee notes that the application of Commonwealth legislation with respect to privacy and the access to information may not be as rigorous in its protection of these rights compared with the equivalent NSW legislation that is to be excluded by this Bill. Similarly, the Committee recognises that equivalent Commonwealth legislation may actually strengthen these protections. The Committee has not compared the various legislation and does comment as to which legislation affords the greatest protection of personal rights. However, it is incumbent on the Committee to identify possible impacts on personal rights – especially if there is a possibility that protections are weakened – as a potential consequence of new legislation.
18. The Committee also appreciates that the nature of cooperative federalism will at times require Commonwealth legislation to take precedence over NSW legislation for operational purposes given the nationwide approach of the National Health Reform Agreement.

The Committee recognises that the application of Commonwealth legislation with respect to privacy and the access to information – to the exclusion of NSW legislation – may impact on these personal rights, although the Committee does not comment as to whether these rights are weakened, strengthened or if there is no material difference. The Committee also recognises the nature of cooperative federalism will at times require Commonwealth legislation to take precedence over NSW legislation for operational purposes. The Committee makes no further comment.

5. Inspector of Custodial Services Bill 2012

Date introduced	23 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to provide for the appointment of an Inspector of Custodial Services and confer on that Inspector functions relating to the inspection and review of custodial centres and custodial services, and
 - (b) to make a number of miscellaneous amendments of a minor or consequential nature to other Acts and regulations.

BACKGROUND

2. The Inspector-General of Corrective Services was dissolved in 2003 after the then Government accepted recommendations of a five-year statutory review of the office. The review stated that there were significant duplications of work done by the Inspector-General and the Ombudsman as both organisations dealt with complaints by correctional inmates.
3. In June 2009, the Legislative Council General Purpose Standing Committee No. 3 published its report of the inquiry in the privatisation of prisons and prison-related services. The report highlighted that the inspectorate of corrections was essentially part of Corrective Services and therefore would not be seen as having the independence required to perform its duties.
4. The Committee noted that the establishment of independent prison inspectors in a number of other jurisdictions and recommended that the position of a New South Wales Inspector-General of Prisons be reinstated to report on both public and private prisons.
5. The Committee also recommended that a prisons oversight committee be established with similar powers to the Committees of the Independent Commission Against Corruption and the Police Integrity Commission.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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

8. Clause 3 defines certain words and expressions used in the proposed Act. Amongst others, the provision provides for the following principal definitions for the purposes of the proposed Act:

custodial centre means the following:

- (a) correctional centre (including a juvenile correctional centre, a managed correctional centre and a periodic detention centre),
- (b) a residential facility,
- (c) a transitional centre,
- (d) a juvenile justice centre,

but does not include any police station or court cell complex that is not managed by Corrective Services NSW or Juvenile Justice.

custodial service means the following:

- (a) the management, direction, control or security of a custodial centre,
- (b) the security, management, control, safety, care or welfare (including health care) of persons in custody, detained or residing at a custodial centre,
- (c) the transport of persons in custody or otherwise detained to or from a custodial centre by or on behalf of Corrective Services NSW or Juvenile Justice,

but does not include any function of, or service provided by, the NSW Police Force, the Serious Offenders Review Council, the Serious Young Offenders Review Panel or the State Parole Authority.

9. The proposed section also provides that certain terms used in the proposed Act have the same meanings as in the *Crimes (Administration of Sentences) Act 1999*, except in so far as they are defined differently in the proposed Act or the context or subject-matter otherwise indicates or requires.

Part 2 Inspector of Custodial Services

Division 1 Appointment and staff of Inspector of Custodial Services

10. Clause 4 provides for the appointment of an Inspector of Custodial Services (the Inspector) and that the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the *Ombudsman Act 1974* may veto the appointment of a person as the Inspector.
11. Clause 5 provides for the employment and engagement of staff to assist the Inspector.

Division 2 Functions and powers of Inspector of Custodial Services

12. Clause 6 specifies certain principal functions of the Inspector. In general the Inspector is responsible primarily for inspecting, examining and reviewing, and making

recommendations on, custodial services (including the management of the custodial centres). More specifically, the Inspector has the following functions:

- (a) to inspect each custodial centre (other than juvenile justice centres and juvenile correctional centres) at least once every 5 years,
 - (b) to inspect each juvenile justice centre and juvenile correctional centre at least once every 3 years,
 - (c) to examine and review any custodial service at any time,
 - (d) to report to Parliament on each such inspection, examination or review,
 - (e) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interest of any person or in the public interest to do so,
 - (f) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if requested to do so by the Minister,
 - (g) to include in any report such advice or recommendations as the Inspector thinks appropriate (including advice or recommendations relating to the efficiency, economy and proper administration of custodial centres and custodial services),
 - (h) to oversee Official Visitor programs conducted within correctional centres and juvenile justice centres,
 - (i) to advise, train and assist Official Visitors in the exercise of their functions,
 - (j) such other functions as may be conferred or imposed on the Inspector under the proposed Act or any other Act.
13. Clause 7 sets out certain powers of the Inspector. The proposed section provides that the Inspector in the exercise of the Inspector's functions:
- (a) is entitled to full access to the records of any custodial centre (including health records) and may make copies of, or take extracts from, those records and may remove and retain those copies or extracts, and
 - (b) may visit and examine any custodial centre at any time the Inspector thinks fit, and
 - (c) may require custodial centre staff members to supply information or produce documents or other things relating to any matter, or any class or kind of matters, concerning a custodial centre's operations, and
 - (d) may require custodial centre staff members to attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations, and
 - (e) may refer matters relating to a custodial centre to other appropriate agencies for consideration or action, and

(f) is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.

14. Clause 8 provides that the Inspector also has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions.

Division 3 Relationship of Inspector with other agencies

15. Clause 9 provides that the Inspector may enter into arrangements with the Director-General of the Department of Attorney General and Justice regarding the exercise of the Inspector's functions in relation to Corrective Services NSW and Juvenile Justice. The clause also provides that the Inspector may enter into such arrangements with the Chief Executive of the Justice and Forensic Mental Health Network regarding the exercise of the Inspector's functions in relation to that Network.
16. Clause 10 provides that the Inspector may enter into arrangements with the Ombudsman as to the investigation of complaints and certain other matters that could be the subject of a complaint under the Ombudsman Act 1974.
17. Clause 11 provides that the Inspector must report to the Independent Commission Against Corruption any matter concerning corrupt conduct. The Inspector may enter into arrangements with the Commission for the handling of matters that involve possible misconduct.

Division 4 Reports by Inspector

18. Clause 12 requires the Inspector to make annual reports to Parliament of the Inspector's operations within 4 months after 30 June of each year. Those reports must include a description of the Inspector's activities during that year, an evaluation of the response of relevant authorities to the Inspector's recommendations and any recommendations for changes in the laws of the State or for administrative action that the Inspector considers should be made.
19. Clause 13 provides that all other reports of the Inspector under the proposed Act to Parliament are to be provided to the Presiding Officer of each House of Parliament.
20. Clause 14 requires the Inspector to provide the Minister with a draft of each of the Inspector's reports to Parliament, and to provide Government Divisions and other persons criticised in a draft report with a draft, before it is furnished to the Presiding Officers. The Minister, the Division Head and person concerned are to be given a reasonable opportunity to make submissions on the draft report, but the Inspector is not bound to make any changes to the draft report because of any such submission.
21. Clause 15 provides that the Inspector must not disclose information in a report to Parliament if there is an overriding public interest against disclosure of the information. A similar balancing test to that set out in the *Government Information (Public Access) Act 2009* is provided for. The proposed section provides that there are public interest considerations against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) prejudice the supervision of, or facilitate the escape of, any person in lawful custody or detention,
 - (b) prejudice the security, discipline or good order of any custodial centre,
 - (c) prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth),
 - (d) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,
 - (e) identify or allow the identification of a person who is or was detained at a juvenile justice centre or in custody in a juvenile correctional centre,
 - (f) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person who is in custody, detained or residing at a custodial centre (including but not limited to systems or procedures to protect witnesses and other persons who may be separated from other persons at the centre for their safety),
 - (g) identify or allow the identification of a custodial centre staff member or endanger, or prejudice any system or procedure for protecting, the life, health or safety of such a staff member.
22. The fact that disclosure of information might cause embarrassment to, or a loss of confidence in, the Government or that disclosure of information might be misinterpreted or misunderstood by any person is irrelevant and must not be taken into account.
23. Clause 16 provides for a copy of a report furnished to the Presiding Officers to be laid before each House of Parliament. If the report includes a recommendation that the report be made public immediately, the Presiding Officer may make it public whether or not the House is in session and whether or not the report has been laid before the House. Such publicised reports attract the same privileges and immunities as if they had been laid before the House.

Part 3 Parliamentary Joint Committee

24. Clause 17 confers functions on the Committee on the Office of the Ombudsman and the Police Integrity Commission constituted under the *Ombudsman Act 1974* including the function of monitoring and reviewing the exercise by the Inspector of the Inspector's functions.
25. Clause 18 provides that the Minister is to refer a proposal to appoint a person as Inspector to that Parliamentary Joint Committee and that Committee is empowered to veto the proposed appointment. The Parliamentary Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

Part 4 Miscellaneous

26. Clause 19 creates offences relating to the obstruction of the Inspector, including:

- (a) without reasonable excuse, wilfully obstructing, hindering, resisting or threatening the Inspector or a member of staff of the Inspector, or
 - (b) without reasonable excuse, refusing or wilfully failing to comply with any lawful requirement of the Inspector or a member of staff of the Inspector, or
 - (c) wilfully making any false statement to or misleading, or attempting to mislead, the Inspector or a member of staff of the Inspector.
27. The offences are to carry a maximum penalty of 50 penalty units or imprisonment for 12 months, or both.
28. Clause 20 makes it an offence for a person to take or threaten to take detrimental action against another person for providing, or proposing to provide, information, documents or evidence to the Inspector or a member of staff of the Inspector. The offence carries a maximum penalty of 50 penalty units or imprisonment for 12 months, or both.
29. Clause 21 provides that the Inspector or member of staff of the Inspector may, in another State or Territory, exercise functions under the law of the other State or Territory. Such an exercise of functions is to be in accordance with arrangements between the Minister and the relevant Minister of the other State or Territory.
30. Clause 22 provides that the Inspector, a member of staff of the Inspector or a person acting under the Inspector's direction is not personally liable for actions done in good faith for the purposes of executing the proposed Act or any other Act.
31. Clause 23 provides for the delegation of the Inspector's functions.
32. Clause 24 provides that proceedings for an offence under the proposed Act or the regulations may be dealt with summarily before the Local Court.
33. Clause 25 restricts the disclosure of information obtained in connection with the administration or execution of the proposed Act (or any other Act conferring or imposing functions on the Inspector).
34. Clause 26 enables the Inspector and the Ombudsman to share information obtained in discharging their functions. However, information may not be disclosed under the proposed section if it could not otherwise be disclosed or obtained by the Inspector or Ombudsman under their respective legislation.
35. Clause 27 enables the Governor to make regulations for the purposes of the proposed Act.
36. Clause 28 provides for the review of the proposed Act 5 years after its commencement.

Schedule 1 Provisions relating to Inspector

37. Schedule 1 contains provisions relating to the appointment, term of office, vacation of office and remuneration of the Inspector. Provisions are included to enable the appointment of the Inspector on a full-time or part-time basis.

Schedule 2 Savings, transitional and other provisions

38. Schedule 2 enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act or any Act that amends the proposed Act.

Schedule 3 Amendment of Acts and regulations

39. Schedule 3 makes consequential amendments to the Acts and regulations specified in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Right to Privacy

40. Clause 7 provides the Inspector with access to any records of any custodial centre (including health records). The clause also permits the Inspector to make copies or extracts of those records.

The Committee will always be concerned when a person is given unfettered access to another person's health records. However, the Committee understands that such a breach of privacy with respect to a person in custody at a correctional service may be necessary to enable the Inspector to perform their work, which effectively protects rights and liberties of all people in custody. Given the outcome, the Committee does not consider this to be an undue trespass on personal rights and liberties.

Protecting officials from liability

41. Clause 22 of the Bill has the effect of providing the Inspector, a member of staff of the Inspector or a person acting under the direction of the Inspector with immunity from civil action, if their actions or omissions were made in good faith and for the purposes of executing this or any other Act.

The Committee will always seek to comment when a provision has the effect of limiting an individual's right to seek redress for civil wrongs in the common law division of the Courts. The Committee notes that the immunity only exists in relation to acts or omissions done in good faith in performing statutory requirements and as such does not make an adverse comment with respect to this issue.

Right to Silence

42. Clause 7 of the Bill empowers the Inspector to require custodial centre staff to attend before the Inspector to answer questions or produce documents or other things relating to the operations of the custodial centre.

The Committee will always be concerned when a person is compelled by a government official to answer questions that may be incriminating. However, the Committee understands that this clause only requires employees or officers to appear before the Inspector to answer questions but does not compel

employees or officers to provide answers to those questions. Therefore, the Committee makes no adverse comments in relation to this issue.

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

Commencement by proclamation

43. Clause 2 states that the Act commences on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the delay in commencement is to allow for the significant administrative arrangements to be put in place in order to establish the inspectorate. As such, the Committee does not consider there to be an inappropriate delegation of legislative power in this instance.

Inappropriate delegation of power

44. Clause 23 provides that the Inspector may delegate the exercise of any function of the Inspector contained in the Act (except for the power to delegate) to any member of the staff of the Inspector or any person, or any class of persons authorised for the purposes of this section by the regulations.
45. Given the significant powers to be created and conferred by this legislation, the Committee is concerned that the power of delegation is wide and ill-defined, and may constitute an inappropriate delegation of power.

The Committee is concerned that the delegation powers contained in this Bill may be too wide and ill-defined, and refers to Parliament its concerns.

6. National Energy Retail Law (Adoption) Bill 2012

Date introduced	23 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill is to apply as a law of this State the National Energy Retail Law which is contained in a Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia. The enactment of this Bill is part of a uniform scheme of legislation applying that Law (which relates to the supply of energy to customers by retailers and distributors) in the States and the Australian Capital Territory (*participating jurisdictions*).
2. The National Energy Retail Law scheme provides for the following matters:
 - (a) the regulation of the supply of energy by retailers to customers,
 - (b) the provision of information about contractual and pricing options for energy supply,
 - (c) the authorisation of retailers to supply energy,
 - (d) the regulation of contracts relating to the provision of connection services by energy distributors,
 - (e) an exempt seller and a retailer of last resort scheme,
 - (f) small compensation claims,
 - (g) rules and regulations for the further implementation of the scheme,
 - (h) compliance and enforcement of the scheme.
3. National regulations supporting the National Energy Retail Law are to be made by the Governor of South Australia and are to be adopted by each participating jurisdiction. National Energy Retail Rules are to be made under the National Energy Retail Law and will apply in the participating jurisdictions. The National Energy Retail Law provides for specified enforcement, licensing and other functions to be carried out by the Australian Energy Market Commission and the Australian Competition Tribunal and the Australian Energy Regulator (the *AER*) rather than by State-based agencies.
4. The National Energy Retail Law, as applied by this Bill in New South Wales, will replace provisions of the *Electricity Supply Act 1995* and the *Gas Supply Act 1996*, and

instruments made under those Acts, that currently regulate retail suppliers of energy and connections to distribution networks for energy.

5. This Bill is cognate with the *Energy Legislation Amendment (National Energy Retail Law) Bill 2012*.

BACKGROUND

6. In 2004, the Commonwealth, State and Territory governments entered into the Australian Energy Market Agreement. Revisions to the agreement made in 2006 underpin the 2012 Bills, which are the current and final component of the national energy retail market reforms.
7. The new, national energy retail law will replace current State-based electricity and gas retail licensing with a national authorisation regime, administered by one regulator – the Australian Energy Regulator.
8. This adoption Bill applies the national energy retail law in New South Wales. The cognate Bill, the *Energy Legislation Amendment (National Energy Retail Law) Bill 2012*, makes consequential changes to existing New South Wales statutory instruments.
9. These cognate Bills will establish a national uniform scheme for the regulation of electricity and gas retail markets in New South Wales. The Bills will give effect to the national energy market reform programme in this State. These reforms began under the Council of Australian Governments and aim to streamline regulatory requirements for energy retailers across the national energy market.

OUTLINE OF PROVISIONS

Part 1 Preliminary

10. Clause 1 sets out the name (also called the short title) of the proposed Act.
11. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. Different days may be appointed for the commencement of different provisions of the National Energy Retail Law.
12. Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Application of National Energy Retail Law

13. Clause 4 applies the National Energy Retail Law as a law of this jurisdiction, to be called the *National Energy Retail Law (NSW)*, with the modifications set out in Schedule 1 to the proposed Act.
14. Clause 5 applies the National Energy Retail Regulations as regulations in force for the purposes of the *National Energy Retail Law (NSW)*, with the modifications prescribed by regulations made under the proposed Act.
15. Clause 6 defines certain words and expressions used in the *National Energy Retail Law (NSW)*.
16. Clause 7 excludes the operation of the *Interpretation Act 1987* and the *Subordinate Legislation Act 1989*, and South Australian interpretation legislation, from applying to

the applied provisions and instruments made under the applied provisions. This does not affect local regulations made under the proposed Act.

Part 3 Related matters

17. Clause 8 confers functions and powers in this jurisdiction on a Commonwealth body if they are conferred under the national energy retail legislation of another jurisdiction.
18. Clause 9 extends to the proposed Act the provision of the National Energy Retail Law that reads down provisions so as to save their validity.
19. Clause 10 saves instruments or decisions made by the AER before the commencement of the *National Energy Retail Law (NSW)* in preparation for that commencement that would have been valid if made on or after that commencement.
20. Clause 11 saves actions done by the AER before the commencement of the *National Energy Retail Law (NSW)* in preparation for that commencement that would have been valid if made on or after that commencement.

Part 4 Miscellaneous

21. Clause 12 enables the Governor to make regulations for the purposes of the proposed Act. In particular, the regulations may amend the Schedule of modifications to the National Energy Retail Law and modify the National Energy Retail Regulations and the operation of the National Energy Retail Rules for the purposes of this jurisdiction.
22. Clause 13 enables regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act and its cognate Act.
23. Clause 14 authorises the Independent Pricing and Regulatory Tribunal to provide the AER with information and assistance for the purposes of the *National Energy Retail Law (NSW)*.

Schedule 1 New South Wales changes and additions to National Energy Retail Law

24. Schedule 1 contains amendments to the National Energy Retail Law for the purposes of its application in New South Wales. The Schedule modifies that Law as follows:
 - (a) the consumption threshold for determining who is to be treated as a small customer under that Law (and therefore subject to additional protections) is to be determined under local regulations,
 - (b) the Law is only to apply to customers whose premises are connected, or are to be connected, to the interconnected national electricity system under the Law and local regulations may provide for exemptions from any or all provisions of the Law,
 - (c) a new category of *regulated offer customer*, being a customer who is entitled to be offered electricity at the prices determined or agreed by IPART for electricity and gas (*regulated offer prices*) and in accordance with a standard retail contract, is to be created in tandem with the category of small customer (entitled to retailers' standing offer prices) established by that Law,

- (d) price comparator and pricing information guidelines under that Law are to apply in respect of regulated offer prices and those prices are to be used in determining prices charged by retailers of last resort,
- (e) provisions relating to small market offer customers and to the small compensation claims regime will not apply in New South Wales,
- (f) the AER will have power to monitor compliance by retailers and exempt sellers with decisions of the energy ombudsman under New South Wales energy legislation,
- (g) distributors will be able to vary the limitations on their liability for failure to supply energy under contracts with small customers in accordance with the regulations.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

25. Section 10 of the Bill outlines that in circumstances where a decision or instrument was made before the application of the Act in New South Wales, but in circumstances where it would have been applied if the Bill had commenced in New South Wales, then such a decision or instrument it to be taken as valid. However, the decision or instrument is only taken to be valid from the time of application.

Whilst the Committee is concerned when retrospective clauses are included in legislation, the Committee notes that the particular effect of this clause is to validate a decision or instrument that may have been made before the application of the new law, but does not have the effect of validity until after the law has commenced. As such, the Committee does not make any further comment in relation to this issue.

26. Subsection 13(2) of the Bill outlines that regulations may take effect from the date of assent to the Act. Section 2 of the Bill outlines that the Act commences upon proclamation.

The Committee is concerned when a regulation may be made to take effect from a date prior to the commencement of the Act and prior to the making of the regulation. The Committee notes that subsection 13(3) of the Bill outlines that such a regulation may not affect a person prejudicially or impose liabilities on someone, and as such does not make a further comment with respect to this issue.

Fair trial

27. Section 12 of the Bill outlines that the regulations may create offences punishable by a penalty not exceeding 100 penalty units, and that such offences are summary offences.

The Committee notes that the effect of creating summary offences is to deny a defendant a trial by jury. In circumstances where the offence does not attract a penalty greater than 100 penalty units, the Committee makes no further comment in relation to this issue.

Confidential professional communication

28. Section 14 of the Bill outlines that the Independent Pricing and Regulatory Tribunal (IPART) may authorise the disclosure of information provided by IPART to the Australian Energy Regulator even if the information was given to IPART in confidence. This section also outlines that when IPART provides document under section 14 this cannot be considered a breach of an Act of another law, a breach of contract, agreement understanding or undertaking, a breach of duty of confidence, or constitute a civil or criminal wrong.

The Committee is always concerned when an Act authorises the disclosure of information that is provided in confidence. The Committee is also concerned when an Act purports to provide blanket immunity with respect to an action undertaken with respect to civil and criminal wrongs, breach of contract and breach of duty of confidence. As such, the Committee refers this section to Parliament for its consideration.

Right to privacy

29. Clause 154 requires that a failed retailer provide certain information to a retailer of last resort (RoLR) by way of a RoLR notice. The information that may be required includes the names and details of the customers of a failed retailer and their financial details (method of payment and direct debit details) as well as the details of any pension, health or social security payments, rebates or concessions of such customers.
30. The Committee understands that such details may be necessary in order for the retailer of last resort to be able to continue to provide electricity to the customer and the Committee notes that clause 169 requires that all customer retail contracts must include a notice explaining what will happen if a RoLR event occurs. However the Committee is concerned that personal details of a customer are provided to a third party without the customer's express consent.

The Committee refers to Parliament whether the provision of customers' personal information to a retailer of last resort constitutes a breach of privacy.

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

Commencement by proclamation

31. Section 2 of the Bill outlines that the Act will commence on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the national nature of the scheme that the Bill seeks to implement and recognises the degree of flexibility that the commencement of the scheme will require. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

Application of law in another jurisdiction

32. Sections 4 and 5 of the Bill outline that the National Energy Law, as provided for in the South Australian Act and Regulations (the *National Energy Retail Law (South Australia)*)

Act 2011), applies as a law of the State of New South Wales and applies as if it were an Act.

The Committee will always seek to comment in circumstances where an Act seeks to vest legislative power in an alternative jurisdiction. However, the Committee notes the importance of National Law initiatives and the administrative convenience of National Law being provided in one Act with other jurisdictions applying that law. The Committee also notes that whilst the Bill adopts the South Australian law, this is subject to modifications outlined in Schedule 1. Consequently, the Committee makes no further comment in relation to this issue.

Conferral of power on bodies from another jurisdiction

33. Section 8 of the Bill outlines that a Commonwealth body has the power to do acts in or in relation to New South Wales in the performance or exercise of a function or power express to be conferred on that body.
34. Clause 25 of Schedule 1 to the Bill has the effect of providing the Australian Energy Regulator with a function of monitoring compliance by retailers and exempt sellers with the provisions of a New South Wales Act and Regulations.

The Committee is keen to comment in circumstances where a Bill has the effect of providing a Commonwealth body with power in the jurisdiction of New South Wales in circumstances where it would not otherwise have that power. However, as this Bill implements National Law, the Committee considers it appropriate that Commonwealth bodies with express powers in the agreed National Law be provided with the necessary access in New South Wales, and as such makes no further comment in relation to this issue.

Henry VIII clause

35. Section 12 of the Bill outlines that regulations may amend Schedule 1 of the Bill. Schedule 1 of the Bill outlines the changes and additions that New South Wales makes to the National Energy Retail Law.
36. Clause 11 of Schedule 1 to the Bill outlines that the NSW regulations may exempt any area or person from any or all of the provisions of the National Energy Retail Law.

The Committee refers to Parliament its serious concern in relation to section 12 of the Bill which provides that Schedule 1 of the Bill may be amended by regulation. The Committee also refers to Parliament clause 11 of Schedule 1 to the Bill which outlines that the regulations may exempt any area or person from any or all of the provision of the National Energy Retail Law. The Committee considers this an inappropriate delegation of legislative power.

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

Exclusion of Subordinate Legislation Act 1989

37. Section 7 of the Bill excludes the operation of the *Subordinate Legislation Act 1989*. As the *Subordinate Legislation Act 1989* provides for scrutiny by a parliamentary committee, being the Legislation Review Committee, with respect to regulations, this

may have the effect of limiting parliamentary scrutiny with respect to regulations made with respect to the National Energy Retail Law.

The Committee is concerned when the operation of the *Subordinate Legislation Act 1989* is excluded, as this may have the effect of minimising the proper review of regulations made in New South Wales. However, in these circumstances the Committee notes the exhaustive, national process that has been undertaken with respect to the preparation of the National Energy Retail Law – which includes thorough public consultation. As such, the Committee makes no further comment in relation to this issue.

7. Public Sector Employment and Management Amendment (Procurement of Goods and Services) Bill 2012

Date introduced	23 May 2012
House introduced	Legislative Council
Minister responsible	The Hon Gregory Pearce MLC
Portfolio	Finance and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to establish a new scheme for the procurement of goods and services by and for government agencies in New South Wales. The Bill abolishes the State Contracts Control Board and establishes the NSW Procurement Board (the Board). The Board will oversee procurement across all government agencies, which includes Government departments, statutory bodies and certain other public authorities. The new scheme applies to the procurement of goods and services by and for government agencies, including goods and services required by government agencies to exercise statutory functions, and also to procurement carried out pursuant to statutory powers of procurement. Under the new scheme, a government agency will, subject to accreditation by the Board and Board directions, be able to procure goods and services for the agency or for other agencies.
2. The Bill also repeals the *Public Sector Employment and Management (Goods and Services) Regulation 2010* and makes consequential amendments to the *Public Sector Employment and Management Regulation 2009* and other legislation.

BACKGROUND

3. The *Public Sector Employment and Management Amendment (Procurement of Goods and Services) Bill 2012* forms part of the Government's reforms to the system for purchasing goods and services. Following consultation on a discussion paper released seeking comment on a new operating model for government procurement, this Bill implements part of the procurement reforms.

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 Public Sector Employment and Management Act 2002

6. Schedule 1 [2] omits Parts 7.1 and 7.2 of Chapter 7 of the *Public Sector Employment and Management Act 2002* (the principal Act) and inserts new Parts 7.1–7.4.

7. Proposed Part 7.1 defines words and expressions used in proposed Chapter 7. A government agency is defined to mean any of the following:
 - (c) a public sector agency (within the meaning of the principal Act),
 - (d) a NSW Government agency,
 - (e) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation),
 - (f) any State owned corporation prescribed by the regulations.
8. Procurement of goods and services is defined to mean the process of acquiring goods and services by:
 - (a) identifying the need to purchase goods and services, and
 - (b) selecting suppliers for goods and services, and
 - (c) contracting and placing orders for goods and services, and includes the disposal of goods that are unserviceable or no longer required.
9. The proposed Chapter will apply to the procurement of goods and services by or for a government agency, which includes:
 - (d) the procurement of goods and services required by a government agency to exercise its statutory functions, and
 - (e) the procurement of goods and services by a government agency pursuant to the agency's specific powers of procurement.
10. The proposed Chapter will not apply to procurement by or for a local council or other local authority or the Parliament of New South Wales.
11. Proposed Part 7.2 establishes the Board as a NSW Government agency. The Board will consist of the Director-General of the Department of Finance and Services (the Chairperson) and the Division Heads of at least 6 of the Divisions of the Government Service specified in Division 1 of Part 1 of Schedule 1 to the principal Act, being the Divisions determined by the Minister for Finance and Services (the Minister) from time to time. The Board will be subject to the direction and control of the Minister in the exercise of its functions and will be able to establish subcommittees and advisory groups to assist the Board. Schedule 1 [4] inserts provisions relating to the members and procedure of the Board.
12. Proposed Part 7.3 sets out the objectives and functions of the Board. The objectives of the Board are as follows:
 - (f) to develop and implement a Government-wide strategic approach to procurement,
 - (g) to ensure best value for money in the procurement of goods and services by and for government agencies,

- (h) to improve competition and facilitate access to Government procurement business by the private sector, especially by small and medium enterprises and regional enterprises,
 - (i) to reduce administrative costs for government agencies associated with procurement,
 - (j) to simplify procurement processes while ensuring probity and fairness.
13. The Board will have the following functions:
- (k) to oversee the procurement of goods and services by and for government agencies,
 - (l) to develop and implement procurement policies,
 - (m) to issue directions to government agencies,
 - (n) to monitor compliance by government agencies with the requirements of the proposed Chapter (including Board directions),
 - (o) to investigate and deal with complaints about the procurement activities of government agencies,
 - (p) to develop appropriate procurement and business intelligence systems for use by government agencies,
 - (q) to collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies,
 - (r) such other functions as are conferred or imposed on the Board by or under the principal Act or any other Act.
14. Proposed Part 7.4 sets out the new procurement scheme. The Board may establish a scheme under which government agencies accredited by the Board may procure goods and services for that agency or for other government agencies, subject to any terms and conditions of its accreditation. Government agencies may also be authorised by the Board to carry out specified procurement of goods and services without Board accreditation. The Board will be able to issue directions to government agencies regarding the procurement of goods and services by and for government agencies. Government agencies will be obliged to exercise procurement functions in accordance with any applicable Board policies and directions, the terms of any Board accreditation and the principles of probity and fairness.
15. Schedule 1 [1] substitutes the heading to Chapter 7 of the principal Act to reflect the new procurement scheme.
16. Schedule 1 [3] omits Part 7.3 (Competitive neutrality in tendering) and transfers the provisions of that Part to Schedule 1 to the *Public Sector Employment and Management Regulation 2009*.
17. Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
18. Schedule 1 [6] contains savings and transitional provisions.

Schedule 2 Amendment of Public Sector Employment and Management Regulation 2009

19. Schedule 2 [1] inserts provisions from the *Public Sector Employment and Management (Goods and Services) Regulation 2010* (which is repealed by Schedule 3.5 to the proposed Act) into the *Public Sector Employment and Management Regulation 2009*, including provisions that deal with the following matters:
- (s) the procurement of goods and services in emergencies,
 - (t) the supply of goods and services by approved disability employment organisations, (u) agreements between the Board and public bodies (that are not government agencies and not covered by the procurement arrangements in proposed Chapter 7 of the principal Act) relating to the procurement of goods and services for or by those bodies.
20. Schedule 2 [2]–[6] are minor amendments consequent on the transfer of Part 7.3 (Competitive neutrality in tendering) of the principal Act to the *Public Sector Employment and Management Regulation 2009*.

Schedule 3 Consequential amendments to other legislation

21. Schedule 3.1–3.4 make amendments to the following legislation as a consequence of the abolition of the State Contracts Control Board and establishment of the NSW Procurement Board:
- (v) *Government Information (Public Access) Act 2009*,
 - (w) *Government Information (Public Access) Regulation 2009*,
 - (x) *Independent Pricing and Regulatory Tribunal Act 1992*,
 - (y) *Local Government Act 1993*.
22. Schedule 3.5 repeals the *Public Sector Employment and Management (Goods and Services) Regulation 2010*.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

23. The Bill provides that the Act commences on a day or days to be appointed by proclamation which delegates to the Government the power to commence the Act on a day or days of its choosing.

The Committee notes that the Bill delegates to the Government the power to commence the Act by proclamation. Given the nature of the administrative processes the Bill proposes, including the formation of the NSW Procurement Board, the Committee considers that in these circumstances there has been no inappropriate delegation of legislative powers.

Regulations

24. Proposed section 146 provides that the regulations may make further provision for and with respect to the NSW Procurement Board's functions of ensuring compliance with competitive neutrality principles. The section also makes it an offence, with a maximum penalty of 100 penalty units or 6 months imprisonment, if a person contravenes a provision of the regulations made under the section.
25. Clause [3] of the Bill also removes Part 7.3 the *Public Sector Employment and Management Act 2002* and transfers it to the regulations. Part 7.3 of the Act provides the current State Contracts Control Board with a role under the State's complaints mechanism in connection with competitive neutrality principles.
26. The Committee notes the above provisions in the Bill which confer to the regulations details which may be more appropriately contained in the primary legislation. This is especially so regarding the offence provision which includes a penalty of imprisonment.

The Committee notes that the Bill enables further functions of the NSW Procurement Board and the details of an offence involving a term of imprisonment to be prescribed by the regulations. The Committee refers to Parliament whether this is an inappropriate delegation of legislative powers.

Appendix One – Index of Ministerial Correspondence on Bills

The Committee is not in receipt of Ministerial Correspondence with respect to Bills.

Appendix Two – Index of Correspondence on Regulations on which the Committee has reported

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.