



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. CO-OPERATIVES (ADOPTION OF NATIONAL LAW) BILL 2012

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

Protecting officials from liability

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. As this provision forms part of the National Law, noting that clause 38 of the Appendix outlines that a co-operative may sue and be sued – and given that the immunity only relates to actions or omissions made honestly and without negligence – the Committee does not make an adverse comment with respect to this issue.

Strict Liability

The Committee will always seek to comment when strict liability offences are included in a Bill. As this Bill implements National Law, and the offences are designed to ensure compliance with a regulatory scheme, the Committee makes no further comment on this issue.

Reversal of onus of proof

The Committee is concerned where legislation reverses the onus of proof, which is inconsistent with the presumption of innocence. However, the Committee considers that in certain circumstances it may be appropriate to shift the onus of proof, for example, where an individual is asserting limited knowledge. The Committee therefore does not consider the reversal of the onus of proof trespasses on personal rights and liberties in the circumstances outlined in clause 92(4) and 142(4) of the Appendix.

Required actions

The Committee notes that the effect of clause 82 of the Appendix may be to compel members to purchase additional shares or resign their membership. Whilst the Committee notes that this may impact on the individual rights and liberties of members, the Committee notes the intention of the co-operative national law and, as this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee notes that whilst members of co-operatives may be restrained from certain aspects of trade, as members of co-operatives they have agreed to these restraints of trade. As such, the Committee makes no further comment with respect to this issue.

Reasonable timeframes and repayments

The Committee is concerned that a period of one year is an extensive length of time to wait for the repayment of shares. The Committee is also concerned that the repayment can take the form of debenture rather than cash. As this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee is concerned that former members of a co-operative continue to have liabilities with respect to the co-operative for twenty four months after their membership has

ceased. However, given the purpose of the Bill, and given that the Bill implements National Law, the Committee makes no further comment on this issue.

Compulsory acquisition of shares

The Committee will always seek to comment in circumstances where individuals are compelled to acquire shares. The Committee notes that under Division 3 of Chapter 4 a transferee can only avoid such a requirement by resigning their membership, which may adversely affect their ability to earn an income in circumstances where the business of the co-operative is their livelihood. The Committee particularly notes the timeframes with respect to the compulsory acquisition of shares can be as few as 42 days. As this Bill implements National Law, the Committee makes no further comment on this issue.

Compulsory transfer of funds to the Registrar

The Committee will always seek to comment when the effect of a provision is to compulsory transfer an asset held on trust by a co-operative to the State. As this Bill implements National Law, the Committee makes no further comment on this issue.

Compulsory loan commitment

The Committee will always comment on clauses which impose obligations on individuals without providing adequate alternatives. Given the purpose of a co-operative, the Committee makes no further comment on this issue.

Right of entry and right to silence

The Committee will always comment on clauses which provide access to premises without a warrant. The Committee will also be concerned to comment in circumstances where a person's right to silence is removed by legislation, notwithstanding that the statement will not be admissible in evidence against the speaker in circumstances where the speaker notes that the statement might incriminate them. The Committee refers to Parliament whether clauses 500 and 502 of the Appendix are appropriately included in the National Law.

Multiple Punishments

The Committee will always note when a person may be subject to multiple punishments with respect to the same act or omission. However, given that the requirement relates to the administration of co-operatives, the Committee is of the opinion that the provision is reasonable in the circumstances.

Procedural Fairness

The Committee notes that the Bill provides that a co-operative is required to treat any lack of notice from the Registrar with respect to an application or an approval as a refusal of that application or approval. The Committee refers to Parliament whether this is a breach of procedural fairness.

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

Powers of the Registrar

The Committee will always seek to comment in circumstances where an administrative power is granted without providing limitations with respect to that power. As this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee will always seek to comment in circumstances where an administrative power is granted to compel the transfer of engagements from one co-operative to another. The Committee notes that this power is limited to the circumstances outlined in clause 455 of the Appendix. As this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee will always seek to comment in circumstances where an administrative power is granted to an individual to fix a fee, particularly in circumstances where the review of that act is to be conducted by the same individual. The Committee generally prefers fees to be fixed by legislation. However, noting the individual circumstances that subclause 443(7) will govern, and noting that this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee will always seek to comment in circumstances where the responsibility of interpretation of public interest is granted to a person in a non-judicial or non-elected role. However, as this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee will always seek to comment in circumstances where the powers granted by law are permitted to be delegated to any person or body, and such powers can be sub-delegated. However, as this Bill implements National Law, the Committee makes no further comment on 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 Committee notes that the inclusion of a commencement by proclamation provision assist in the uniform introduction of National Law. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

Retrospectivity

The Committee will always be concerned to identify where legislation is taken to have effect retrospectively. However, the Committee does not make an adverse comment in relation to the retrospective provisions in this Bill as the safeguards in the Bill will effectively prevent any disadvantage of those persons affected.

Delegated legislation not subject to the Subordinate Legislation Act 1989

The Committee notes that the *Subordinate Legislation Act 1989* outlines the requirements for delegated legislation in New South Wales. The Committee also notes that the *Subordinate Legislation Act 1989* affords protections with respect to delegated legislation, including cost/benefit analysis and ensuring that the objectives of the regulations are reasonable and appropriate. However, as the Bill has been subject to a Regulation Impact Review process, the Committee does not make an adverse comment in relation to this issue.

Matters in the regulations that ought to be in the legislation

Given the potential impact on the rights and liberties of individuals with respect to supervision, inspection and the creation of offences - and notwithstanding the limit of \$2,000 outlined in clause 612(5) of the Appendix and that this Bill implements National Law - the Committee

refers to Parliament whether it is reasonable for the Bill to provide that the Regulations may create offences and impose penalties for an offence.

The Committee will always seek to comment when definitions, relevant factors and considerations may be listed or provided in the Regulations rather than the primary legislation. As this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee will always seek to comment when NSW legislation is drafted to provide for the application of Commonwealth legislation with respect to subject matter that is not listed under section 52 of the Commonwealth Constitution. As this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee is concerned that a provision for the winding up of a co-operative may be determined in the Regulations. The Committee is of the view that the circumstances for which an un-elected or non-judicial officer can wind up a co-operative is a matter for the governing legislation, and not the Regulations. The Committee refers to Parliament whether this is an appropriate matter for inclusion in the Regulations.

The Committee notes that placing restrictions with respect to advertising and publicity may be matters that are more appropriately included in the legislation rather than the Regulations. However, as this Bill implements National Law, the Committee makes no further comment on this issue.

The Committee notes the purpose of the rules of a co-operative, and considers that any prescription with respect to the content of the rules is appropriately included in the legislation rather than the Regulations. The Committee queries the appropriateness of providing the Regulations with the power to outline circumstances in which a person who otherwise has a relevant interest in a share is to be disregarded. However, as this Bill implements National Law, the Committee makes no further comment on these issues.

Henry VIII Clause

The Committee will always seek to comment when legislation provides for amendment by Regulation. As this Bill implements National Law, the Committee makes no further comment on this issue.

2. LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2012

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

3. SYDNEY WATER CATCHMENT MANAGEMENT AMENDMENT (BOARD MEMBERS) BILL 2012

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

Compensation

The Committee notes that clause 3 prohibits the payment of compensation by or on behalf of the State to an individual who was previously a member of the Board and who, because of the operation of the Act, ceases to be a member of the Board. The Committee also notes that the payment of remuneration to members of the Board is at the discretion of the Minister (clause 5 of Schedule 1 of the Act). As such, the Committee makes no adverse comment in relation to this clause.

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, given that the Committee has not identified any other provisions that adversely affect individual rights and liberties, the Committee does not consider there to be an inappropriate delegation of legislative power in this instance.

PART TWO - REGULATIONS

The Committee does not report on any Regulations.

Part One - Bills

1. Co-operatives (Adoption of National Law) Bill 2012

Date introduced	4 April 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Fair Trading

PURPOSE AND DESCRIPTION

1. The object of this Bill is to enact co-operatives legislation applying in this State. It does so as part of a proposed substantively uniform scheme of legislation applying the Co-operatives National Law in the States and Territories (*jurisdictions*).
2. The Bill contains the Co-operatives National Law, set out in the Appendix, which operates as a template for all jurisdictions. Each jurisdiction has agreed to enact legislation applying the National Law in its jurisdiction or to enact consistent legislation. The intention is that there will be a substantively uniform scheme of legislation for co-operatives applying in all jurisdictions, based on the National Law.
3. In addition to applying the Co-operatives National Law, this Bill and the application legislation of other jurisdictions would specify local administration details such as the appointment of a Registrar of Co-operatives, specifying which courts deal with various matters, and stating how official notices are published.
4. National Regulations supporting the Co-operatives National Law would be made by the Governor of New South Wales. Each jurisdiction has agreed to adopt, or make regulations consistent with, the National Regulations. Existing co-operatives legislation in all jurisdictions is based on Core Consistent Provisions developed by the Standing Committee of Attorneys-General. The proposed Co-operatives National Law continues the major features of the existing legislation, while also removing variations between jurisdictions and updating some provisions—particularly provisions that apply parts of the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*).

BACKGROUND

5. Co-operatives are mutual organisations principally operated for the benefit of their members. There are two types of co-operatives: distributing and non-distributing. Distributing co-operatives predominantly operate in wholesale and retail trades, transport, agriculture, manufacturing and property services. In general, distributing co-operatives maintain a proportion of any surplus to build the capital of the organisation and then disperse any remaining surplus to members. Non-distributing co-operatives are restricted from making distributions to members. These co-operatives deliver benefits to their members through mechanisms such as access to

shared equipment and business services and lower charges for services or products. Non-distributing co-operatives are found in agricultural produce handling, consumer co-operatives, professional organisations, as well as cultural or sporting clubs. Traditional not-for-profit activities such as child care and community services can also be found in the non-distributing co-operative sector.

6. State and Territory legislation enabling a co-operative to become incorporated as a legal entity is very similar across jurisdictions as it is based on a set of core consistent provisions developed in 1996 by the Standing Committee of Attorneys-General. However, these provisions have been implemented inconsistently by jurisdictions and true consistency across Australia has not been achieved at any stage.
7. The existing regulatory regime imposes restrictions and compliance costs on the co-operatives sector, resulting in a competitive disadvantage when compared to other entities. Existing co-operatives legislation:
 - imposes additional burdens on co-operatives through outdated corporate governance provisions and financial reporting requirements;
 - imposes additional compliance costs on co-operatives that wish to trade across state and territory borders; and
 - makes inconsistent provision for access to capital markets to enable expansion through external funding.
8. In 2007, the Ministerial Council on Consumer Affairs (MCCA) agreed to implement nationally uniform legislation for co-operatives, to address inconsistent State and Territory legislation and competitive disadvantages that exist in comparison to entities operating under the *Corporations Act 2001*.
9. A draft Co-operatives National Law and consultation regulatory impact statement were released for public consultation in December 2009. The objectives of the proposed Law are to ensure that there are no competitive advantages or disadvantages for co-operatives as compared to corporations by providing:
 - freedom to operate on a national basis;
 - better access to external capital funding; and
 - an accessible modern legislative environment.
10. The Co-operatives National Law scheme makes no conceptual changes to the nature of a co-operative, rather it remakes existing co-operatives legislation as laws of each State and Territory in a uniform manner. The terms of the supporting inter government agreement permits a jurisdiction to make consistent legislation as well as applying the Co-operatives National Law as a template. The Law does not effect any changes to the existing regulatory environment under Commonwealth legislative responsibility.

OUTLINE OF PROVISIONS

Part 1 Preliminary

11. Clause 1 sets out the name (also called the short title) of the proposed Act.
12. Clause 2 provides for the commencement of the proposed Act by proclamation.
13. Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Application of Co-operatives National Law and Co-operatives National Regulations

14. Clause 4 applies the Co-operatives National Law as a law of this jurisdiction called the *Co-operatives National Law (NSW)*. The clause applies the Co-operatives National Regulations as regulations called the *Co-operatives National Regulations (NSW)*.
15. Clause 5 defines certain words and expressions used in the *Co-operatives National Law (NSW)*.
16. Clause 6 excludes the operation of the *Interpretation Act 1987* and *Subordinate Legislation Act 1989* from applying to the applied provisions and the Co-operatives National Regulations and other instruments made under the Co-operatives National Law. The clause makes it clear that it does not affect local regulations made under the proposed Act.

Part 3 Some matters referred to in the Co-operatives National Law (NSW)

17. Clause 7 specifies for this jurisdiction the meaning of certain terms used in the Co-operatives National Law. These terms are *designated authority*, *designated instrument*, and *designated tribunal*. It is intended that each jurisdiction will make appropriate provision for these terms in jurisdictional legislation applying the National Law.
18. Clause 8 provides that a reference to a particular date in provisions of the Corporations Act as applied in this jurisdiction is to be read as a reference to a specified different date. The specified different date relates to changes to the liability of directors under insolvent trading provisions in the Corporations Act that were not adopted by the *Co-operatives Act 1992* until a later time.
19. Clause 9 provides that unclaimed money from the disposal of shares compulsorily acquired is to be dealt with under the *Unclaimed Money Act 1995*.
20. Clause 10 results in certain property of a deregistered co-operative vesting in the State of New South Wales. The clause achieves this by providing that the specified entity referred to in section 453 (d) of the *Co-operatives National Law (NSW)* is the State of New South Wales. By way of explanation, section 453 of the Co-operatives National Law applies provisions of the Corporations Act that refer to the Commonwealth, and clause 10 (1) has the effect of substituting the State of New South Wales for this purpose. Clause 10 (2) replaces references to a Special Account under Commonwealth legislation with references to the Special Deposits Account under State legislation.
21. Clause 11 provides for the application of legislation of this jurisdiction to warrants issued under the Co-operatives National Law.

22. Clause 12 provides that the costs of an inquiry under Part 6.5 of the *Co-operatives National Law (NSW)* may be directed to be paid to the State.
23. Clause 13 provides that information obtained in the course of administering the *Co-operatives National Law (NSW)* or the *Co-operatives Act 1992* may be divulged to certain specified persons.
24. Clause 14 provides that a pecuniary penalty ordered to be paid in the State is a civil debt payable to the Registrar of Co-operatives on behalf of the State, and is recoverable accordingly.
25. Clause 15 provides that stamp duty is not payable on certain instruments associated with co-operatives, and stamp duty already paid is to be taken into account in respect of certain other instruments associated with co-operatives.
26. Clause 16 provides that registration fees are not chargeable under any Act in respect of certain instruments associated with co-operatives.

Part 4 Regulations

Clause 17 authorises the Governor to make regulations (*National Regulations*) under the power conferred by the Co-operatives National Law as applied in each jurisdiction to make Co-operatives National Regulations. The Co-operatives National Regulations in that form take effect only to the extent they are applied or adopted by individual jurisdictions (see clause 4 in the case of this jurisdiction).

Clause 18 authorises the Governor to make regulations (*local regulations*) for the purposes of the proposed Act or as contemplated by the Co-operatives National Law as applying in this jurisdiction.

Part 5 Miscellaneous

27. Clause 19 provides that the Co-operatives National Law does not apply to certain co-operative housing bodies.
28. Clause 20 contains evidentiary provisions relating to the making of orders, notices, exemptions and other instruments published in the Gazette.
29. Clause 21 provides for the procedure for the prosecution of offences under the proposed Act and the *Co-operatives National Law (NSW)*.
30. Clause 22 provides for the recovery of fines and penalties imposed by the rules of a co-operative.
31. Clause 23 gives protection from civil liability for certain persons.
32. Clause 24 specifies the officer who is to exercise functions as the Registrar of Co-operatives under the proposed Act or the *Co-operatives National Law (NSW)*.
33. Clause 25 repeals the *Co-operatives Act 1992*, the *Co-operatives Amendment Act 1997*, and the *Co-operatives Regulation 2005*.

Schedule 1 Savings and transitional provisions

34. This Schedule contains some specific savings and transitional provisions, and also enables local regulations of a savings or transitional nature to be made.

Appendix Co-operatives National Law

35. This Appendix sets out the Co-operatives National Law. It is divided into Chapters and Schedules, which are briefly summarised below.

Chapter 1 Preliminary

36. This Chapter sets out the principles used by a co-operative organisation. The principles are those agreed by the International Co-operative Alliance and incorporated into Recommendation 193 of the International Labour Organization.
37. The Chapter contains interpretation provisions and also sets out the relationship between the Co-operatives National Law and the Corporations Act. The provisions of the Corporations Act that are applied throughout the Co-operatives National Law are collected in a note and cross-referenced in tabular form along with relevant modifications for ease of reference.

Chapter 2 Formation, powers and constitution of co-operatives

38. This Chapter provides the mechanism for incorporating a co-operative and specifies the legal powers of the incorporated body as well as the legal assumptions that underpin a co-operative's dealings with third parties. It identifies the matters that must be included in the rules of a co-operative and authorises the Registrar of Co-operatives to publish model rules that a co-operative can adopt. The Chapter also sets out the nature of share capital of a co-operative and establishes the legal notions of membership and active membership. Member rights and obligations as well as the circumstances in which membership is cancelled and any rights accompanying cancellation are dealt with in the Chapter.

Chapter 3 Management and operation of co-operatives

39. This Chapter deals with corporate governance of a co-operative. Matters such as the board as the managing organ, directors and their duties and meetings are included. Matters relating to financial reporting and auditing are contained in the Chapter along with provisions governing fundraising from members and the public.

Chapter 4 Structural and other events for co-operatives

40. This Chapter deals with corporate structural events such as external administration, mergers, schemes of arrangement and transfers of incorporation. Relevant provisions of the Corporations Act are applied and modified to achieve consistency of treatment in most external administration processes. Special provisions for caretaker-type administration and administrative powers of the Registrar of Co-operatives leading to a winding up are also located here.

Chapter 5 Participating co-operatives

41. This Chapter replaces the existing system of multiple registration to enable cross-border trade by co-operatives with a mutual recognition scheme for co-operatives from jurisdictions that participate in the Co-operatives National Law scheme.

Chapter 6 Supervision and protection of co-operatives

42. This Chapter establishes the powers of the Registrar of Co-operatives, inspectors and special investigators and the procedures that must be used when conducting an investigation. The Co-operatives National Law will introduce consistent powers and procedures across jurisdictions. If necessary, however, a particular jurisdiction will be able to modify provisions in this Chapter to account for local circumstances.

Chapter 7 Legal proceedings and other matters

43. This Chapter establishes nationally consistent provisions for offences, civil penalty provisions, appeals against administrative decisions, and the use of evidence in proceedings.

Chapter 8 General

44. This Chapter deals with administrative and other miscellaneous matters such as those relating to the office of Registrar of Co-operatives, the service and filing of documents, and the making of National Regulations.

Schedules

45. Schedule 1 sets out the matters that must be addressed in the rules of a co-operative.
46. Schedule 2 defines terms used in provisions that regulate interests and control in shares of a co-operative.
47. Schedule 3 contains savings and transitional provisions. Schedule 4 sets out interpretation provisions that are nationally consistent and are used in place of the interpretation legislation in each jurisdiction.

ISSUES CONSIDERED BY COMMITTEE

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

Protecting officials from liability

48. Clause 23(2) of the Bill has the effect of providing officials with immunity from civil action if actions or omissions are made honestly and without negligence.

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. As this provision forms part of the National Law, noting that clause 38 of the Appendix outlines that a co-operative may sue and be sued – and given that the immunity only relates to actions or omissions made honestly and without negligence – the Committee does not make an adverse comment with respect to this issue.

Strict Liability

49. Chapters 2, 3, 4, 5 and 7 of the Bill contain a number of strict liability offences. The Committee notes that strict liability offences often arise in a regulatory context to ensure compliance with regulatory schemes.

The Committee will always seek to comment when strict liability offences are included in a Bill. As this Bill implements National Law, and the offences are designed to ensure compliance with a regulatory scheme, the Committee makes no further comment on this issue.

Reversal of onus of proof

50. Clause 92(4) of the Appendix outlines that a defendant bears an evidential burden in relation to disclosures only being necessary to the extent to which matters are known to the person required to make a disclosure. Clause 142(2) of the Appendix outlines that disclosures to the registrar and applicant are exceptions to the prohibition on disclosure outlined in clause 142(1). Clause 142(4) outlines that a defendant bears an evidential burden in relation to the matter in subsection 142(2).

The Committee is concerned where legislation reverses the onus of proof, which is inconsistent with the presumption of innocence. However, the Committee considers that in certain circumstances it may be appropriate to shift the onus of proof, for example, where an individual is asserting limited knowledge. The Committee therefore does not consider the reversal of the onus of proof trespasses on personal rights and liberties in the circumstances outlined in clause 92(4) and 142(4) of the Appendix.

Required actions

51. Clause 82 of the Appendix outlines that the board of a distributing co-operative may require a member to take up or subscribe to additional shares, with the only recourse available to a member who does not wish to undertake such an action being to resign membership.

The Committee notes that the effect of clause 82 of the Appendix may be to compel members to purchase additional shares or resign their membership. Whilst the Committee notes that this may impact on the individual rights and liberties of members, the Committee notes the intention of the co-operative national law and, as this Bill implements National Law, the Committee makes no further comment on this issue.

52. Clause 125 of the Appendix notes that contracts under this clause are exempt from 'restraint of trade' laws. This has the effect of restricting members of co-operatives from engaging in activities that they would be otherwise free to engage in.

The Committee notes that whilst members of co-operatives may be restrained from certain aspects of trade, as members of co-operatives they have agreed to these restraints of trade. As such, the Committee makes no further comment with respect to this issue.

Reasonable timeframes and repayments

53. Clauses 128 and 163 of the Appendix provide for the repayment of shares on expulsion, resignation or cancellation of membership. Up to one year is provided for repayment, which may take the form of either repayment or be applied as a donation, a deposit or a debenture. Clause 165(2) of the Appendix outlines that debentures need not be repaid before ten years unless outlined in the rules of the co-operative. Clause 128 also outlines that if the balance sheet indicates a loss or deficiency, there must be a proportionate reduction in the capital to be repaid to the member.

The Committee is concerned that a period of one year is an extensive length of time to wait for the repayment of shares. The Committee is also concerned that the repayment can take the form of debenture rather than cash. As this

Bill implements National Law, the Committee makes no further comment on this issue.

54. Clause 450 of the Appendix outlines that a former member whose membership ceased in the preceding 24 months is liable on the winding up of a co-operative to contribute to the property of the co-operative the nominal value of the shares forfeited or the amount paid by the co-operative to the former member.

The Committee is concerned that former members of a co-operative continue to have liabilities with respect to the co-operative for twenty four months after their membership has ceased. However, given the purpose of the Bill, and given that the Bill implements National Law, the Committee makes no further comment on this issue.

Compulsory acquisition of shares

55. Division 3 of Chapter 4 of the Appendix outlines the circumstances in which a transferee is required to acquire shares.

The Committee will always seek to comment in circumstances where individuals are compelled to acquire shares. The Committee notes that under Division 3 of Chapter 4 a transferee can only avoid such a requirement by resigning their membership, which may adversely affect their ability to earn an income in circumstances where the business of the co-operative is their livelihood. The Committee particularly notes the timeframes with respect to the compulsory acquisition of shares can be as few as 42 days. As this Bill implements National Law, the Committee makes no further comment on this issue.

Compulsory transfer of funds to the Registrar

56. Division 3 of Chapter 4 of the Appendix outlines that if an amount or other property received by the co-operative under this Division has been held in trust by the co-operative for a person for at least two years, the co-operative must pay the amount to the Registrar. The Registrar is the Minister for Fair Trading in New South Wales.

The Committee will always seek to comment when the effect of a provision is to compulsory transfer an asset held on trust by a co-operative to the State. As this Bill implements National Law, the Committee makes no further comment on this issue.

Compulsory loan commitment

57. Clause 343 of the Appendix requires members of a co-operative to lend money, with or without security, in accordance with a proposal approved by special resolution. The loan can be up to seven years. If a member does not wish to take part in the loan they may resign their membership on the passing of the special resolution.

The Committee will always comment on clauses which impose obligations on individuals without providing adequate alternatives. Given the purpose of a co-operative, the Committee makes no further comment on this issue.

Right of entry and right to silence

58. Clause 498 of the Appendix outlines that an inspector may enter a place – without consent or a warrant - if it is a place at which the affairs or activities of a co-operative are managed or conducted. The Committee notes that this may include an individual's residence. Clauses 500 and 502 of the Appendix outlines that the inspector may require the production of documents, attendance before the inspector and may require the answering of questions. Clause 503 outlines that statements that are prefaced with a claim that the statement might tend to incriminate the speaker are not admissible in evidence against him or her in criminal proceedings, unless those criminal proceedings relate to the supervision and inspection of documents.

The Committee will always comment on clauses which provide access to premises without a warrant. The Committee will also be concerned to comment in circumstances where a person's right to silence is removed by legislation, notwithstanding that the statement will not be admissible in evidence against the speaker in circumstances where the speaker notes that the statement might incriminate them. The Committee refers to Parliament whether clauses 500 and 502 of the Appendix are appropriately included in the National Law.

Multiple Punishments

59. Clause 539 provides that if a person is required to act, the obligation to act continues until the act is done, even if the person is convicted of an offence for a failure to do the act or the provision required the act to be performed in a particular time frame and that time period has ended or passed.

The Committee will always note when a person may be subject to multiple punishments with respect to the same act or omission. However, given that the requirement relates to the administration of co-operatives, the Committee is of the opinion that the provision is reasonable in the circumstances.

Procedural Fairness

60. Clauses 570 to 576 of the Appendix provide that if the Registrar fails to approve or register certain applications, then it is to be taken that the Registrar has refused to approve or register the application. Requiring an assumption to be formed by persons that an omission by the Registrar is to be regarded as a positive act is problematic as co-operatives will rely on decisions of the Registrar with respect to planning and managing their operations.

The Committee notes that the Bill provides that a co-operative is required to treat any lack of notice from the Registrar with respect to an application or an approval as a refusal of that application or approval. The Committee refers to Parliament whether this is a breach of procedural fairness.

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

Powers of the Registrar

61. In New South Wales, the Registrar is the Director General (clause 5). Part 4.3 of Chapter 4 of the Appendix outlines the circumstances in which co-operatives can merge and

transfer engagements. Clause 397(2)(f) provides that the Registrar can require a co-operative to provide information as directed by the Registrar. Clause 397(5) provides that the Registrar may give an approval or an exemption under this section unconditionally or subject to conditions. The Bill does not outline what those conditions can include or considerations that the Registrar should bear in mind when preparing the conditions.

The Committee will always seek to comment in circumstances where an administrative power is granted without providing limitations with respect to that power. As this Bill implements National Law, the Committee makes no further comment on this issue.

62. Clause 401 provides the Registrar, with the approval of the Minister, to direct a co-operative to transfer its engagements to a co-operative approved by the Registrar, but only in the circumstances outlined in clause 455. The circumstances listed in clause 455 include when the number of members has been reduced to less than the minimum number allowed; when a co-operative has not started business within one year of registration or has suspended business for more than six months; when registration has been obtained by mistake or fraud; when a co-operative exists for an illegal purpose; when a co-operative has wilfully and after notice from the Registrar violated the provisions of the Co-operatives National Law or the rules of the co-operative.

The Committee will always seek to comment in circumstances where an administrative power is granted to compel the transfer of engagements from one co-operative to another. The Committee notes that this power is limited to the circumstances outlined in clause 455 of the Appendix. As this Bill implements National Law, the Committee makes no further comment on this issue.

63. Clause 443(7) provides the Registrar with the power to fix the security to be given by a liquidator and the fees payable to a liquidator. Clause 449 provides for a review of the liquidator's remuneration, which is to be conducted by the Registrar if the liquidator was appointed by the Registrar.

The Committee will always seek to comment in circumstances where an administrative power is granted to an individual to fix a fee, particularly in circumstances where the review of that act is to be conducted by the same individual. The Committee generally prefers fees to be fixed by legislation. However, noting the individual circumstances that subclause 443(7) will govern, and noting that this Bill implements National Law, the Committee makes no further comment on this issue.

64. Clause 537 provides the Registrar with the power to authorise a person who was involved in the administration of this law or the former Act, to record, make use of, or divulge information obtained in the course of the administration if the Registrar considers it in the public interest for that person to do so. Clause 548 also provides the Registrar the power to withhold the inclusion of information in relation to an undertaking if the Registrar believes the disclosure would be against public interest.

The Committee will always seek to comment in circumstances where the responsibility of interpretation of public interest is granted to a person in a non-

judicial or non-elected role. However, as this Bill implements National Law, the Committee makes no further comment on this issue.

65. Clause 598 provides the Registrar with the power to delegate to any person or body any of the Registrar's functions under this Law. Furthermore, the delegate may sub-delegate to another person or body any function delegated to them under this section if the person is authorised under the terms of the delegation to do so. The Committee notes the wide range of powers given to the Registrar under this Bill, especially the decision-making powers.

The Committee will always seek to comment in circumstances where the powers granted by law are permitted to be delegated to any person or body, and such powers can be sub-delegated. However, as this Bill implements National Law, the Committee makes no further comment on this issue.

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

Commencement by proclamation

66. Clause 2 of the Bill outlines that the Act will commence on a day or days to be appointed by proclamation and that different days may be appointed for the commencement of different provisions. The Minister, the Hon. Anthony Roberts MP, noted in the Agreement in Principle speech that each jurisdiction has agreed to secure the passage and proclamation of the uniform laws within 12 months, or such time as may be unanimously approved by the Council of Australian Governments Consumer Affairs Forum.

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 that the inclusion of a commencement by proclamation provision assist in the uniform introduction of National Law. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

Retrospectivity

67. Clause 613 of the Appendix allows for the Regulations that contain provisions of a savings or transitional nature consequent on the enactment of legislation setting out, applying or amending this Law, to take effect retrospectively, if the Regulations so provide. The Committee notes that subsection (3) of the clause provides that any retrospective provision will not operate to so as to affect a person in a prejudicial manner, the rights of that person prior to the enactment of the law, nor impose any liability on any person for any act or thing done prior to the publication of the Regulations.

The Committee will always be concerned to identify where legislation is taken to have effect retrospectively. However, the Committee does not make an adverse comment in relation to the retrospective provisions in this Bill as the safeguards in the Bill will effectively prevent any disadvantage of those persons affected.

Delegated legislation not subject to the Subordinate Legislation Act 1989

68. Clause 6 of the Bill excludes the operation of the *Interpretation Act 1987* and the *Subordinate Legislation Act 1989* with respect to the *Co-operatives National Law (NSW)*, the *Co-operatives National Regulations (NSW)* and the Co-operatives National Regulations or other instruments made under that Law.

The Committee notes that the *Subordinate Legislation Act 1989* outlines the requirements for delegated legislation in New South Wales. The Committee also notes that the *Subordinate Legislation Act 1989* affords protections with respect to delegated legislation, including cost/benefit analysis and ensuring that the objectives of the regulations are reasonable and appropriate. However, as the Bill has been subject to a Regulation Impact Review process, the Committee does not make an adverse comment in relation to this issue.

Matters in the regulations that ought to be in the legislation

69. Clause 18(2) of the Bill outlines that in addition to making provision of the administration and procedural matters arising from the *Co-operatives National Law (NSW)*, the regulations may relate to the supervision and inspection of co-operatives. Clause 18(3) outlines that the regulations may create offences and impose penalties for an offence.

Given the potential impact on the rights and liberties of individuals with respect to supervision, inspection and the creation of offences - and notwithstanding the limit of \$2,000 outlined in clause 612(5) of the Appendix and that this Bill implements National Law - the Committee refers to Parliament whether it is reasonable for the Bill to provide that the Regulations may create offences and impose penalties for an offence.

70. Clause 4 of the Appendix provides definitions. The clause outlines that some definitions will be provided in the regulations. Clause 145 of the Appendix also provides that some definitions may be provided in the regulations. Clause 149 of the Appendix outlines the factors and considerations when determining a co-operatives primary activities, with further factors and consideration to be prescribed in the National Regulations.

The Committee will always seek to comment when definitions, relevant factors and considerations may be listed or provided in the Regulations rather than the primary legislation. As this Bill implements National Law, the Committee makes no further comment on this issue.

71. Clause 12(2) of the Appendix outlines the circumstances in which the Corporations legislation is not excluded from applying to cooperatives. Division 2 of Chapter 1 of the Appendix outlines circumstances in which Corporations legislation applies to cooperatives.

The Committee will always seek to comment when NSW legislation is drafted to provide for the application of Commonwealth legislation with respect to subject matter that is not listed under section 52 of the Commonwealth Constitution. As this Bill implements National Law, the Committee makes no further comment on this issue.

72. Clause 455 of the Appendix outlines the grounds on which a co-operative may have an administration appointed, have engagements transferred and/or be wound up. Subclause 455(3)(b) outlines that the necessary grounds for winding up a co-operative on a certificate of the Registrar exist if the Registrar certified that an event has occurred on the occurrence of which the National Regulation provide the co-operative is to be wound up.

The Committee is concerned that a provision for the winding up of a co-operative may be determined in the Regulations. The Committee is of the view that the circumstances for which an un-elected or non-judicial officer can wind up a co-operative is a matter for the governing legislation, and not the Regulations. The Committee refers to Parliament whether this is an appropriate matter for inclusion in the Regulations.

73. Clauses 466 and 467 provide restrictions on advertising and publicity with respect to shares, debentures and co-operative capital units. These clauses provide that additional requirements with respect to advertising and publicity may be included in the Regulations.

The Committee notes that placing restrictions with respect to advertising and publicity may be matters that are more appropriately included in the legislation rather than the Regulations. However, as this Bill implements National Law, the Committee makes no further comment on this issue.

74. Clauses 1 and 2 of Schedule 1 to the Appendix outline the matters for which rules of co-operatives must make provision, providing scope at subclauses 1(y) 2(i) for the National Regulations to prescribe matters. Clause 14 of Schedule 2 to the Appendix outlines that the National Regulations may provide that a relevant interest in a share is to be disregarded for the purposes of a provision of the Co-operatives National Law.

The Committee notes the purpose of the rules of a co-operative, and considers that any prescription with respect to the content of the rules is appropriately included in the legislation rather than the Regulations. The Committee queries the appropriateness of providing the Regulations with the power to outline circumstances in which a person who otherwise has a relevant interest in a share is to be disregarded. However, as this Bill implements National Law, the Committee makes no further comment on these issues.

Henry VIII Clause

75. Clause 160 of the Appendix provides a list of circumstances in which the board of a co-operative must not declare the membership of a member to be cancelled. The clause also provides that the National Regulations may provide otherwise.

The Committee will always seek to comment when legislation provides for amendment by Regulation. As this Bill implements National Law, the Committee makes no further comment on this issue.

2. Local Government Amendment (Elections) Bill 2012

Date introduced	2 April 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Don Page MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The Bill was introduced to amend the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*. The Bill passed Parliament on 3 April 2012 and was assented on 11 April 2012. It is currently in effect.
2. The objects of the Act are to provide for a system of continuous automatic enrolment of electors on the rolls for State parliamentary elections to extend to local government elections.
3. In addition, it enables residential electors to enrol and cast a provisional vote at an election on polling day, subject to proof of identity.
4. Lastly, the Act makes other miscellaneous amendments to improve the conduct of Local Government election under the *Local Government Act 1993*.

BACKGROUND

5. The amendments provided for in the Act build on previous amendments made to the *Parliamentary Electorates and Elections Act 1912* which introduced a system of automatic enrolment. This system was used in advance of the last State Election in 2011. The continuous enrolment regime – called SmartRoll – will now be used to prepare the residential rolls for local government elections.
6. The Act also makes a number of miscellaneous amendments to the *Local Government Act 1993*. This includes: mirroring terminology used in the *Parliamentary Electorates and Elections Act 1912* for consistency; modernising provisions for determining the randomised order of candidates on a ballot; and varying the period during which mayors are to be elected by councillors following an ordinary or first election so that it commences from the date of the declaration of the poll, instead of polling day.

OUTLINE OF PROVISIONS

7. **Clause 1** sets out the name (also called the short title) of the proposed Act.
8. **Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.
9. **Schedule 1 [1], [2], [4], [5] and [9]** make amendments to give effect to the objective set out in paragraph (a) of the Overview. The result of the amendments is that the Electoral

Commissioner will be required to continuously keep a roll for each local government area of persons who are, in the opinion of the Electoral Commissioner, entitled to be enrolled as electors because they are residents of the area. The Electoral Commissioner may use the roll used for elections of the Legislative Assembly (that is, the automatically updated roll for State elections under the *Parliamentary Electorates and Elections Act 1912*) or the roll used for Commonwealth elections as a basis for the local government residential roll (see section 298 of the LG Act).

10. **Schedule 1 [6]–[8] and [14]** make consequential amendments to provide for printed and electronic authorised copies of the roll of electors for use at local government elections. (See also proposed provisional voting provisions that will allow certain residents who are not on the authorised copy of the roll to cast a provisional vote at an election).
11. **Schedule 1 [10] and Schedule 2 [11]** make amendments to give effect to the objective set out in paragraph (b) of the Overview. Substituted section 305 allows regulations to be made to enable provisional votes to be cast in certain circumstances in local government elections under the LG Act.
12. Proposed Subdivision 1A of Division 7 of Part 11 of the LG Regulation (proposed clauses 320A–320E) will enable an elector to cast a provisional vote in a local council election in a similar manner as a provisional vote is cast in a State election under section 106 of the *Parliamentary Electorates and Elections Act 1912*. The proposed Subdivision provides for 4 types of provisional vote. Provisional voting is currently allowed:
 - (a) where a person is already marked off an authorised roll but the person claims not to have voted (clause 344 of the LG Regulation), and
 - (b) where a person’s name has been incorrectly omitted from a roll (section 305 of the LG Act and clause 343 of the LG Regulation).
13. Under the new provisions, provisional voting will also be permitted:
 - (a) where a resident of the local government area is enrolling for the first time, re-enrolling or transferring enrolment (provided the resident can produce a New South Wales driver licence or Photo Card), and
 - (b) where a person has enrolled for the election before polling day but after authorised copies of the rolls have been finalised.
17. The proposed Subdivision and related provisions also deal with the procedure for provisional voting and the scrutiny and counting of provisional votes.
18. **Schedule 2 [2], [3], [12]–[19] and [28]–[31]** make consequential changes to the LG Regulation.
19. **Schedule 1 [3]** amends section 290 of the LG Act to make it clear that, in determining when an election of a mayor by the councillors must be held after an election of councillors, time begins to count after the declaration of election of all the councillors of the council concerned.

20. **Schedule 1 [11] and [15] and Schedule 2 [27]** make amendments to the LG Act and LG Regulation to streamline the process, after an election, for checking the rolls of electors for double-voting and failure to vote. All the rolls used in a local government election (whether the election is administered by the Electoral Commissioner or by the general manager of a council) are to be checked by the Electoral Commissioner.
21. **Schedule 1 [12] and Schedule 2 [6]–[10]** make amendments to the LG Act and LG Regulation to enable the relevant election manager to approve methods of random selection (for example, by electronic means) to determine the order that candidates' names and groups' names appear on ballot-papers rather than being limited to the method of balloting of names currently set out in the LG Regulation.
22. **Schedule 1 [13]** enables regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.
23. **Schedule 2 [1] and [4]** make amendments to make certain terminology used in the LG Regulation consistent.
24. **Schedule 2 [5]** makes it clear that a candidate for nomination at an election must be proposed by persons who are enrolled in respect of the same ward or area as at the prescribed closing date for the election.
25. **Schedule 2 [20]–[26]** make amendments to provide that, in relation to elections administered by the general manager of a council, the returning officer is to be responsible for the registration of electoral material under Subdivision 6 of Division 9A of Part 11 of the LG Regulation (rather than the general manager).

ISSUES CONSIDERED BY COMMITTEE

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

3. Sydney Water Catchment Management Amendment (Board Members) Bill 2012

Date introduced	4 April 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Sydney Water Catchment Management Act 1998 to change the constitution of the Sydney Catchment Authority Board (the Board) so as to provide that the members who are appointed by the Minister must each or together have a specific range of relevant qualifications, experience, knowledge and expertise.

BACKGROUND

2. The Sydney Catchment Authority Board is responsible for the policies and long-term strategic plans of the Authority.
3. Currently, the Board is required to include a nominee of the NSW Farmers Association, the Nature Conservation Council as well as an elected councillor from within the catchment area. The Minister for Primary Industries, the Hon. Katrina Hodgkinson MP, stated in the Second reading Speech for the Bill:

"While selection based on defined stakeholder groups can sometimes be effective, it does not allow for representation across the full spectrum of stakeholders. It can also inhibit the Minister from selecting the best person for the job at any given time. The Bill therefore removes the current requirement for the board to include nominees from the NSW Farmers Association, the Nature Conservation Council and a local councillor. Instead, the Bill specifies the skills and expertise that are required for the board to operate effectively."

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 to be appointed by proclamation.

Schedule 1 Amendment of Sydney Water Catchment Management Act 1998 No 171

6. Schedule 1 [1] provides that the members of the Board who are appointed by the Minister must each or together have specified relevant qualifications, experience, knowledge and expertise and such other expertise as the Minister considers necessary for the Sydney Catchment Authority to realise its objectives. For example, the specified

qualifications and expertise include those relevant to catchment management and protection and water supply planning and asset management.

7. Currently, the Minister must appoint members to the Board who each or together have expertise in the areas of the protection of the environment and public health and such other expertise as the Minister considers necessary for the Authority to realise its objectives. Two of those appointed members must be nominees of specific stakeholder groups and one other must be an elected councillor of a local government area within the catchment area.
8. Schedule 1 [2] enables regulations to be made containing savings and transitional provisions consequent on the enactment of the proposed Act. Schedule 1 [3] contains specific transitional provisions.

ISSUES CONSIDERED BY COMMITTEE

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

Compensation

9. On commencement of the Bill, persons who were appointed as a member of the board by the Minister immediately prior to the commencement cease to hold that office. Clause 3 states that compensation is not payable to persons who cease to hold an office as a result of the enactment of the Bill.

The Committee notes that clause 3 prohibits the payment of compensation by or on behalf of the State to an individual who was previously a member of the Board and who, because of the operation of the Act, ceases to be a member of the Board. The Committee also notes that the payment of remuneration to members of the Board is at the discretion of the Minister (clause 5 of Schedule 1 of the Act). As such, the Committee makes no adverse comment in relation to this clause.

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

Commencement by proclamation

10. Clause 2 provides for the commencement of the Bill on a day 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, given that the Committee has not identified any other provisions that adversely affect individual rights and liberties, the Committee does not consider there to be an inappropriate delegation of legislative power in this instance.

Part Two - Regulations

The Committee does not report on any Regulations.

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

The Committee is not in receipt of correspondence on Regulations on which the Committee has reported.

