



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”.

Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
PART ONE - BILLS	1
1. COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2014	1
2. CRIME COMMISSION LEGISLATION AMENDMENT BILL 2014	6
3. LIMITATION AMENDMENT (CHILD ABUSE) BILL 2014*	13
4. MOTOR DEALERS AND REPAIRERS AMENDMENT BILL 2014*	15
5. PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) AMENDMENT (FRESH START SUPPORT) BILL 2014 (NO 2)	17
6. PETROLEUM (ONSHORE) AMENDMENT (NSW GAS PLAN) BILL 2014	20
7. REAL PROPERTY FURTHER AMENDMENT (ELECTRONIC CONVEYANCING) BILL 2014	22
8. STATE ENERGY AND WATER UTILITIES PROTECTION (REFERENDUM) BILL 2014*	27
PART TWO – REGULATIONS	29
1. CRIMES (ADMINISTRATION OF SENTENCES) REGULATION 2014	29
2. CRIMINAL RECORDS REGULATION 2014	32
INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	34
APPENDIX ONE – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	35

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. COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2014

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

Privacy

The Committee notes that Schedule 4.1 of the Bill authorises the exchange of information about inmates between the Commissioner of Corrective Services and the Commissioner of Fines Administration to the exclusion of the *Privacy and Personal Information Protection Act 1998*. As such, the receipt and disclosure of information may impact on inmate privacy. However, the Committee also recognises that the exchange of information is closely related to the functions of both Commissioners. The Committee makes no further comment.

Retrospectivity

The Committee notes that Schedule 4.1 of the Bill retrospectively authorises the exchange of personal information that may have been prohibited at the time of exchange. This may infringe on the privacy of inmates who may have ordinarily expected their personal information not be received or disclosed in breach of the *Privacy and Personal Information Protection Act 1998*. The Committee makes no further comment.

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

Retrospectivity of Regulations

The Committee notes that Schedule 4.5 of the Bill authorises the making of regulations with retrospective effect. However, the Committee also notes the safeguards of the Bill which ensures that regulations cannot be made with retrospective effect which adversely affect the rights of individuals or creates liabilities. The Committee makes no further comment.

2. CRIME COMMISSION LEGISLATION AMENDMENT BILL 2014

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

Presence at Hearing

The Committee is concerned that an affected individual may be prevented from being physically present at a hearing, and notes the limitations of viewing proceedings from either a concealed position or via closed circuit television (CCTV). Given that the use of CCTV and other forms of concealment are now common at hearings, the Committee makes no further comment.

Presence at Hearing

Given that the Commission can require the compulsory examination of witnesses, the Committee notes that requiring such witnesses to give evidence in the presence – physical, concealed or via closed circuit television – of others whose presence the witness may have

objected to, impacts on the rights of that witness. Given the principles of open justice, in so far as they apply to an accused, the Committee makes no further comment on this issue.

Right to Silence / Right against Self-incrimination

The Committee notes that a charged person's right to silence is only to be abrogated if the public interest requires it and is so determined by the Supreme Court. Nonetheless, the Committee notes the impact on the charged person's right to silence and refers this matter to Parliament for its further consideration.

Derivative Evidence and Procedural Fairness

The Committee is of the view that requiring individuals to give evidence ('original evidence') that may incriminate them may trespass on their rights. The Committee is therefore of the view that any 'derivative evidence' that is obtained as a result of this original evidence may trespass on procedural fairness rights. The Committee refers this to Parliament for its consideration.

Retrospectivity

Despite the retrospective application of Schedule 1[13], the Committee notes that the use of CCTV and other forms of concealment are now common at hearings. The Committee makes no further comment.

Retrospectivity

The Committee is keen to note when sections of proposed legislation are taken to have commenced retrospectively, particularly in relation to proceedings that are pending or have commenced. As section 45C provides the court with limited scope of providing a stay of proceedings, the Committee draws this retrospectivity to the Parliament's attention for its further consideration.

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

Grant of Assistance from the Attorney General

The Committee notes that proposed section 35A may require a charged individual to answer questions before the Commission, if the Commission is given leave by the Supreme Court. Proposed section 42(2A) would provide the charged individual with the opportunity to apply to the Attorney General for legal assistance in relation to such matters. The Committee makes no further comment.

3. LIMITATION AMENDMENT (CHILD ABUSE) BILL 2014*

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

Limitation Period

By removing the limitation period for the bringing of civil proceedings for child sexual or physical abuse, the Bill may prejudice defendants to actions brought long after the abuse is alleged to have occurred. While the Committee notes the public policy reasons for dispensing with the limitation period, the Committee also notes that in a long, intervening period, evidence that a defendant could have used to defend an action may be lost. The Committee refers the matter to Parliament for consideration.

The Committee generally comments when provisions in legislation are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law that allows people knowledge of the laws that they are subject to at any given time. In this case, defendants who presumed they could not lawfully be made subject to large claims for damages could now be made subject to such claims. The Committee refers the matter to Parliament for consideration.

Legislative Interference with Judicial Matters

The Committee notes that the Bill allows the setting aside of court decisions that have already been made to dismiss actions for child abuse on the grounds that they are statute barred. In the Committee's view, this may constitute legislative interference with judicial matters. Nonetheless, the Bill does not direct courts to set aside decisions, it merely gives courts discretion to do so if considered just and reasonable. In the circumstances, the Committee makes no further comment.

4. MOTOR DEALERS AND REPAIRERS AMENDMENT BILL 2014*

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

Privacy

The Committee notes that maintaining a register of those repairers who have received a court conviction or been issued a penalty notice may impact on their right to privacy. However, given the policy aims of the scheme, the Committee makes no further comment on this issue.

5. PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) AMENDMENT (FRESH START SUPPORT) BILL 2014 (NO 2)

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

Retrospectivity

The Committee generally comments when provisions in Bills are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. Nonetheless, the retrospective provision in this Bill does not create new offences or penalties or remove rights. Instead, it allows certain people who were made redundant before the commencement of the Bill to benefit from the Fresh Start Support Scheme. In the circumstances, the Committee makes no further comment.

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

Notice Published in Gazette

In the Committee's view, to allow for appropriate Parliamentary scrutiny, 'designated employers' should be set by regulation, not via a notice published in the Gazette. Unlike regulations, there appears to be no requirement under the *Interpretation Act 1987* for a notice published in the Gazette to be tabled in Parliament and subject to disallowance. The Committee makes no further comment.

6. PETROLEUM (ONSHORE) AMENDMENT (NSW GAS PLAN) BILL 2014

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

Retrospectivity

The Committee notes that the Bill will expunge applications for petroleum titles at the date of the Bill's introduction into Parliament, rather than upon the Bill's commencement or on a fixed, future date. This means that for the period between the introduction date and the commencement date, key provisions of the Bill will be operational despite not having been formally adopted into law. As such, there will also be a brief window where the Bill will have retrospective effect. Despite this, the Committee also notes that this retrospectivity is unlikely to alter the status of applications for petroleum titles under the Bill. The Committee makes no further comment.

Denial of Compensation

The Committee notes the far-reaching implications of this Bill in denying compensation to potential applicants for any conduct done or omitted to be done by the State. In this respect, the Bill effectively prevents potential applications from accessing the courts to have legitimate legal grievances considered and remedied. This may adversely affect the rule of law and the general right to justice. The Committee refers this matter to Parliament for its further consideration.

7. REAL PROPERTY FURTHER AMENDMENT (ELECTRONIC CONVEYANCING) BILL 2014

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

8. STATE ENERGY AND WATER UTILITIES PROTECTION (REFERENDUM) BILL 2014*

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

PART TWO – REGULATIONS

1. CRIMES (ADMINISTRATION OF SENTENCES) REGULATION 2014

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Strip Searches

The Committee notes that strip searches trespass on personal rights and liberties. However, in the context of inmates at correctional centres, the Committee considers strip searches to not unduly trespass on those rights and liberties. The Committee is concerned that strip searches may be conducted by, or in the presence of, a person of the opposite sex – although the Committee notes that this may only occur in the case of an emergency. The Committee makes no further comment on this issue.

Compulsory Drug Testing of Correctional Staff

The Committee notes that requiring staff to submit to drug and alcohol testing may unduly trespass on the rights of that individual during their recreational time. However, given the policy reasons for requiring staff to be sober to undertake work at a correctional facility, the Committee makes no further comment on this issue.

2. CRIMINAL RECORDS REGULATION 2014

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Disclosure of Spent Convictions

The Committee notes that providing for circumstances where individuals are required to disclose spent convictions, and circumstances where the police may provide information to agencies in relation to spent convictions, is a departure from the circumstances where an individual is no longer required to disclose such convictions. While the Committee notes the policy reasons for requiring the disclosure, the Committee refers to Parliament this possible trespass on individual rights and liberties.

Part One - Bills

1. Courts and Crimes Legislation Amendment Bill 2014

Date introduced	12 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Civil and Administrative Tribunal Act 2013*:

- (i) to make further provision with respect to the powers of the Civil and Administrative Tribunal (the Tribunal) with respect to the representation of parties to proceedings, and
- (ii) to rename the Health Practitioner Division List of the Occupational Division of the Tribunal as the Health Practitioner List, and
- (iii) to enable a person who is a senior member (but not an Australian lawyer) to sit as one of the three members of an Appeal Panel determining an internal appeal against a decision made in the Guardianship Division of the Tribunal.

(b) to amend the *Guardianship Act 1987*:

- (i) to make further provision with respect to persons who are to be treated as parties to certain proceedings under that Act, and
- (ii) to provide for alternative enduring guardians to be called substitute enduring guardians, and
- (iii) to confer additional powers on the Tribunal in connection with the determination of proceedings under that Act, and
- (iv) to enable a person to make an application to the Tribunal for a financial management order with respect to the person and to enable such a person to apply for a review of the appointment of a manager of the person's estate,

(c) to amend the *Children's Court Act 1987*, *District Court Act 1973*, *Drug Court Act 1998*,

Dust Diseases Tribunal Act 1989 and *Local Court Act 2007* to enable the Attorney General to appoint an acting head of the Court or Tribunal during a vacancy or absence from duty of the head of the Court or Tribunal,

- (d) to amend the *District Court Act 1973*, *Industrial Relations Act 1996*, *Land and Environment Court Act 1979*, *Local Court Act 2007* and *Supreme Court Act 1970* to enable acting judicial officers to be appointed:
 - (i) for a period not exceeding 5 years (instead of the current 12 months), and
 - (ii) up to the age of 77 years (instead of the current 75 years),
- (e) to amend the *Crimes (Administration of Sentences) Act 1999* to enable the Commissioner of Fines Administration and the Commissioner of Corrective Services to share certain information about inmates so as to identify any of their outstanding fines and to facilitate their participation in work and development orders to satisfy all or part of those fines,
- (f) to amend the *Jury Act 1977* to enable the sheriff to obtain a customer identification number allocated to a person by Roads and Maritime Services for the purpose of determining whether the person should be excluded from jury service,
- (g) to amend the *Land and Environment Court 1979* to extend the classes of proceedings in which judges of the Land and Environment Court of New South Wales may be assisted by commissioners to include Class 4 proceedings (Class 4 proceedings relate to environmental planning and protection and development contract civil enforcement),
- (h) to amend the *NSW Trustee and Guardian Act 2009* to enable the Mental Health Review Tribunal to revoke financial management orders made under the Act in respect of certain current or former patients admitted to mental health facilities,
- (i) to amend the *Oaths Act 1900* to enable justices of the peace to witness certain interstate and Commonwealth oaths, affidavits and statutory declarations,
- (j) to amend the *Trees (Disputes Between Neighbours) Act 2006* to extend the application of certain provisions relating to court orders in respect of high hedges that obstruct sunlight or views to land within a zone designated “rural-residential” under an environmental planning instrument,
- (k) to make amendments to certain legislation in the nature of statute law revision,
- (l) to make consequential amendments to certain legislation.

BACKGROUND

2. This Bill is part of the Government’s periodic legislative review and monitoring program, and makes miscellaneous amendments to legislation affecting the operation of the courts and tribunals of New South Wales and other legislation administered by the Attorney General and Minister of Justice.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendments concerning Civil and Administrative Tribunal

6. The amendments to the legislation set out in Schedule 1 are explained in detail in the explanatory notes in the Schedule.

Schedule 2 Amendments concerning guardianship

7. The amendments to the legislation set out in Schedule 2 are explained in detail in the explanatory notes in the Schedule.

Schedule 3 Amendments concerning acting judicial officers

8. The amendments to the legislation set out in Schedule 3 are explained in detail in the explanatory notes in the Schedule.

Schedule 4 Other amendments

9. The amendments to the legislation set out in Schedule 4 are explained in detail in the explanatory notes in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

10. Schedule 4.1 of the Bill proposes to insert a new section 257A into the *Crimes (Administration of Sentences) Act 1999* to enable the Commissioner of Fines Administration and the Commissioner of Corrective Services to exchange information about inmates so as to identify any of their outstanding fines. The information will be used to facilitate inmate participation in work and development orders to satisfy all or part of those fines.
11. Specifically, proposed sections 257(3)(a)-(b) respectively provide that the Commissioner of Corrective Services can receive, and the Commissioner of Fines Administration can disclose, personal information comprising the name, address and date of birth of a person who is an inmate and a fine defaulter, as well as the details of the fine incurred.
12. Similarly, proposed sections 257A(3)(c)-(d) respectively provide that the Commissioner of Fines Administration can receive, and the Commissioner of Corrective Services can disclose, information about a person who is an inmate. The information that may be exchanged includes the inmate's date of birth, date they were taken into custody, usual place of residence, unique identifying number, sentence details, and details regarding their release.

13. Proposed section 257A(3) expressly provide that both the disclosure and receipt of information is authorised despite any other Act or law of the State.
14. The Committee notes the effect of these provisions is to suspend the operation of the *Privacy and Personal Information Protection Act 1998* insofar that it relates to the exchange of information about inmates between the Commissioner of Fines Administration and the Commissioner of Corrective Services. In this respect, the Committee notes the potential impact on inmate privacy.
15. However, the Committee also recognises the public policy reasons behind these provisions, and that the receipt and disclosure of inmate information is directly related to general functions of the Commissioner of Fines Administration and the Commissioner of Corrective Services.

The Committee notes that Schedule 4.1 of the Bill authorises the exchange of information about inmates between the Commissioner of Corrective Services and the Commissioner of Fines Administration to the exclusion of the *Privacy and Personal Information Protection Act 1998*. As such, the receipt and disclosure of information may impact on inmate privacy. However, the Committee also recognises that the exchange of information is closely related to the functions of both Commissioners. The Committee makes no further comment.

Retrospectivity

16. Schedule 4, clause 2 of the Bill proposes to amend the *Crimes (Administration of Sentences) Act 1999* to ensure that proposed section 257A (discussed above) is to extend to information obtained before the commencement of that section.

The Committee notes that Schedule 4.1 of the Bill retrospectively authorises the exchange of personal information that may have been prohibited at the time of exchange. This may infringe on the privacy of inmates who may have ordinarily expected their personal information not be received or disclosed in breach of the *Privacy and Personal Information Protection Act 1998*. The Committee makes no further comment.

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

Retrospectivity of Regulations

17. Schedule 4.5 of the Bill proposes to insert a Tenth Schedule into the *Oaths Act 1900*. This Schedule will enable the making of regulations that may contain provisions of a savings or transitional nature consequent of the enactment of any Act that amends this Bill (once enacted). Clause 1(3)(a) provides that provisions may take effect from a date that is earlier than the date of its publication. The Committee notes that this enables the making of regulations with retrospective effect.
18. However, clauses 1(3)(a)-(b) also provide that any retrospective provision cannot operate in a manner that is prejudicial to any person, the rights of that person existing before the date of the regulation's publication, or impose liabilities on any person in respect to anything done or omitted to be done before the regulation's publication.

The Committee notes that Schedule 4.5 of the Bill authorises the making of regulations with retrospective effect. However, the Committee also notes the safeguards of the Bill which ensures that regulations cannot be made with retrospective effect which adversely affect the rights of individuals or creates liabilities. The Committee makes no further comment.

2. Crime Commission Legislation Amendment Bill 2014

Date introduced	11 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Stuart Ayres MP
Portfolio	Minister for Police and Emergency Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Crime Commission Act 2012* (the Principal Act) so as:
 - (a) to address issues raised in decisions of the High Court in connection with the compulsory examination of persons about an offence for which they have been charged, and
 - (b) to provide for the referral for investigation, and oversight, by the New South Wales Crime Commission Management Committee (the Management Committee) of the New South Wales Crime Commission (the Commission) of matters arising from work done in co-operation with a person or authority of the Commonwealth, the State or another State or Territory (including a task force or a member of a task force) (an external person or authority), and
 - (c) to make other amendments relating to the procedures of the Commission, including in relation to search warrants, hearings and annual reports, and
 - (d) to provide for savings and transitional matters consequent on the enactment of the proposed Act.
2. The Bill also amends the *Crimes (Appeal and Review) Act 2001* to limit appeals arising from compulsory examination of a person or the giving of evidence, or the production of a document or thing, under the Principal Act.

BACKGROUND

3. Following two High Court cases, *X7 v Australian Crime Commission & Anor* (2013) 248 CLR 92 and *Do Young (aka Jason) Lee v The Queen* [2014] HCA 20, the Minister is seeking to clarify how investigations may be undertaken by the Crime Commission and to provide certainty in relation to the use of compulsory examination material in legal proceedings.

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.

Schedule 1 Amendment of Crime Commission Act 2012 No 66—provisions relating to compulsory examinations

6. The High Court in various cases raised issues in connection with the compulsory examination by the Commission of persons about offences for which they have already been charged or are later charged. The principal cases in the High Court are *X7 v Australian Crime Commission & Anor* (2013) 248 CLR 92 and *Do Young (aka Jason) Lee v The Queen* [2014] HCA 20. In *X7 v Australian Crime Commission & Anor* (2013) 248 CLR 92, the High Court considered the accusatorial nature of criminal trials and determined that any fundamental change in that system, such as the compulsory examination, prior to and outside the trial process, of a person charged with an offence about matters relevant to that charge, should be expressly effected by legislation. In *Do Young (aka Jason) Lee v The Queen* [2014] HCA 20, the High Court ordered the retrial of offences in a case where transcripts of evidence given by a defendant during a compulsory examination in a hearing before the Commission were given to the prosecution to aid in its preparation for trial. The decision in that case was based on the principle that proof by the prosecution, unaided by the accused, is fundamental to the criminal justice system.
7. The amendments made by the Schedule address issues raised in both cases relating to persons charged with an offence where that offence has not been finally dealt with or determined (a current charge).

Limitations on presence of other persons at compulsory examinations

8. Schedule 1 [2] makes it clear that a person is taken to be present at a hearing even though the person is not physically present if, while the hearing is occurring, the person can view and hear (or understand) it from a concealed position or remotely by closed circuit television or similar means or can hear (or understand) it by electronic or other means.
9. Schedule 1 [4] requires the Commission to give prior notice to a witness of a proposed direction that another person may be present while the witness is giving evidence at a hearing and to give the witness an opportunity to comment on the proposed direction. An adverse comment by the witness will not result in the other person not being entitled to be present.
10. Schedule 1 [5] prevents the Commission from giving a direction that another person may be present if the hearing involves a person who is the subject of a current charge for an offence unless the Commission is of the opinion that the presence of the other person is reasonably necessary to exercise its functions. The amendment also prohibits the Commission from giving a direction that a person who is a member of an investigative agency involved in investigating a person who has been charged with an offence may be present while the person is being questioned about the subject matter of the offence. Schedule 1 [3] makes a consequential amendment.

Evidence of accused persons

11. Schedule 1 [6] prohibits a person who is the subject of a current charge from being compulsorily examined by, or from being required to produce a document or thing to,

the Commission except in accordance with the leave of the Supreme Court. Leave may only be granted if the Court is satisfied that any prejudicial effect likely to arise to the person's trial is outweighed by the public interest in having the matter referred to the Commission fully investigated. Evidence that is obtained from the person after leave is granted cannot be used against the person in any civil, criminal or disciplinary proceeding (other than for an offence against the Principal Act or an offence relating to falsity of evidence) but is not inadmissible as against other persons. Notice that leave has been granted is to be given to the person by the Commission. The general functions and procedures of the Supreme Court relating to ex parte proceedings will apply in respect of ex parte applications for leave.

12. Schedule 1 [7] provides for evidence (derivative evidence) that is obtained as a result of original evidence obtained by the questioning of a witness at a hearing of the Commission or the production of a document or thing to the Commission to be admissible in a civil or criminal proceeding, despite specified grounds on which it might otherwise be inadmissible. However, this does not extend to making any derivative evidence admissible against a person questioned in relation to the subject matter of the offence for which the person was charged unless the derivative evidence could have been obtained (or its significance understood) without the testimony of the person.
13. Schedule 1 [8] enables a person subject to a current charge in respect of whom leave to be examined has been given by the Supreme Court to apply to the Attorney General for assistance in respect of an application for a review of the decision.

Disclosure of evidence

14. Schedule 1 [9] and [10] require the Commission to make evidence given before the Commission available to a court if the court certifies that it may be in the interests of justice that the evidence be made available to the prosecutor even though the Commission has directed that the evidence must not be published so as not to prejudice the fair trial of a person who has been charged with an offence. The court may, after examining the evidence, make the evidence available to the prosecutor if the court is satisfied that the interests of justice require it to do so.
15. Schedule 1 [11] makes it clear that the provisions relating to publication of evidence are subject to the new restrictions on disclosure of evidence inserted by the proposed Act.
16. Schedule 1 [12] prohibits the Commission from allowing evidence as to the subject matter of an offence that is given by a person the subject of a current charge for the offence who objected to providing the evidence to be disclosed to a member of an investigative agency or a prosecutor involved in investigating or prosecuting the offence. The Commission may direct that evidence be disclosed to a member of an investigative agency for use in investigation or prosecution of offences under the Principal Act relating to false evidence by the witness, an offence other than the offence concerned or offences by another person, if the Commission considers it desirable in the interests of justice to do so and the witness was informed of the power to make such a direction. Evidence may also be disclosed to the Director of Public Prosecutions for the purposes of a request by the Director of Public Prosecutions to the Attorney General to grant indemnity from prosecution or of giving advice about undertakings relating to the use of evidence, both in relation to persons who give evidence when subject to a current charge and persons who are charged after giving evidence.

17. Schedule 1 [12] also sets out matters that a court must consider when considering an application for a stay of proceedings arising from the compulsory examination of a person before the Commission or a disclosure of evidence or a record of evidence given before the Commission. It further provides that the fact that the Commission examined the person about the subject matter of an offence (whether or not the person was the subject of a current charge for the offence), or that a transcript or record of the proceedings was given to an investigative agency or a prosecutor whether before or after the person was charged with the offence, is not capable of giving rise to a presumption that there is a fundamental defect in criminal proceedings. Other matters are also excluded from being sufficient grounds for a stay, including the fact that evidence has been derived from the holding of a hearing or from the dissemination of a record of a hearing.

Other amendments

18. Schedule 1 [1] inserts definitions.
19. Schedule 1 [2] defines when a person is the subject of a current charge.
20. Schedule 1 [13] inserts savings and transitional provisions consequent on the enactment of the proposed Act, including a provision that applies the new provisions relating to stays of proceedings to both proceedings, and applications for stays, pending before the commencement of the provisions.

Schedule 2 Amendment of Crime Commission Act 2012 No 66—provisions relating to working with interstate and Commonwealth persons or authorities and other matters

Referrals relating to work in co-operation with external persons or authorities, including joint task forces

21. Schedule 2 [6] confers on the Management Committee the function of referring (by written notice) to the Commission for investigation matters (joint task matters) relating to the subject of co-operation with an external person or authority. Schedule 2 [7] makes a consequential amendment.
22. Schedule 2 [8] sets out the matters about which the Management Committee must be satisfied before it can refer a joint task matter to the Commission for investigation.
23. Schedule 2 [9] enables the Management Committee to impose limitations on the investigation by the Commission of joint task matters.
24. Schedule 2 [10] sets out the matters that must be contained in a notice by the Management Committee referring a joint task matter to the Commission for investigation. Schedule 2 [5] makes a consequential amendment.
25. Schedule 2 [11] enables the Commission to request the Management Committee to refer a joint task matter to the Commission for investigation.
26. Schedule 2 [12] makes it clear that the parliamentary Joint Committee that monitors and reports on the exercise by the Management Committee of its functions is not authorised to reconsider a decision by the Management Committee to refer a joint task matter to the Commission for investigation.

Miscellaneous amendments

27. Schedule 2 [1] enables the Commission, in accordance with any guidelines of the Management Committee, to disseminate intelligence and information to bodies of other countries if the Commission thinks it appropriate to do so.
28. Schedule 2 [2] revises the grounds on which an executive officer of the Commission may apply for a search warrant. The new grounds will be that the Commission has reasonable grounds to suspect that there is or will be within one month in or on premises things connected with an investigation or that may be used in relevant proceedings and that the Commission has reasonable grounds to believe that, if a summons for production were issued, the things might be concealed, lost, mutilated or destroyed.
29. Schedule 2 [3] extends the procedure for Supreme Court review that currently applies to a decision by the Commission that a person is not entitled to refuse to produce information or answer a question under a summons issued by an executive officer to a decision to that effect made by the Commission where a person claims to be entitled not to take an oath or affirmation or to answer questions or to produce a document or thing at a hearing of the Commission. The person may apply for a review within 5 days after being notified of the decision.
30. Schedule 2 [4] prohibits a prosecution from being commenced in respect of a failure to take an oath or affirmation or to answer questions or to produce a document or thing at a hearing of the Commission, if the person has claimed to be entitled not to do so, until after the period for applying for a Supreme Court review or, if an application is made, until after it is determined or otherwise disposed of.
31. Schedule 2 [13] enables the Commission to waive the requirement for a consultant, or members of a class of consultants, engaged by the Commission to provide a statement of financial information.
32. Schedule 2 [14] and [15] replace the mandatory requirement for the Commission to include all recommendations that it has for legislative changes in its annual report with a discretion to include any such recommendations in its annual report.

**Schedule 3 Amendment of Crimes (Appeal and Review) Act 2001 No 120—
provisions relating to compulsory examinations before the Crime
Commission**

33. Schedule 3 [1] prohibits the Supreme Court from directing that an inquiry be held into the conviction or sentence of a person, or that a matter be referred to the Court of Criminal Appeal to be dealt with as an appeal, if the grounds for the direction or appeal arise only from the fact that the person was questioned at a hearing of the Commission or required to produce a document or thing to the Commission or that evidence was obtained directly or as a result of that questioning or the production of the document or thing.
34. Schedule 3 [2] applies that prohibition to applications to the Supreme Court for a direction or referral that were pending before the commencement of the amendment made by Schedule 3 [1] and to any application to, or action on its own motion by, the Supreme Court relating to a proposed direction or referral on or after that commencement. The amendment also extends the application of the amendments to

evidence obtained, or documents or things produced, under the *New South Wales Crime Commission Act 1985*.

ISSUES CONSIDERED BY COMMITTEE

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

Presence at Hearing

35. Schedule 1 [2] proposes the insertion of section 4 (1A) in the Act, outlining that a person who is not physically present at a hearing is taken to be present at the hearing if the person views it from a concealed position or by means of closed circuit television or other means and can hear or understand what is being said.

The Committee is concerned that an affected individual may be prevented from being physically present at a hearing, and notes the limitations of viewing proceedings from either a concealed position or via closed circuit television (CCTV). Given that the use of CCTV and other forms of concealment are now common at hearings, the Committee makes no further comment.

Presence at Hearing

36. Schedule 1 [4] proposes the insertion of subsections 21 (4) and (5) which provide that a witness be informed that a person proposes to be present, physically or otherwise, at a hearing. A witness is also to be provided with an opportunity to comment on the person being present. However, a person does not cease to be entitled to be present at a hearing if a witness comments adversely on the presence of that person.

Given that the Commission can require the compulsory examination of witnesses, the Committee notes that requiring such witnesses to give evidence in the presence – physical, concealed or via closed circuit television – of others whose presence the witness may have objected to, impacts on the rights of that witness. Given the principles of open justice, in so far as they apply to an accused, the Committee makes no further comment on this issue.

Right to Silence / Right against Self-incrimination

37. Schedule 1 [6] would insert section 35A, providing that a person who is the subject of a current charge may be required to give evidence, with the leave of the Supreme Court. The Supreme Court may grant leave if it is satisfied that any prejudicial effect that is likely to arise to the person's trial from the proposed questioning is outweighed by the public interest.

The Committee notes that a charged person's right to silence is only to be abrogated if the public interest requires it and is so determined by the Supreme Court. Nonetheless, the Committee notes the impact on the charged person's right to silence and refers this matter to Parliament for its further consideration.

Derivative Evidence and Procedural Fairness

38. Schedule 1 [7] inserts section 39A into the Act, providing that further information obtained ('derivative evidence') as a result of requiring a person to give evidence is not inadmissible in any proceedings.

The Committee is of the view that requiring individuals to give evidence ('original evidence') that may incriminate them may trespass on their rights. The Committee is therefore of the view that any 'derivative evidence' that is obtained as a result of this original evidence may trespass on procedural fairness rights. The Committee refers this to Parliament for its consideration.

Retrospectivity

39. Schedule 1[13] inserts a part 4 in Schedule 4, outlining that the new section 4 (1A) is taken to have always been in force. As outlined above, section 4 (1A) provides that a person may be present at a hearing if they are concealed or observing the hearing via closed circuit television (CCTV).

Despite the retrospective application of Schedule 1[13], the Committee notes that the use of CCTV and other forms of concealment are now common at hearings. The Committee makes no further comment.

Retrospectivity

40. Schedule 1[13] also inserts a new clause 13 to part 4 of Schedule 4, outlining that new section 45C will apply to proceedings and applications that are pending or commenced on or after the commencement of that section. Section 45C will also apply to acts or omissions relating to proceedings held, or evidence obtained, under the previous 1985 Act.

The Committee is keen to note when sections of proposed legislation are taken to have commenced retrospectively, particularly in relation to proceedings that are pending or have commenced. As section 45C provides the court with limited scope of providing a stay of proceedings, the Committee draws this retrospectivity to the Parliament's attention for its further consideration.

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

Grant of Assistance from the Attorney General

41. Schedule 1 [8] inserts subsection 42(2A) into the Act, providing that an individual who has been charged, and is being required by the Commission to answer questions in relation to that charge, may apply to the Attorney General for funds provided by the Parliament in relation to their appearance in the Supreme Court and/or the Commission.

The Committee notes that proposed section 35A may require a charged individual to answer questions before the Commission, if the Commission is given leave by the Supreme Court. Proposed section 42(2A) would provide the charged individual with the opportunity to apply to the Attorney General for legal assistance in relation to such matters. The Committee makes no further comment.

3. Limitation Amendment (Child Abuse) Bill 2014*

Date introduced	13 November 2014
House introduced	Legislative Council
Member responsible	Mr David Shoebridge MLC
Portfolio	Private Member's Bill*

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Limitation Act 1969* (the Act) to remove any limitation period applying under the Act to an action on a cause of action for the recovery of damages for child abuse.

BACKGROUND

2. In his Second Reading Speech to Parliament, Mr David Shoebridge MLC stated that, as a general rule, statute of limitation legislation in NSW and in States and Territories across Australia limits the time in which a victim of child abuse can bring a civil claim to three years from the time of the abuse or to within three years of the victim reaching the age of 18 years. Mr Shoebridge stated that this is an impediment to justice because, on average, it takes survivors of child abuse more than 20 years to come forward and disclose the abuse.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Limitation Act 1969 No 31

5. Schedule 1 [1] excludes an action on a cause of action to recover damages for child abuse (defined as conduct relating to sexual abuse or physical abuse, or both, of a minor) from the operation of the Act. Accordingly, the bringing of proceedings on such causes of action is not subject to any limitation period provided for in the Act. The Interpretation Act 1987 defines minor to be an individual who is under the age of 18 years.
6. Schedule 1 [3] makes it clear that the exclusion of such actions from the limitation periods applying under the Act extends to existing causes of action, including cases where the relevant limitation period has already expired, an action has been commenced previously on the cause of action, or judgment on the cause of action has previously been given on the ground that the action was statute barred. To this end, the item empowers a court to set aside a judgment based on the fact that an action was statute barred. Schedule 1 [2] makes a consequential amendment.

ISSUES CONSIDERED BY COMMITTEE

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

Limitation Period

7. In his Second Reading Speech on the Bill, Mr Shoebridge stated that in NSW and other States and Territories across Australia, as a general rule, victims of child abuse must bring any civil claim for the abuse within three years of the abuse occurring or within three years of turning 18 years. Schedule 1, item 1 of the Bill seeks to change the law in NSW to provide that there is no limitation period for the bringing of civil proceedings for child sexual or physical abuse.

By removing the limitation period for the bringing of civil proceedings for child sexual or physical abuse, the Bill may prejudice defendants to actions brought long after the abuse is alleged to have occurred. While the Committee notes the public policy reasons for dispensing with the limitation period, the Committee also notes that in a long, intervening period, evidence that a defendant could have used to defend an action may be lost. The Committee refers the matter to Parliament for consideration.

Retrospectivity

8. Schedule 1, item 3 of the Bill makes it clear that the exclusion of child sexual and physical abuse actions from the limitation periods applying under the *Limitation Act 1969* extends to existing causes of action, including cases where the relevant limitation period has already expired, an action has been commenced previously on the cause of action, or judgment on the cause of action has previously been given on the ground that the action was statute barred.

The Committee generally comments when provisions in legislation are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law that allows people knowledge of the laws that they are subject to at any given time. In this case, defendants who presumed they could not lawfully be made subject to large claims for damages could now be made subject to such claims. The Committee refers the matter to Parliament for consideration.

Legislative Interference with Judicial Matters

9. Schedule 1, item 3 of the Bill makes it clear that the exclusion of child sexual and physical abuse actions from the limitation periods applying under the *Limitation Act 1969* extends to cases where judgment on the cause of action has previously been given on the ground that the action was statute barred.

The Committee notes that the Bill allows the setting aside of court decisions that have already been made to dismiss actions for child abuse on the grounds that they are statute barred. In the Committee's view, this may constitute legislative interference with judicial matters. Nonetheless, the Bill does not direct courts to set aside decisions, it merely gives courts discretion to do so if considered just and reasonable. In the circumstances, the Committee makes no further comment.

4. Motor Dealers and Repairers Amendment Bill 2014*

Date introduced	13 November 2014
House introduced	Legislative Assembly
Member responsible	Ms Tania Mihailuk MP
Portfolio	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to require persons who carry on a business of assessing the value or cost of motor vehicle repairs, or inspecting the repair work carried out by motor vehicle repairers, to be licensed under the *Motor Dealers and Repairers Act 2013*, and
 - (b) to require a register of offences committed under the *Motor Dealers and Repairers Act 2013* and the regulations under that Act to be kept and maintained, and
 - (c) to enable motor vehicle repairers to seek assistance from the Small Business Commissioner in relation to unfair contracts between motor vehicle repairers and motor vehicle insurers and to apply to the Civil and Administrative Tribunal for certain orders.

BACKGROUND

2. The Bill responds to a number of concerns identified in relation to motor repairers, including the quality of repair work undertaken by repairers and the price paid by insurers to repairers.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act 1 month after the date of assent to the proposed Act.

Schedule 1 Amendment of Motor Dealers and Repairers Act 2013 No 107

5. Schedule 1 [1]–[8] and [28] give effect to the object set out in paragraph (a) of the Overview above.
6. Schedule 1 [9] gives effect to the object set out in paragraph (b) of the Overview above.
7. Schedule 1 [10]–[27] give effect to the object set out in paragraph (c) of the Overview above.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

8. Schedule 1 [9] inserts Division 3 in to the Act, providing for a register of offences and penalty notices. This register may include the name of the person and their business details in relation to any particular offence following a court conviction or the issuance of a penalty notice.

The Committee notes that maintaining a register of those repairers who have received a court conviction or been issued a penalty notice may impact on their right to privacy. However, given the policy aims of the scheme, the Committee makes no further comment on this issue.

5. Payroll Tax Rebate Scheme (Jobs Action Plan) Amendment (Fresh Start Support) Bill 2014 (No 2)

Date introduced	11 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Treasurer and Minister for Industrial Relations

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 to implement the Government's proposed support scheme to provide for an additional payroll tax rebate in respect of the employment of persons whose employment with particular employers has been terminated because of redundancy. The additional rebate amount of \$1,000 is to apply in relation to the first year of eligible employment under the Act of a person who has been made redundant.

BACKGROUND

2. In his Second Reading Speech to Parliament (on behalf of the Hon. Andrew Constance MP), Mr Mark Speakman MP, Parliamentary Secretary for Treasury, stated that under the Jobs Action Plan a payroll tax rebate is paid to employers who employ workers made redundant by particular employers.
3. The Fresh Start Support Scheme proposed under the Bill will provide an additional \$1000 payroll tax rebate to employers when they hire a worker made redundant after 1 January 2014 from a list of designated employers.

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.

Schedule 1 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

6. Schedule 1 [1] inserts a reference to the definitions of designated employer and fresh start employee for the purposes of the proposed support scheme.
7. Schedule 1 [2] provides that the Minister may, by notice published in the Gazette, designate an employer as a designated employer, and must have regard to the matters prescribed by the regulations in making a designation. This amendment further provides that the designation of an employer may have retrospective effect, for the purposes of the proposed support scheme, to a day not earlier than 1 January 2014.

8. Schedule 1 [3] provides that the annual rebate amount for the first year of eligible employment in respect of fresh start employees under the proposed support scheme is \$3,000. This amount is \$1,000 more than the rebate amount otherwise applying in relation to a person's first year of eligible employment under the Act.
9. Schedule 1 [4] defines fresh start employee and prescribed redundancy for the purposes of the proposed support scheme.
10. Schedule 1 [5] provides that a regulation may prescribe a date to extend the scheme closure date in respect of the employment of any employees or any class of employees. An extension of the scheme closure date in respect of the employment of particular employees would extend the application of the rebate scheme to those employees beyond the current scheme closure date under the Act (30 June 2015). The proposed amendment also states how particular provisions of the Act would apply in relation to such employees, and provides that a regulation may apply provisions of the Act, with any necessary modifications, in relation to an extension of the rebate scheme.
11. Schedule 1 [6] extends the date on which the Act will be repealed by one year to 1 July 2019.
12. Schedule 1 [7] provides that an application under section 20 of the Act for registration as a claimant in respect of a fresh start employee may be made within 30 days after the day the notice designating the employee's former employer as a designated employer is published.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

13. Schedule 1, item 2 of the Bill provides that the designation of an employer may have retrospective effect for the purposes of the proposed support scheme, to a day not earlier than 1 January 2014.

The Committee generally comments when provisions in Bills are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law which allows people knowledge of the laws that they are subject to at any given time. Nonetheless, the retrospective provision in this Bill does not create new offences or penalties or remove rights. Instead, it allows certain people who were made redundant before the commencement of the Bill to benefit from the Fresh Start Support Scheme. In the circumstances, the Committee makes no further comment.

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

Notice Published in Gazette

14. Schedule 1, item 2 of the Bill provides that the Minister may, by notice published in the Gazette, designate an employer as a 'designated employer' for the purposes of the Act. Employers will be eligible for payroll tax rebates if they employ a person made redundant by any employer that has been declared a 'designated employer'. In

designating an employer, the Minister must have regard to the matters prescribed by the regulations for making a designation.

In the Committee's view, to allow for appropriate Parliamentary scrutiny, 'designated employers' should be set by regulation, not via a notice published in the Gazette. Unlike regulations, there appears to be no requirement under the *Interpretation Act 1987* for a notice published in the Gazette to be tabled in Parliament and subject to disallowance. The Committee makes no further comment.

6. Petroleum (Onshore) Amendment (NSW Gas Plan) Bill 2014

Date introduced	13 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill is to expunge certain pending applications for petroleum titles (being applications where the applicant is not currently the holder of a petroleum title over the area that is the subject of the application).

BACKGROUND

2. Only five percent of NSW gas usage is produced domestically and there have been concerns that the State faces a potential gas shortage in the next five years. In response, the Government has been examining the potential development of coal seam gas resources.
3. In 2013, Chief Scientist and Engineer, Prof. Mary O’Kane, was commissioned to undertake an independent review of coal seam gas activities in New South Wales, and her final report was released on 30 September 2014. The report brings together the extensive body of work undertaken during the review and makes a series of 16 recommendations.
4. The NSW Gas Plan – the Government’s blueprint for gas development in the State – draws on the Chief Scientist and Engineer’s recommendations and identifies five priority pathways to reset New South Wales’ approach to gas. The first step is to pause, reset and recommence gas exploration on different terms.
5. The proposed amendments in this Bill implement the first step of the NSW Gas Plan by voiding existing applications to petroleum titles for a later reissuance under different conditions. The Bill also lays out the foundations for a second tranche of legislation to be introduced in 2015.
6. This Bill was passed by both Houses of Parliament on 13 November 2014. However, under section 8A(2) of the *Legislation Review Act 1987*, the Committee is not precluded from examining or reporting on a Bill just because the Bill has already been passed or has become an Act.

OUTLINE OF PROVISIONS

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

9. Schedule 1 inserts new provisions into the Act that will expunge those pending applications for a petroleum title under the Act where the applicant is not currently the holder of a petroleum title over the area that is the subject of the application.

The new provisions also provide that:

- (a) application fees payable in respect of expunged applications are to be refunded, and
- (b) no compensation is payable by or on behalf of the State in connection with the operation of the new provisions.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

10. Proposed Schedule 2, clause 3(1) provides that each application for a petroleum title that is specified in a table under clause 3(2) is expunged with effect from the introduction date.

The Committee notes that the Bill will expunge applications for petroleum titles at the date of the Bill's introduction into Parliament, rather than upon the Bill's commencement or on a fixed, future date. This means that for the period between the introduction date and the commencement date, key provisions of the Bill will be operational despite not having been formally adopted into law. As such, there will also be a brief window where the Bill will have retrospective effect. Despite this, the Committee also notes that this retrospectivity is unlikely to alter the status of applications for petroleum titles under the Bill. The Committee makes no further comment.

Denial of Compensation

11. Schedule 2, clause 5 provides that compensation is not payable by or on behalf of the State as a result of the enactment or operation of this Bill, including as a result of the expunging of petroleum title applications.
12. Specifically, clause 5(3)(a) expressly makes it clear that no compensation is payable as a result of any conduct (including any statement, act or omission) even if the conduct was unconscionable, negligent, false, misleading or deceptive. Further, clause 5(3)(b) provides that the lack of compensation extends to any conduct, even if constituting an offence, tort, breach of contract or breach of statute. However, Schedule 2, clause 4 does provide that lodgement fees already paid be refunded, and waived if not yet paid.

The Committee notes the far-reaching implications of this Bill in denying compensation to potential applicants for any conduct done or omitted to be done by the State. In this respect, the Bill effectively prevents potential applications from accessing the courts to have legitimate legal grievances considered and remedied. This may adversely affect the rule of law and the general right to justice. The Committee refers this matter to Parliament for its further consideration.

7. Real Property Further Amendment (Electronic Conveyancing) Bill 2014

Date introduced	12 November 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Minister for Finance and Services

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to amend the Real Property Act 1900:
 - i to enable the Registrar-General to make rules (called the conveyancing rules) for or with respect to the preparation and lodgment of paper documents to give effect to conveyancing transactions under the Act, and
 - ii to enable a person who is involved in a conveyancing transaction under the Act to give a client authorisation to a representative to enable the representative to do things on the person's behalf in connection with the transaction, and
 - iii to consolidate and standardise the provisions of the Act concerning the certification of the correctness of certain conveyancing transactions (whether conducted in paper or electronic form), and
 - iv to provide that certain paper conveyancing documents that are required under the Act to be executed or witnessed can be certified or authenticated by such other means as may be provided by the conveyancing rules, and
 - v to enable a person who intends to lodge a dealing to give effect to a legal or equitable interest in land claimed by the person to lodge a priority notice to prevent the Registrar-General from recording certain other dealings concerning the land for a limited period pending the lodgment of the proposed dealing for registration, and
 - vi to enable the Registrar-General to cease to issue certificates of title on and from a day to be declared by the Registrar-General by order published in the Gazette and to confirm that, before that day, the Registrar-General may cease to issue certificates of title on a staged basis, and
 - vii to provide that, after certificates of title are no longer issued, the Registrar-General may rely on either paper or electronic consents for certain conveyancing transactions given by the person who is recorded in the Register as having control of the right to deal in the land concerned, and

- viii to enable the Registrar-General to designate certain persons employed in the Public Service to be Deputy Registrars-General and to provide for their functions, and
 - ix to enable an Australian address to be specified as an address for service in a caveat lodged under the Act, and
- (b) to make consequential amendments to the Interpretation Act 1987 and Real Property Regulation 2014.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Dominic Perrottet MP, Minister for Finance and Services, stated that the Bill facilitates the implementation of electronic conveyancing in NSW by aligning paper and electronic conveyancing processes. National electronic conveyancing began in NSW on 8 October 2013 on a limited basis. A major expansion of electronic conveyancing began on 10 November 2014.
3. Mr Perrottet further advised Parliament that the cost and complexity of conveyancing would increase if it were necessary to operate using two different processes, one for paper and one for electronic, especially if a solicitor or conveyancer needs to backtrack and take different steps because a transaction has to change from electronic to paper or from paper to electronic. This need to change would likely be common for the first few years until electronic conveyancing is widely adopted because all four parties to a transaction (vendor, purchaser, discharging mortgagee and incoming mortgagee) need to be on the electronic system before a transaction can proceed electronically.
4. Mr Perrottet stated that the key reforms in the Bill will allow the adoption of a single conveyancing process regardless of whether a transaction is electronic or paper or changes mid-transaction, by introducing to paper conveyancing new practices to align with the new requirements for electronic conveyancing.

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.

Schedule 1 Amendment of Real Property Act 1900 No 25

1.1 Amendments concerning conveyancing rules

7. Schedule 1.1 amends the Real Property Act 1900 (the principal Act):
 - (a) to enable the Registrar-General to make rules (called the conveyancing rules) for or with respect to the preparation and lodgment of paper documents to give effect to conveyancing transactions under the Act, and
 - (b) to define the term conveyancing transaction for this purpose in a manner consistent with the Electronic Conveyancing National Law (NSW).

1.2 Amendments concerning client authorisations

8. Schedule 1.2 amends the principal Act:
 - (a) to enable a law practice or licensed conveyancer to be authorised by a person under a client authorisation to carry out certain transactions on the person's behalf for the purposes of the principal Act, and
 - (b) to define the term authorised representative for this purpose, and
 - (c) to provide for the effect of signatures under a client authorisation (and the repudiation of such signatures).
9. The provisions to be inserted are modelled on those in the Electronic Conveyancing National Law (NSW) and they also provide that a client authorisation under that Law can also have effect as a client authorisation under the principal Act.

1.3 Amendment concerning certifications of correctness

10. Schedule 1.3 amends the principal Act to consolidate the provisions of sections 117 and 117A into one section concerning the certification of the correctness of certain conveyancing transactions (whether conducted in paper or electronic form).

1.4 Amendment concerning execution and attestation

11. Schedule 1.4 amends the principal Act to provide that certain paper conveyancing documents that are required to be executed or witnessed under the principal Act can be certified or authenticated by such other means as may be provided by the conveyancing rules.

1.5 Amendments concerning priority notices

12. Schedule 1.5 amends the principal Act to insert a new Part 7B that deals with priority notices.
13. The new Part will enable a person who intends to lodge a dealing to give effect to a legal or equitable interest in land claimed by the person to lodge a priority notice. The lodgment of a priority notice will reserve the priority of the dealings specified in the notice by preventing the Registrar-General from registering certain other dealings and plans concerning the land for a limited period (initially 60 days, with the possibility of an extension to 90 days) pending the lodgment of the proposed dealings for registration.
14. The new Part also provides for the following:
 - (a) interpretative provisions (see proposed section 74S),
 - (b) requirements with respect to the lodgment of priority notices (see proposed section 74T),
 - (c) the recording, and removal of such recordings, in the Register under the Act by the Registrar-General (see proposed sections 74U and 74X (2)),
 - (d) the circumstances when priority notices cease to have effect (see proposed section 74V),

- (e) the effect of priority notices (see proposed section 74W),
- (f) the withdrawal of priority notices by persons lodging such notices, whether voluntarily or by order of the Supreme Court (see proposed sections 74X (1) and 74Y),
- (g) the liability to pay compensation for pecuniary loss in connection with the lodgment of, or the refusal or failure to withdraw, priority notices where there has been no reasonable cause for the lodgment or the refusal or failure to withdraw (see proposed section 74Z).

15 Schedule 1.5 also makes a number of amendments to the principal Act that are consequential on the creation of priority notices.

1.6 Amendments concerning certificates of title and consents

16 Schedule 1.6 amends the principal Act:

- (a) to enable the Registrar-General to cease to issue certificates of title on and from a day to be declared by the Registrar-General by order published in the Gazette, and
- (b) to enable consents to certain conveyancing transactions involving land for which there is no certificate of title to be given in either paper or electronic form once certificates of title can no longer be issued, and
- (c) to confirm that, before that day, the Registrar-General may cease to issue certificates of titles to particular classes of persons on a staged basis under section 33AA of the principal Act.

1.7 Amendments concerning Registrar-General and Deputy Registrars-General

17 Schedule 1.7 amends the principal Act:

- (a) to insert a definition of Registrar-General in the Act, and
- (b) to enable the Registrar-General to designate certain persons employed in the Public Service to be Deputy Registrars-General or the Senior Deputy Registrar-General, and
- (c) to provide for the circumstances in which a Deputy Registrar-General may act as the Registrar-General when there is no Registrar-General or the Registrar-General is absent from duty, and
- (d) to provide for the functions of Deputy Registrars-General (including the delegation to them of functions of the Registrar-General by the Registrar-General).

1.8 Amendments concerning service of notices on caveators

18 Schedule 1.8 amends the principal Act to enable an Australian address to be specified as an address for service in a caveat lodged under the principal Act.

Schedule 2 Consequential amendment of other legislation

19 Schedule 2.1 substitutes the definition of Registrar-General in the Interpretation Act 1987 with a definition that is consistent with the definition to be inserted by Schedule 1.7.

LEGISLATION REVIEW COMMITTEE

REAL PROPERTY FURTHER AMENDMENT (ELECTRONIC CONVEYANCING) BILL 2014

- 20 Schedule 2.2 makes an amendment to the Real Property Regulation 2014 that is consequential on the amendment made by Schedule 1.3.

ISSUES CONSIDERED BY COMMITTEE

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

8. State Energy and Water Utilities Protection (Referendum) Bill 2014*

Date introduced	13 November 2014
House introduced	Legislative Council
Member responsible	The Hon. Adam Searle MLC
Portfolio	Private Member's Bill *

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prevent the assets of business undertakings of certain State energy or water utilities (namely, Essential Energy, Ausgrid, Endeavour Energy, TransGrid, Sydney Water Corporation and Hunter Water Corporation) from being transferred unless the transfer is approved by a referendum.

BACKGROUND

2. This Opposition Bill has been introduced in response to plans by the Government to privatise the remaining stock of electricity poles and wires after the next State election. This Bill seeks to ensure that before any privatisation is to proceed, the Government first seeks and receives a mandate from the general public.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 defines certain words and expressions used in the proposed Act, including *transfer* which means sell, lease or dispose of.
6. Clause 4 provides that certain transactions may not be entered into unless a question in relation to the transaction is submitted in a referendum and the majority of persons voting in the referendum have answered the question in the affirmative. The transactions required to be approved by a referendum involve the transfer of the assets or business undertaking of a State energy or water utility (including its facilities or, in the case of an energy distributor or energy transmission operator, any electricity distribution or transmission network). The requirement for a referendum does not apply to the transfer of assets to a subsidiary of the State energy or water utility or the transfer of any assets that total less than \$1 billion (so long as those assets do not include any part of the main business undertaking carried on by the utility).
7. Clause 5 provides that a referendum required under the proposed Act is to be held on the date appointed by the Governor and provides that the persons entitled to vote at a referendum are those qualified to vote in a general election.

LEGISLATION REVIEW COMMITTEE

8. Clause 6 provides that the vote of the electors at a referendum under the proposed Act is to be taken in accordance with the *Constitution Further Amendment (Referendum) Act 1930* which makes general provision for the conduct of referendums.
9. Clause 7 enables regulations to be made under the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Part Two – Regulations

1. Crimes (Administration of Sentences) Regulation 2014

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with minor modifications, the Crimes (Administration of Sentences) Regulation 2008 (to be repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*).
2. This Regulation deals with the following matters:
 - (a) admission procedures for correctional centres (Part 2),
 - (b) placement, case management and classification of inmates (Part 3),
 - (c) correctional centre routine (Part 4),
 - (d) visits and communications (Part 5),
 - (e) correctional centre discipline (Part 6),
 - (f) inmates' requests and complaints (Part 7),
 - (g) release procedures for correctional centres (Part 8),
 - (h) miscellaneous provisions relating to full-time imprisonment (Part 9),
 - (i) intensive correction (Part 10),
 - (j) home detention (Part 11),
 - (k) compulsory drug treatment detention (Part 12),
 - (l) community service work (Part 13),
 - (m) parole (Part 14),
 - (n) revocation by State Parole Authority of certain orders (Part 15),
 - (o) correctional officers and departmental officers (Part 16),
 - (p) conduct of members of correctional staff regarding alcohol and drugs (Part 17),
 - (q) Justice Health and Forensic Mental Health Network matters (Part 18),
 - (r) use of firearms (Part 19),

- (s) bravery and meritorious service awards (Part 20),
 - (t) the Review Council (Part 21),
 - (u) general provisions (Part 22).
3. In addition to minor modifications, this Regulation modifies the Crimes (Administration of Sentences) Regulation 2008 by:
- (a) providing that the general manager of a correctional centre may confiscate electronic devices of an inmate (clause 48 (3)), and
 - (b) providing that, to assist an inspection or search of a visitor or a visitor's possessions, an authorised officer or the principal security officer may require the visitor to remove any hat, gloves, coat, jacket or shoes worn by the visitor (clause 95 (1)), and
 - (c) extending the general power to prevent visits to a correctional centre to a correctional officer holding office or acting in a rank that is of or above the rank of Assistant Superintendent and (in the case of a correctional centre managed in accordance with Part 12 of the Act) a person holding office or acting in a rank that is of or above a rank equivalent to Assistant Superintendent (clause 106), and
 - (d) providing for the testing or analysis of an inmate's or offender's drug test sample (which includes breath, urine or oral fluid) as opposed to the testing or analysis of only urine (clauses 159, 160 and 206), and
 - (e) providing that the general manager of a correctional centre may permit an inmate to purchase or rent goods that are not required to be provided to the inmate under the Act or this Regulation (clause 177).
4. This Regulation is made under the Crimes (Administration of Sentences) Act 1999, including sections 77 (5), 79, 81 (2), 93, 106, 106V (1), 106Y (1), 106ZA, 117, 128B (2) (a), 128C, 130 (1), 137B, 141A (4), 143B, 145 (1), 146 (5) (b), 160AC, 161, 165B (1), 167 (1) (d), 173 (2) (a), 175 (1A), 197, 199 (2), 236, 236I, 271 (the general regulation-making power) and 271A and various other provisions referred to in the Regulation.

ISSUES CONSIDERED BY COMMITTEE

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Strip Searches

5. Clause 46 provides that a correctional officer may at the direction of the general manager and at any times the correctional officers considers appropriate strip-search an inmate. This can be done by a member of the opposite sex, or in the presence of a person of the opposite sex in the case of an emergency.

The Committee notes that strip searches trespass on personal rights and liberties. However, in the context of inmates at correctional centres, the Committee considers strip searches to not unduly trespass on those rights and liberties. The Committee is concerned that strip searches may be conducted by, or in the presence of, a person of the opposite sex – although the Committee

notes that this may only occur in the case of an emergency. The Committee makes no further comment on this issue.

Compulsory Drug Testing of Correctional Staff

6. Correctional staff may be subjected to breath testing and breath analysis (part 17 of the regulation), with clause 272 outlining that a member of correctional staff must not refuse to undergo a breath test or submit to a breath analysis or provide a non-invasive sample.

The Committee notes that requiring staff to submit to drug and alcohol testing may unduly trespass on the rights of that individual during their recreational time. However, given the policy reasons for requiring staff to be sober to undertake work at a correctional facility, the Committee makes no further comment on this issue.

2. Criminal Records Regulation 2014

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to remake, with minor amendments, the Criminal Records Regulation 2004, which is repealed on 1 September 2014 by section 10 (2) of the Subordinate Legislation Act 1989.

This Regulation:

- (a) prescribes certain offences under the Crimes Act 1900 and the Summary Offences Act 1988 to be sexual offences for the purposes of the definition of sexual offences in section 7 (4) of the Criminal Records Act 1991, and
- (b) prescribes the former offence of a self-excluded person entering or remaining in a casino to which an exclusion order in respect of the person relates as an offence to which section 8 (5) of the Criminal Records Act 1991 applies, and
- (c) provides that a person may be required to disclose spent convictions when making certain job applications or during job interviews with certain agencies, and
- (d) provides that spent convictions may be used by the Commissioner of Police when making an application for a declaration that an organisation is a criminal organisation under the Crimes (Criminal Organisations Control) Act 2012 and by the Supreme Court when deciding whether to grant the declaration, and
- (e) provides that it is not an offence for the officer in charge of the Criminal Records Section of the NSW Police Force to disclose information concerning spent convictions in particular circumstances, and
- (f) prescribes certain persons and bodies as law enforcement agencies for the purposes of the definition of law enforcement agency in section 13 (5) of the Criminal Records Act 1991.

This Regulation is made under the Criminal Records Act 1991, including paragraph (h) of the definition of sexual offences in section 7 (4), paragraph (o) of the definition of law enforcement agency in section 13(5), and sections 8 (5), 13 (2) and 25 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the Subordinate Legislation Act 1989, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

ISSUES CONSIDERED BY COMMITTEE

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Disclosure of Spent Convictions

2. Section 12 of the principal Act provides that spent convictions do not need to be disclosed. Clause 6 of this regulations provides the following exemptions:

- An application for admission as a lawyer
 - An application to be engaged as a consultant to the Inspector of the Police Integrity Commission
 - Applications to work for the Crime Commission, the Crown Prosecutor, the Director of Public Prosecutions, the ICAC and the Police Integrity Commission.
3. Clause 8 of this regulation provides that the officer in charge of the Criminal Records Section of the NSW Police Force may provide information with respect to spent convictions as follows:
- To a judicial officer with respect to *Crimes (Criminal Organisations Control) Act 2012*
 - To the chief executive of the Independent Liquor and Gaming Authority
 - To a person employed in the Bureau of Crime Statistics and Research
 - To a person employed in Corrective Services NSW, the Office of Fair Trading or the Office of the Sheriff.

The Committee notes that providing for circumstances where individuals are required to disclose spent convictions, and circumstances where the police may provide information to agencies in relation to spent convictions, is a departure from the circumstances where an individual is no longer required to disclose such convictions. While the Committee notes the policy reasons for requiring the disclosure, the Committee refers to Parliament this possible trespass on individual rights and liberties.

Index of Ministerial Correspondence on Bills

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

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

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In Digest 12/55, the Committee reported on the Water Management (General) Amendment (Water Sharing Plans) Regulation (No 2) 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
3. In Digest 16/55, the Committee reported on the Home Building Amendment (Threshold for Home Warrant Insurance) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
4. In Digest 12/55, the Committee reported on the Local Government (General) Amendment (Election Procedures) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 21 June 2012 which addresses to the Committee's satisfaction the issues raised.
5. In Digest 15/55, the Committee reported on the Police Amendment (Death and Disability) Regulation 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 9 July 2012 which addresses to the Committee's satisfaction the issues raised.
6. On 8 May 2012 the Committee wrote to the Attorney General in relation to James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012. The Committee was in receipt of a response from the Attorney General dated 10 August 2012 which addressed to the Committee's satisfaction the issues raised. Further information in relation to this can be found in Digest 23/55.