



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

Digest 1/55 – 8 August 2011



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

New South Wales. Parliament. Legislative Assembly. Legislation Review Committee.

Legislation Review Digest, Legislation Review Committee, Parliament NSW Legislative Assembly.  
[Sydney, NSW] : The Committee, 2011,xiii 140p

Chair: Mr Stephen Bromhead MP

8 August 2011

ISSN 1448-6954

1. Legislation Review Committee—New South Wales
2. Legislation Review Digest No. 1/55

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee  
Digest; No. 1 /55

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

# Contents

Membership and Staff _____	iii
Functions of the Committee _____	iv
Guide to the Digest _____	vi
Conclusions _____	viii
<b>PART ONE – BILLS _____</b>	<b>1</b>
1. APPROPRIATION (SUPPLY AND BUDGET VARIATIONS) BILL 2011 _____	1
2. CONSTITUTION AMENDMENT (PROROGATION OF PARLIAMENT) BILL 2011 _____	6
3. COURT SECURITY AMENDMENT BILL 2011 _____	8
4. COURTS AND OTHER LEGISLATION AMENDMENT BILL 2011 _____	11
5. CREDIT (COMMONWEALTH POWERS) AMENDMENT (MAXIMUM ANNUAL PERCENTAGE RATE) BILL 2011 _____	14
6. CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL 2011 _____	16
7. CROSS-BORDER COMMISSION BILL 2011* _____	18
8. DESTINATION NSW BILL 2011 _____	21
9. DUTIES AMENDMENT (SENIOR'S PRINCIPAL PLACE OF RESIDENCE DUTY EXEMPTION) BILL 2011 _____	25
10. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (MAINTENANCE OF LOCAL GOVERNMENT CONSENT POWERS) BILL 2011* _____	27
11. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (PART 3A REPEAL) BILL 2011 _____	31
12. EVIDENCE AMENDMENT (JOURNALIST PRIVILEGE) BILL 2011 _____	40
13. EVIDENCE AMENDMENT (PROTECTION OF JOURNALISTS' SOURCES) BILL 2011* _____	42
14. FIREARMS LEGISLATION AMENDMENT BILL 2011* _____	44
15. GENE TECHNOLOGY (GM CROP MORATORIUM) AMENDMENT (POSTPONEMENT OF EXPIRY) BILL 2011 _____	47
16. GOVERNMENT ADVERTISING BILL 2011 _____	49
17. GRAFFITI LEGISLATION AMENDMENT BILL 2011 _____	53
18. HEALTH SERVICES AMENDMENT (LOCAL HEALTH DISTRICTS AND BOARDS) BILL 2011 _____	57

19.	INDUSTRIAL RELATIONS AMENDMENT (PUBLIC SECTOR CONDITIONS OF EMPLOYMENT) BILL 2011	60
20.	INFRASTRUCTURE NSW BILL 2011	62
21.	LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (MOVE ON DIRECTIONS) BILL 2011	68
22.	LIBRARY AMENDMENT BILL 2011	69
23.	LIQUOR AMENDMENT (3 STRIKES) BILL 2011	71
24.	LOBBYING OF GOVERNMENT OFFICIALS BILL 2011	77
25.	LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2011	80
26.	LOCAL GOVERNMENT (SHELLHARBOUR AND WOLLONGONG ELECTIONS) BILL 2011	84
27.	MARINE PARKS AMENDMENT (MORATORIUM) BILL 2011*	87
28.	MISCELLANEOUS ACTS AMENDMENT (DIRECTORS' LIABILITY) BILL 2011	88
29.	PARLIAMENTARY, LOCAL COUNCIL AND PUBLIC SECTOR EXECUTIVES REMUNERATION LEGISLATION AMENDMENT BILL 2011	91
30.	PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) BILL 2011	95
31.	PUBLIC INTEREST DISCLOSURES AMENDMENT BILL 2011; INDEPENDENT COMMISSION AGAINST CORRUPTION BILL 2011	102
32.	REAL PROPERTY AMENDMENT (TORRENS ASSURANCE LEVY REPEAL) BILL 2011	105
33.	REGIONAL RELOCATION (HOME BUYERS GRANT) BILL 2011	107
34.	RESTART NSW FUND BILL 2011	114
35.	STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2011	116
36.	SUMMARY OFFENCES AMENDMENT (INTOXICATED AND DISORDERLY CONDUCT) BILL 2011	119
37.	WORK HEALTH AND SAFETY BILL 2011; OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2011	122
	PART TWO – REGULATIONS	138
	APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	139
	APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	140

# Membership and Staff

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Garry Edwards MP, Member for Swansea Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon Shaoquett Moselmane MLC The Hon Dr Peter Phelps MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 3060
FACSIMILE	02 9230 3052
E-MAIL	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/legislationreview">www.parliament.nsw.gov.au/legislationreview</a>

# Functions of the Committee

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

## **8A Functions with respect to Bills**

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

## **9 Functions with respect to Regulations**

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

- (v) that the objective of the regulation could have been achieved by alternative and more effective means,
  - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
  - (vii) that the form or intention of the regulation calls for elucidation, or
  - (viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (2) Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
  - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) 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. APPROPRIATION (SUPPLY AND BUDGET VARIATIONS) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

### 2. CONSTITUTION AMENDMENT (PROROGATION OF PARLIAMENT) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

### 3. COURT SECURITY AMENDMENT BILL 2011

#### **Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.

### 4. COURTS AND OTHER LEGISLATION AMENDMENT BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

### 5. CREDIT (COMMONWEALTH POWERS) AMENDMENT (MAXIMUM ANNUAL PERCENTAGE RATE) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

### 6. CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL 2011

#### **Issue: Mandatory sentencing**

The Committee notes proposed s 19B requires life imprisonment for any person who murders a police officer in the execution of the officer's duties regardless of the circumstances of the case.

The Committee refers to Parliament the question of whether the imposition of mandatory life sentences under proposed s 19B trespasses unduly on personal rights and liberties.

### 7. CROSS-BORDER COMMISSION BILL 2011\*

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

### 8. DESTINATION NSW BILL 2011

#### **Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.

**9. DUTIES AMENDMENT (SENIOR'S PRINCIPAL PLACE OF RESIDENCE DUTY EXEMPTION) BILL 2011**

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**10. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (MAINTENANCE OF LOCAL GOVERNMENT CONSENT POWERS) BILL 2011\***

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**11. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (PART 3A REPEAL) BILL 2011**

**Issue: Exclusion of claims for compensation**

The Committee notes that compensation is excluded even in the event of deliberate deception.

The Committee refers to Parliament the question as to whether the exclusion of claims for compensation under cl 9 of proposed Sch 6A constitutes an undue trespass on personal rights and liberties.

**Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the Bill is an interim measure which will be complemented by further legislation. Accordingly, the Committee does not consider that the Bill gives rise to an inappropriate delegation of legislative power.

**12. EVIDENCE AMENDMENT (JOURNALIST PRIVILEGE) BILL 2011**

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**13. EVIDENCE AMENDMENT (PROTECTION OF JOURNALISTS' SOURCES) BILL 2011\***

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**14. FIREARMS LEGISLATION AMENDMENT BILL 2011\***

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**15. GENE TECHNOLOGY (GM CROP MORATORIUM) AMENDMENT (POSTPONEMENT OF EXPIRY) BILL 2011**

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

16. GOVERNMENT ADVERTISING BILL 2011

**Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.

17. GRAFFITI LEGISLATION AMENDMENT BILL 2011

**Issue: Youth justice conferencing**

The Committee notes that the Bill restricts the use of non-judicial proceedings for children who are alleged to have committed a graffiti offence. Accordingly, the Committee refers to Parliament cl 1.7 of Schedule 1 to the Bill.

**Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee is particularly concerned where there may be uncertainty in the community as to the applicability of a law which provides for penalties, and refers to Parliament whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

18. HEALTH SERVICES AMENDMENT (LOCAL HEALTH DISTRICTS AND BOARDS) BILL 2011

**Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.

19. INDUSTRIAL RELATIONS AMENDMENT (PUBLIC SECTOR CONDITIONS OF EMPLOYMENT) BILL 2011

**Issue: Matters in regulation which should be included in legislation**

The Committee refers to Parliament whether provision for the declaration of the government's policy in regulation constitutes an inappropriate delegation of legislative power.

20. INFRASTRUCTURE NSW BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

21. LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (MOVE ON DIRECTIONS) BILL 2011

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

22. LIBRARY AMENDMENT BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

23. LIQUOR AMENDMENT (3 STRIKES) BILL 2011

**Issue: Trespasses on personal rights and liberties**

The Committee notes the potential considerable impact which a strike may have on a business owner or licensee, and considers that basing decision-making on alleged offences, and charges rather than conviction, effectively trespasses against the right to the presumption of innocence. The Committee also notes the disparity between a strike coming into effect and ceasing to be in effect.

The Committee refers to Parliament whether the Bill trespasses unduly on the personal rights and liberties of persons involved in the conduct of businesses subject to the provisions of proposed Part 9A.

**Issue: Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers**

The Committee notes that the Bill gives very wide decision-making powers to the Director General. The full scope of these powers is not set out in the Bill, and are not subject to the notification, etc., requirements of Part 2 of Chapter 5 of the Administrative Decisions Tribunal Act 1997.

The Committee refers to Parliament whether the Bill makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.

24. LOBBYING OF GOVERNMENT OFFICIALS BILL 2011

**Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.

25. LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

26. LOCAL GOVERNMENT (SHELLHARBOUR AND WOLLONGONG ELECTIONS) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

27. MARINE PARKS AMENDMENT (MORATORIUM) BILL 2011\*

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

28. MISCELLANEOUS ACTS AMENDMENT (DIRECTORS' LIABILITY) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**29. PARLIAMENTARY, LOCAL COUNCIL AND PUBLIC SECTOR EXECUTIVES  
REMUNERATION LEGISLATION AMENDMENT BILL 2011**

**Issue: Matters in regulation which should be included in legislation**

The Committee refers to Parliament whether provision for the declaration of the government's policy in regulation constitutes an inappropriate delegation of legislative power.

**30. PAYROLL TAX REBATE SCHEME (JOBS ACTION PLAN) BILL 2011**

**Issue: Search and seizure without a warrant**

The Committee will always be concerned where officials are granted powers of entry to property other than pursuant to a search warrant.

However, having regards to the limits on these powers, and the Chief Commissioner's role in ensuring compliance with rebate scheme, the Committee does not consider that the proposed section constitutes an undue trespass on privacy rights.

**31. PUBLIC INTEREST DISCLOSURES AMENDMENT BILL 2011; INDEPENDENT  
COMMISSION AGAINST CORRUPTION BILL 2011**

**Issue: Provide the executive with unfettered control over the commencement of an Act**

The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the proposed Act to commence on proclamation, and considers that it does not give rise to inappropriate delegations of legislative power.

**Issue: Powers in regulation which should be included in legislation**

The Committee is of the view that any functions concerned with the resolution of disputes involving protected disclosures should be comprehensive and include an adequate system of review and appeal of any decisions. Placing these functions in the primary legislation will assist in emphasising the importance of providing support for public officials who make public interest disclosures and transparent process for resolving disputes.

Therefore, the Committee considers that cl 15 may constitute an inappropriate delegation of legislative power and refers it to Parliament.

**32. REAL PROPERTY AMENDMENT (TORRENS ASSURANCE LEVY REPEAL) BILL  
2011**

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**33. REGIONAL RELOCATION (HOME BUYERS GRANT) BILL 2011**

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

**34. RESTART NSW FUND BILL 2011**

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

35. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

36. SUMMARY OFFENCES AMENDMENT (INTOXICATED AND DISORDERLY CONDUCT) BILL 2011

**Issue: Ill and wide defined powers**

The Committee acknowledges the Attorney General's assurance that police will develop guidelines concerning the operation of the proposed new offence.

37. WORK HEALTH AND SAFETY BILL 2011; OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2011

**Issue: Onus of proof: cl 110 of the Work Health and Safety Bill 2011**

The Committee will be 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 knowledge of certain factual circumstances are in the possession of one party. The Committee therefore does not consider the reversal of the onus of proof trespasses on personal rights and liberties.

**Issue: Privilege against self-incrimination: clause 172 of the Work Health and Safety Bill 2011**

The privilege against self incrimination is considered a fundamental principle of the rule of law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest.

The Committee considers that without limiting the privilege against self incrimination, the ability of inspectors and the regulator to ensure ongoing work health and safety protections may be compromised. The Committee therefore does not consider the abrogation of the privilege against self incrimination to be a trespass on personal rights and liberties.

**Issue: Delegation of legislative power: clauses 52, 56, 61, 70, 75, 276 of the Work Health and Safety Bill 2011**

As large monetary penalties may have the capacity to adversely affect some individuals, the Committee considers that any details which relate to the imposition of large monetary penalties are matters more appropriately dealt with by primary legislation considered by Parliament.

Accordingly, the Committee refers to Parliament the question as to whether clauses 52, 56, 61, 70, 75 and 276 inappropriately delegate legislative power.

**PART TWO – REGULATIONS**





## Part One – Bills

# 1. Appropriation (Supply and Budget Variations) Bill 2011

Date introduced	1 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The *Appropriation (Supply and Budget Variations) Bill 2011* passed both Houses on 15 June 2011, and received Royal Assent on 21 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. Pending the enactment of the annual Appropriation Act, the Treasurer is authorised, under section 25 of the *Public Finance and Audit Act 1983*, to make payments from the Consolidated Fund during the first 3 months of the new financial year in respect of regularly recurring services and ordinary contingencies. However, due to the timing of the budget for this (2011–2012) financial year, spending in respect of such services and contingencies may need to extend beyond the period provided for in section 25, to the first 4 months of this financial year. Also, the rate at which spending is authorised under section 25 will be insufficient to meet the needs of the Government.
3. Consequently, the object of this Bill is to make provision, pending the enactment of this year's Appropriation Act, for the Treasurer to make payments from the Consolidated Fund during the months of July, August, September and October 2011 in respect of the regularly recurring services and ordinary contingencies of the State, as follows (and to disapply section 25 to enable such provision to be made):

(a) The State (other than Parliament or Special Offices):

Recurrent services	\$18,300,000,000
Capital works and services	\$600,000,000
	\$18,900,000,000

(b) The Parliament:

Recurrent services	\$45,500,000
Capital works and services	\$1,000,000

\$46,500,000

(c) Special Offices:

Recurrent services

<i>Independent Commission Against Corruption</i>	\$6,500,000
<i>Ombudsman's Office</i>	\$7,800,000
<i>New South Wales Electoral Commission</i>	\$42,000,000
<i>Office of the Director of Public Prosecutions</i>	\$34,400,000
	\$90,700,000

Capital works and services

<i>Independent Commission Against Corruption</i>	\$100,000
<i>Ombudsman's Office</i>	\$33,000
<i>New South Wales Electoral Commission</i>	\$352,000
<i>Office of the Director of Public Prosecutions</i>	\$536,000
	\$1,021,000
	\$91,721,000

4. The Appropriation Act for the 2011–2012 financial year will contain a provision to the effect that amounts expended under the supply provisions of the proposed Act are to be regarded as having been made out of money appropriated by the Appropriation Act.

## Budget variations

5. The objects of this Bill are as follows:
- (a) to set out the recurrent services and capital works and services for which the “Advance to the Treasurer” appropriation was expended in the 2010–2011 financial year, and the 2009–2010 financial year (where not previously reported), and to make the necessary adjustments to the appropriation for each of those years,
  - (b) to appropriate the following amounts from the Consolidated Fund for recurrent services, and capital works and services, that were required by the exigencies of Government in accordance with section 22 (1) of the *Public Finance and Audit Act 1983*:
  - (c) in relation to the 2010–2011 financial year—\$157,900,000,

- (d) in relation to the 2009–2010 financial year (where not previously reported)—  
\$54,000,000.

## BACKGROUND

6. In the Agreement in Principle speech, the Treasurer stated that the Bill has three main objectives. The Bill:
- permits the Treasurer to make payments from the Consolidated Fund during the months of July, August, September and October 2011, until enactment of a 2011 appropriation Act. With the 2011-12 budget set for release in September 2011, there will be no appropriation Act passed by the start of the 2011-12 financial year.
  - sets out recurrent services and capital works and services expended from the "Advance to the Treasurer".
  - appropriates payments totalling \$157,900,000 to provide for the exigencies of government during 2010-11, and \$54 million to provide for those exigencies during 2009-10 that have not yet been reported. These amounts were paid by the Treasurer pursuant to section 22 of the *Public Finance and Audit Act 1983*.<sup>1</sup>

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

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. Clause 3 interprets various references in the proposed Act.

### Part 2 Supply

10. Clause 4 appropriates money for recurrent services (other than those of the Parliament and certain offices provided for in Parts 3 and 4 of the proposed Act).during the months of July, August, September and October 2011.
11. Clause 5 appropriates money for capital works and services (other than those provided for in Parts 3 and 4) during the months of July, August, September and October 2011.
12. Clause 6 authorises the Treasurer to pay the sums appropriated.
13. Clause 7 disapplies section 25 of the *Public Finance and Audit Act 1983* in relation to the first 3 months of the 2011–2012 financial year, being the period already provided for in the proposed Part.

### Part 3 Supply (Parliament)

14. Clause 8 appropriates money for recurrent services of the Parliament during the months of July, August, September and October 2011.

---

<sup>1</sup> Hon M B Baird MP, Treasurer, Legislative Assembly *Hansard*, 1 June 2011

15. Clause 9 appropriates money for capital works and services of the Parliament during the months of July, August, September and October 2011.
16. Clause 10 authorises the Treasurer to pay the sums appropriated.
17. Clause 11 disapplies section 25 of the *Public Finance and Audit Act 1983* (as explained in clause 7).

#### **Part 4 Supply (Special offices)**

18. Clause 12 appropriates money for recurrent services of certain offices (being the Independent Commission Against Corruption, the Ombudsman's Office, the New South Wales Electoral Commission and the Office of the Director of Public Prosecutions) during the months of July, August, September and October 2011.
19. Clause 13 appropriates money for capital works and services of those offices during the months of July, August, September and October 2011.
20. Clause 14 authorises the Treasurer to pay the sums appropriated.
21. Clause 15 disapplies section 25 of the *Public Finance and Audit Act 1983* (as explained in clause 7).

#### **Part 5 Budget variations**

##### ***Division 1 Budget variations 2010–2011***

22. Clause 16 adjusts the amount appropriated out of the Consolidated Fund for “Advance to the Treasurer” for the 2010–2011 financial year. The recurrent services and capital works and services for which the Advance was expended are set out in Column 1 of Schedule 1 and total \$355,644,000 of the \$440,000,000 originally advanced.
23. Clause 17 appropriates the additional amounts for recurrent services and capital works and services under section 22 (1) of the *Public Finance and Audit Act 1983*, the details of which are set out in Column 2 of Schedule 1. As these amounts are appropriated by the proposed Act, subclause (2) removes the requirement of the *Public Finance and Audit Act 1983* that details of them be included in the Appropriation Act for the 2011–2012 financial year.

##### ***Division 2 Budget variations 2009–2010 (not previously reported)***

24. Clause 18 adjusts the amount appropriated out of the Consolidated Fund for “Advance to the Treasurer” for the 2009–2010 financial year. The recurrent services and capital works and services for which the Advance was expended are set out in Column 1 of Schedule 2 and total \$281,066,000 of the \$440,000,000 originally advanced.
25. Clause 19 appropriates the additional amounts for recurrent services under section 22 (1) of the *Public Finance and Audit Act 1983*, the details of which are set out in Column 2 of Schedule 2. As these amounts are appropriated by the proposed Act, subclause (2) removes the requirement of the *Public Finance and Audit Act 1983* that details of them be included in the Appropriation Act for the 2011–2012 financial year.

*Division 3 General*

26. Clause 20 makes it clear that the sums appropriated by Part 5 of the proposed Act are in addition to any other sums appropriated in respect of the 2009–2010 or 2010–2011 financial year.
27. Clause 21 contains miscellaneous provisions concerning the operation of the proposed Act. Subclause (1) provides that the proposed Act (other than Parts 2–4) is to be construed as part of the annual Appropriation Act or Acts. (This emphasises that the appropriations are part of the budgetary process for the 2009–2010 or 2010–2011 financial year and ensures that terms are construed consistently.) Subclause (1) also makes it clear that the appropriations are not limited to meeting shortfalls from other appropriations. Subclause (2) validates any payment of the appropriated sums before the date of assent to the proposed Act. Subclause (2) also provides that the proposed subsection applies whether or not the proposed Act is assented to during or after the 2009–2010 or 2010–2011 financial year. (This removes an argument, based on section 23 of the *Public Finance and Audit Act 1983*, that the appropriation lapses at the close of the financial year.)
28. Clause 22 validates, to the extent (if any) to which it may be necessary to do so, the expenditure, before the date of assent to the proposed Act, of any sum to which the proposed Act (other than Parts 2–4) applies and the approval of that expenditure.
29. Clause 23 makes it clear that a reference to an agency specified in Schedule 1 or 2 to the proposed Act includes any predecessor of the agency that was responsible for the recurrent services, or capital works and services, specified in relation to the agency in Schedule 1 or 2 in the financial year concerned. This provision is included because names of Departments and other agencies may have changed during the financial year concerned because of administrative changes.

**ISSUES CONSIDERED BY THE COMMITTEE**

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 2. Constitution Amendment (Prorogation of Parliament) Bill 2011

Date introduced	4 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The *Constitution Amendment (Prorogation of Parliament) Bill* passed both Houses on 10 May 2011 and received Royal Assent on 16 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. Under section 24 of the *Constitution Act 1902*, the Legislative Assembly expires on the Friday before the first Saturday in March prior to a scheduled general election on the fourth Saturday in March.
3. The object of this Bill is to amend the *Constitution Act 1902* to prevent the Government from advising the Governor to prorogue Parliament at any time after the fourth Saturday in September and before 26 January prior to that expiry.
4. The amendment will not affect any reserve powers of the Governor to act without the advice of the Government.

### BACKGROUND

5. The Premier in the Agreement in Principle speech stated:

The bill will amend the Constitution Act 1902 to restrict the discretion of the Governor, acting on the advice of Executive Council, to prorogue Parliament in the six months prior to a fixed term election, except on or after Australia Day. Specifically, it will prevent the Premier or the Executive Council from advising the Governor to prorogue Parliament at any time after the fourth Saturday in September and before 26 January prior to a fixed term election. Effectively, this means that, in the future, a government will only be able to prorogue Parliament before a general election from Australia Day. Parliamentary business, such as responses to Questions on Notice and parliamentary committee inquiries and Standing Order 52 provisions of the upper House can be completed before Parliament is prorogued for the final time before a general election.<sup>2</sup>

### OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.

---

<sup>2</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 4 May 2011.

7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Clause 3 amends the *Constitution Act 1902* to give effect to the object set out above.

#### ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

### 3. Court Security Amendment Bill 2011

Date introduced	25 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith MP
Portfolio	Attorney General

#### PURPOSE AND DESCRIPTION

1. The *Court Security Amendment Bill* passed both Houses on 15 June 2011, and received the Royal Assent on 21 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend the *Court Security Act 2005* to implement certain recommendations arising from the statutory review of the Act. In particular, the Bill:
  - (a) clarifies the duration of orders by judicial officers that exclude members of the public generally or certain members of the public from court premises, and
  - (b) contains measures for preventing the taking of animals and alcohol into court premises, and
  - (c) enables a court security officer to require a person not to wear a helmet that obscures the face while in court premises, and
  - (d) enables a court security officer to arrest a person who is committing an act of violence against another person in court premises or has just done so, and
  - (e) extends the definition of **court premises** to include certain areas used in relation to courts that are also used for other purposes.

#### BACKGROUND

3. In the Agreement in Principle speech the Attorney General stated that the Bill gives effect to recommendations that arose out of a five-year statutory review of the *Court Security Act 2005*. The Attorney General commented that 'security incidents in New South Wales courts are relatively uncommon, nevertheless a number of incidents have occurred in which sheriffs' officers and people on court premises have been the subject of violence.'

The legislation provides security officers with a range of powers that are specifically directed at ensuring the secure and orderly operation of the courts.<sup>3</sup>

#### OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.

---

<sup>3</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 25 May 2011



5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### **Amendment of *Court Security Act 2005***

6. Schedule 1 [1] amends section 4 of the Act to specifically include in the definition of court premises any part of premises or a place used in relation to the operations of a court that is also used for other purposes.
7. Schedule 1 [2] amends section 7 of the Act to provide that an order given by a judicial officer that excludes the public generally, or specified members of the public, from court premises or a part of court premises can have effect for no more than 28 days. A judicial officer may renew such an order if the officer considers the circumstances warrant it.
8. Schedule 1 [3] inserts proposed section 7A into the Act to enable a court security officer to refuse a person entry to court premises, or to direct a person to leave court premises, if the person is in possession of an animal. The proposed section does not apply to an assistance animal that is being used by a person with a disability or an animal that is taken into court premises with the authority of a judicial officer, police officer or court security officer.
9. Schedule 1 [5] amends section 11 of the Act to enable a court security officer to require a person to surrender any alcohol in the person's possession before being allowed entry into court premises. Any alcohol surrendered is to be kept in safekeeping and returned to the person on request when the person leaves the court premises. Schedule 1 [4] makes a consequential amendment to section 10 of the Act.
10. Schedule 1 [6] amends section 14 of the Act to specifically include a power for a court security officer to give a direction to a person to remove a helmet that the person is wearing and that obscures the face and not to wear it while in court premises. Schedule 1 [7] and [8] make consequential amendments.
11. Schedule 1 [9] amends section 16 of the Act to enable a court security officer to arrest a person if the person is assaulting another person in the court premises or has just assaulted another person in the court premises. Schedule 1 [11] defines assault as an act of violence against a person that constitutes an offence under Part 3 of the *Crimes Act 1900*.
12. Schedule 1 [10] amends section 16 of the Act to specifically enable a security officer to discontinue an arrest.
13. Schedule 1 [12] and [13] amend Schedule 1 to the Act to make provision for matters of a savings or transitional nature consequent on the enactment of the proposed Act.

### **Amendment of *Court Security Regulation 2005***

14. Schedule 2 amends Schedule 2 to the Regulation to enable a penalty notice to be given to a person for failing to comply with a direction given by a court security officer to leave the premises because the person is in possession of an animal.

## ISSUES CONSIDERED BY THE COMMITTEE

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

*Provide the executive with unfettered control over the commencement of an Act.*

15. The Bill is to commence on a day or days to be appointed by proclamation [proposed s2].
16. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all. However, the Attorney General indicated in the Agreement in Principle speech that the bill will commence towards the end of the year once security officers have received appropriate training relating to the amendments to the Act.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.**

## 4. Courts and Other Legislation Amendment Bill 2011

Date introduced	24 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The *Courts and Other Legislation Amendment Bill 2011* passed both Houses on 30 May 2011 and received Royal Assent on 7 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The objects of this Bill are as follows:
  - (a) to amend the *Crimes (Sentencing Procedure) Act 1999* to require a retired Magistrate to be appointed as a member of the New South Wales Sentencing Council,
  - (b) to amend the *Director of Public Prosecutions Act 1986* to provide for the superannuation entitlements of a Director who is appointed to that office following a period of service as a judge,
  - (c) to amend the *Land and Environment Court Act 1979*:
    - i to provide for the allocation of certain jurisdiction of the Court to particular classes of the Court's jurisdiction, and
    - ii to enable certain proceedings brought under the *Environmental Planning and Assessment Act 1979* and *Trees (Disputes Between Neighbours) Act 2006* to be dealt with by means of on-site hearings,
  - (d) to make an amendment to the *Environmental Planning and Assessment Regulation 2000* that is consequential on the amendments made to the *Land and Environment Court Act 1979*,
  - (e) to amend the *Law Reform Commission Act 1967* to require reports of the Commission to be tabled in Parliament within 14 sitting days of their receipt by the Minister,
  - (f) to amend the *NSW Trustee and Guardian Act 2009* to confirm the meaning of certain definitions,
  - (g) to amend the *Privacy and Personal Information Protection Act 1998* to provide for the Office of the Sheriff of New South Wales to be a law enforcement agency for the purposes of that Act,

- (h) to amend the *Surrogacy Act 2010* to make the registration (as opposed to simply the notification) of the birth of a child a precondition for the making of a parentage order under that Act,
- (i) to make amendments to the *Trustee Companies Act 1964* that are consequential on recent amendments made to the Corporations Act 2001 of the Commonwealth.

## BACKGROUND

- 3. The Attorney General stated in the Agreement in Principle speech that this Bill is 'part of the Government's regular legislative review and monitoring program and will amend a number of Acts to improve the efficiency and operation of our courts, as well as the operation of agencies within the Department of Attorney General and Justice.'<sup>4</sup> The Attorney General further stated that the amendments have been subject to consultation with key stakeholders. In the Agreement in Principle speech the Attorney General made the following comments concerning the amendments:
- 4. Schedule 1.1 to the Bill makes amendments to part 8B of the *Crimes (Sentencing Procedure) Act 1999* to require a retired magistrate to be appointed as a member of the NSW Sentencing Council. As a large majority of criminal cases come before the Local Court, the Sentencing Council would benefit from a permanent Local Court representative.
- 5. Schedule 1.2 to the Bill amends the *Director of Public Prosecutions Act 1986* to make it clear that if a judge or former judge is appointed as Director of Public Prosecutions [DPP], then his or her prior judicial service counts towards any judicial pension to which the DPP would be entitled under the Act.
- 6. Schedule 1.4 to the Bill makes amendments to the *Land and Environment Court Act 1979* for the purposes of clarifying the Land and Environment Court's jurisdiction and to ensure that the court's procedures run efficiently.
- 7. Schedule 1.5 amends section 13 (5) of the *Law Reform Commission Act 1967* to require that the Attorney General table any report provided to him or her by the commission in each House of Parliament within 14 parliamentary sitting days of its receipt. This amendment is intended to reduce the potential for significant time to pass between a report being presented to the Attorney General and it being tabled.
- 8. Schedule 1.6 amends the *NSW Trustee and Guardian Act 2009*. The amendments to the definition of "reciprocating State" in sections 35 and 81 of the *NSW Trustee and Guardian Act* confirm that other States and Territories are reciprocating States for the purposes of the making of reciprocal arrangements in relation to an intestacy matter or the management of an estate. This amendment was requested by the NSW Trustee and Guardian to clarify the definition, which will assist in its administration of reciprocal arrangements.
- 9. Schedule 1.7 amends the *Privacy and Personal Information Protection Act 1998* to include the Office of the Sheriff of New South Wales as a law enforcement agency for the purposes of that Act. The Office of the Sheriff carries out certain functions that are of a law enforcement nature, including carrying out evictions, seizing debtors' property

---

<sup>4</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 24 May 2011

and, in their capacity as court security officers, exercising powers of search, seizure and arrest on court premises. By defining the office as a law enforcement agency that law enforcement exemption clearly will apply.

10. Schedule 1.8 amends the *Surrogacy Act 2010* to require that before a parentage order can be granted to transfer parentage from a surrogate mother to the new parents the child's birth must be registered by the Registry of Births, Deaths and Marriages and not simply notified to the registry. This will ensure that there is a record of the child's birth details before a parentage certificate is granted. It is important that this record be created so that the child can access this later on, if he or she wishes.
11. Schedule 1.9 makes amendments to the *Trustee Companies Act 1964* that are consequential upon recent amendments made to the *Corporations Act 2001* of the Commonwealth.

## OUTLINE OF PROVISIONS

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

## Schedule 1 Amendment of legislation

15. **Schedule 1** contains the amendments to various Acts and the Regulation referred to in the Overview.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 5. Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011

Date introduced	27 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Anthony Roberts MP
Portfolio	Fair Trading

### PURPOSE AND DESCRIPTION

1. The Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011 passed both Houses on 15 June 2011, and received Royal Assent on 21 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend the *Credit (Commonwealth Powers) Act 2010* to allow for the repeal of provisions of that Act that provide for the maximum annual percentage rate for credit contracts when appropriate legislation has been enacted by the Commonwealth to address that matter. Accordingly, this Bill:
  - (a) removes the current expiry date of 1 July 2011 for provisions that specify a maximum annual percentage rate for credit contracts, and
  - (b) enables those provisions to be repealed by the Governor by proclamation.

### BACKGROUND

3. In the Agreement in Principle speech the Minister for Fair Trading stated this Bill will extend the operation of the maximum annual percentage rate beyond 12 months. The Minister commented that in 2010 the NSW Parliament passed legislation to transfer regulatory responsibility for consumer credit from New South Wales to the Commonwealth. Such legislation was the first phase of national credit reforms agreed to by the Council of Australian Governments. The Minister stated:

Phase one of the national credit reforms also commenced on 1 July 2010. This involved the transfer of regulatory powers and the introduction of a national licensing system for credit providers and finance brokers, and new requirements for responsible lending. Although the Consumer Credit Code was transferred to the Commonwealth, non-uniform provisions were not. This meant that those jurisdictions with interest rate caps were free to retain them while the phase two reforms were developed. Victoria, Queensland and the Australian Capital Territory have all retained their interest rate caps<sup>5</sup>

4. Phase two would include an examination of the approach to be taken to short-term small amount lending, with any further legislation required to be in place within 12

<sup>5</sup> Hon A J Roberts MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 27 May 2011

months. For this reason, the *Credit (Commonwealth Powers) Act 2010* provided for the maximum annual percentage rate in New South Wales to expire 12 months after 1 July 2010. It is now clear that phase two reforms will not be in place until December 2011 at the earliest.

5. Thus, this Bill extends the operation of the maximum annual percentage rate beyond 12 months 'in order to maintain consumer protection and certainty in New South Wales until assured that the Commonwealth's regulatory and enforcement measures in respect of short-term small amount lending are appropriate and adequate.'<sup>6</sup>

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of *Credit (Commonwealth Powers) Act 2010*

8. Schedule 1 [3] provides for the repeal of Division 2 of Part 2 of Schedule 3 to the Act by proclamation rather than on 1 July 2011, as is currently the case. That Division sets a maximum annual percentage rate for credit contracts entered into after 1 July 2010 of 48% calculated in accordance with that Division.
9. Schedule 1 [4] provides for the repeal of clause 9 of Schedule 3 to the Act by proclamation rather than on 1 July 2011, as is currently the case. That clause continues on the provisions of the former New South Wales consumer credit legislation that specify the maximum annual percentage rate for credit contracts to which that legislation applied before its repeal.
10. Schedule 1 [1] and [2] enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act. In particular, those regulations may continue on the provisions relating to the maximum annual percentage rate in relation to credit contracts entered into before the repeal of those provisions.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

---

<sup>6</sup> Hon A J Roberts MP, Minister for Fair Trading, Legislative Assembly *Hansard*, 27 May 2011

## 6. Crimes Amendment (Murder of Police Officers) Bill 2011

Date introduced	26 May 2011
House introduced	Legislative Council
Minister responsible	Hon Michael Gallacher MLC
Portfolio	Police

### PURPOSE AND DESCRIPTION

1. The *Crimes Amendment (Murder of Police Officers) Bill* passed both Houses on 20 June 2011, and received the Royal Assent on 23 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of the Bill is to amend the *Crimes Act 1900* to provide for mandatory life sentences to be imposed on persons convicted of murdering police officers. A life sentence is a sentence for the term of the person's natural life without release on parole.

### BACKGROUND

3. The Minister for Police provided the following rationale for the Bill:

Making sure that those who murder an officer are imprisoned for the term of their natural life is the most effective deterrent. We have recognised that the murder of police officers requires special consideration in terms of sentencing because, as a community, we ask our police officers to put themselves at risk every day on our behalf and they therefore deserve all the protection that we can afford them.<sup>7</sup>

### OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 inserts section 19B into the *Crimes Act 1900*. The proposed section provides that a mandatory life sentence is to be imposed by the court on a person convicted of murdering a police officer:
  - (a) while the officer was executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer in the execution of his or her duties, and
  - (b) where the person knew (or ought reasonably to have known) the person killed was a police officer, and

<sup>7</sup> Hon M J Gallacher MLC, Minister for Police, Legislative Council *Hansard*, 26 May 2011.



- (c) where the person intended to kill the police officer or was engaged in criminal activity that risked serious harm to police officers.
- 7. The proposed section does not apply to convicted persons under the age of 18 years or suffering a significant cognitive impairment.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Mandatory sentencing*

- 8. The Committee has previously expressed its view on mandatory sentencing in NSW, namely in its report on the *Crimes Amendment (Murder of Police Officers) Bill 2006* [2006 Bill].<sup>8</sup>

**The Committee notes proposed s 19B requires life imprisonment for any person who murders a police officer in the execution of the officer's duties regardless of the circumstances of the case.**

**The Committee refers to Parliament the question of whether the imposition of mandatory life sentences under proposed s 19B trespasses unduly on personal rights and liberties.**

---

<sup>8</sup> Private Members Bill introduced by Mr P Debnam MP. See *Digest* No 7 of 2006.

## 7. Cross-Border Commission Bill 2011\*

Date introduced	12 May 2011
House introduced	Legislative Assembly
	Hon Richard Torbay MP
	*Private Member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to establish the Cross-Border Commission of New South Wales to inquire into matters affecting border communities.

### BACKGROUND

2. In the Agreement in Principle speech, Hon Richard Torbay MP stated that the aim of establishing a Cross Border Commission is to:

...resolve the many issues confronted by communities on the New South Wales border with Queensland, Victoria, South Australia and the Australian Capital Territory. At stake are the cost burdens that run into millions of dollars a year plus the massive inconvenience experienced by thousands of businesses and residents in these communities.<sup>9</sup>

3. The commission would invite members of border communities to make submissions, conduct inquiries referred to it by the Premier or as the commission considers appropriate; identify issues to refer to the Premier; prepare an annual report for tabling in Parliament; and carry out other functions conferred or imposed on it by or under any Act or law.

### 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.
6. Clause 3 defines certain words and expressions used in the proposed Act.

### Cross-Border Commission

7. Clause 4 provides for the constitution of the Cross-Border Commission of New South Wales. The Commission is to consist of the Chairperson and between 4 and 8 part-time members appointed by the Premier. The part-time members are to be residents of New South Wales who, in the opinion of the Premier, are suitably qualified to represent various interests in relation to border communities. A person cannot be a part-time member if he or she is a member of the Parliament of New South Wales or of the Commonwealth.

---

<sup>9</sup> Hon R G Torbay MP, Legislative Assembly *Hansard*, 12 May 2011.

8. Clause 5 provides that the Chairperson is to be appointed by the Governor on the recommendation of the Premier after consultation by the Premier with the Leader of the Opposition in the Legislative Assembly (or, if the Opposition comprises 2 or more recognised political parties, the leaders of those parties).
9. Clause 6 makes provision for the appointment by the Premier, after consultation with the Leader of the Opposition in the Legislative Assembly (or, if the Opposition comprises 2 or more recognised political parties, the leaders of those parties), of an acting Chairperson during the illness or absence of the Chairperson.
10. Clause 7 enables staff to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* to assist the Commission. Clause 7 also enables the Commission to utilise staff or facilities of a government department or a public or local authority and to engage consultants.
11. Clause 8 sets out the following functions of the Commission:
  - (a) to invite members of a border community to make submissions to the Commission in relation to matters affecting that community,
  - (b) to conduct inquiries into such matters affecting border communities as are referred to it by the Premier or as the Commission considers appropriate,
  - (c) to identify issues affecting border communities and to make recommendations to the Premier regarding such issues,
  - (d) to prepare an annual report for tabling in Parliament in relation to the results of its inquiries into matters affecting border communities, and in relation to any action taken by the Government as a consequence of any recommendations referred to in paragraph (c),
  - (e) other functions conferred or imposed on the Commission by or under any other Act or law.
12. Clause 9 requires the Commission to prepare an annual report and to forward it to the Premier. The Premier is to cause the report to be tabled in each House of Parliament as soon as practicable after the report is forwarded to the Premier. Clause 9 also makes provision for the tabling of such a report if a House of Parliament is not sitting when the Premier seeks to table the report.

### Miscellaneous

13. Clause 10 absolves a member of the Commission, or a person acting under the direction of the Commission, from personal liability for anything done or omitted in good faith for the purpose of executing an Act (including the proposed Act).
14. Clause 11 requires the Premier to review the functions of the Commission 5 years after the commencement of the proposed Act and to report the outcome of the review to each House of Parliament.
15. Schedule 1 contains provisions relating to the constitution and procedure of the Commission, including terms of office of members, voting and quorum for meetings.

16. Schedule 2 makes a consequential amendment to the *Public Sector Employment and Management Act 2002*.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 8. Destination NSW Bill 2011

Date introduced	17 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon George Souris MP
Portfolio	Tourism, Major Events, Hospitality and Racing

### PURPOSE AND DESCRIPTION

1. The *Destination NSW Bill* passed both Houses on 22 June 2011, and received Royal Assent on 27 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to establish Destination NSW as a government agency having functions in relation to the development of tourism and the procuring of major events.

### BACKGROUND

3. In the Agreement in Principle speech the Minister stated:

The bill establishes a new statutory authority to be known as Destination NSW. We have chosen a statutory authority structure because it is the most suitable structure for an organisation that has strong commercial interests, requires partnerships with private industry and manages valuable government collateral, such as the Sydney and New South Wales brands.<sup>10</sup>

4. The Minister further stated that Destination NSW will encompass the current functions of Tourism New South Wales. It will also include:
  - event acquisition, enhancement and marketing functions currently undertaken by Events NSW;
  - the role previously assigned to the Greater Sydney Partnership for marketing Brand Sydney;
  - responsibility for delivering the approved strategies developed by the Visitor Economy Taskforce in conjunction with existing bodies such as Business Events Sydney and Regional Tourism Organisations.

### OUTLINE OF PROVISIONS

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

---

<sup>10</sup> The Hon G Souris, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 17 June 2011.

7. Clause 3 defines certain words and expressions used in the proposed Act.

### **Constitution and management of Destination NSW**

8. Clause 4 constitutes Destination NSW as a body corporate.
9. Clause 5 makes Destination NSW a NSW Government agency, which has the effect of conferring the status, privileges and immunities of the Crown on Destination NSW.
10. Clause 6 makes Destination NSW subject to the control and direction of the Minister.
11. Clause 7 establishes a Board of Management of Destination NSW that will consist of the following members:
- (a) the Chairperson who is appointed by the Minister,
  - (b) other persons with relevant skills and experience who are appointed by the Minister,
  - (c) the Chief Executive Officer of Destination NSW,
  - (d) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (or his or her nominee).
12. Clause 8 gives the Board the primary responsibility for the operation of Destination NSW by providing that all decisions relating to the functions of Destination NSW are to be made by or under the authority of the Board, but subject to any direction of the Minister. The Board will also be required to provide the Minister with any information relating to the functions of Destination NSW that the Minister requests.
13. Clause 9 provides for the appointment by the Minister of the Chief Executive Officer of Destination NSW who will be responsible for the day to day operations of Destination NSW in accordance with the directions of the Board.
14. Clause 10 enables the Minister to appoint a person to act in the office of Chief Executive Officer.
15. Clause 11 provides for the staff of Destination NSW.

### **Functions of Destination NSW**

16. Clause 12 provides that the principal object of Destination NSW is to achieve economic and social benefits for the people of New South Wales through the development of tourism and the securing of major events.
17. Clause 13 sets out the functions of Destination NSW, which include marketing and promoting New South Wales as a tourist destination and as a destination for the hosting of major events. Destination NSW will also have functions relating to the implementation of strategic plans approved by the Minister.
18. Clause 14 enables Destination NSW to delegate its functions.
19. Clause 15 provides for the exercise of Destination NSW's functions through partnerships, joint ventures or other associations with any person or body.

20. Clause 16 authorises Destination NSW to acquire land for tourism-related purposes in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

### Miscellaneous

21. Clause 17 provides that the proposed Act binds the Crown.
22. Clause 18 prohibits the disclosure of information obtained in connection with the administration of the proposed Act.
23. Clause 19 requires disclosure of conflicts of interest of members of the Board of Management of Destination NSW or the Chief Executive Officer of Destination NSW, and provides for the management of any such conflict of interest. Clause 20 excludes Destination NSW, the Board of Management of Destination NSW, the Chief Executive Officer or a person acting under their direction from personal liability for an act or omission done in good faith for the purpose of executing the proposed Act.
24. Clause 21 provides for the manner in which proceedings for offences under the proposed Act may be taken.
25. Clause 22 enables the Governor to make regulations for the purposes of the proposed Act.
26. Clause 23 provides for the review of the proposed Act in 5 years.

### Members and procedure of Board and Management of Destination NSW

27. Schedule 1 contains provisions relating to members and procedure of the Board of Management of Destination NSW that are the standard provisions for boards of statutory corporations.

### Savings, transitional and other provisions

28. Schedule 2 provides for the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act. The Schedule also abolishes Tourism New South Wales and provides for the transfer of its assets, rights and liabilities to Destination NSW.

### Amendment of other Acts

29. Schedule 3.1 amends the *Public Finance and Audit Act 1983* to provide for financial auditing and annual reporting by Destination NSW.
30. Schedule 3.2 amends the *Public Sector Employment and Management Act 2002*:
- (a) to rename the Tourism New South Wales Division (which is currently a Special Employment Division of the Government Service) as the Destination NSW Division, and
  - (b) to remove the position of General Manager of Tourism New South Wales from the list of chief executive positions and replace it with the position of Chief Executive Officer of Destination NSW.

### Repeal of *Tourism New South Wales Act 1984* No 46

31. Schedule 4 repeals the *Tourism New South Wales Act 1984*.

### ISSUES CONSIDERED BY THE COMMITTEE

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

*Provide the executive with unfettered control over the commencement of an Act.*

32. The Bill is to commence on a day or days to be appointed by proclamation [proposed s2].
33. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.**



## 9. Duties Amendment (Senior's Principal Place of Residence Duty Exemption) Bill 2011

Date introduced	9 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The *Duties Amendment (Senior's Principal Place of Residence Duty Exemption) Bill* passed both Houses on 11 May 2011, and received the Royal Assent on 18 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to extend the senior's principal place of residence duty exemption under the NSW Home Builders Bonus to persons between 55 and 65 years of age. This exemption from duty for new housing purchases is to be made available to persons in that age range in respect of agreements or transfers entered into or occurring on or after 1 July 2011 and before 1 July 2012. Currently, the exemption is only available to persons who are 65 years of age or older.

### BACKGROUND

3. In the Agreement in Principle speech, the Treasurer stated that the 'concession, described in the bill as the "senior's principal place of residence exemption", provides that individuals aged 55 years or over will pay zero transfer duty if they are selling an existing property and buying a newly constructed home costing up to \$600,000.<sup>11</sup>
4. The Treasurer further stated that:

...reducing the age threshold from 65 to 55 acknowledges that many people are planning for retirement well before 65, that indeed the period between 55 and 65 is the most active, and that this includes changes in lifestyle and home location, such as downsizing from the family home to smaller house or unit.<sup>12</sup>

### OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Schedule 1 makes the amendment outlined in the overview.

<sup>11</sup> Hon M B Baird, Treasurer, Legislative Assembly *Hansard*, 9 May 2011.

<sup>12</sup> Hon M B Baird, Treasurer, Legislative Assembly *Hansard*, 9 May 2011.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 10. Environmental Planning and Assessment Amendment (Maintenance of Local Government Consent Powers) Bill 2011\*

Date introduced	6 May 2011
House introduced	Legislative Assembly
	Mr Greg Piper MP
	*Private Member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to change the procedures for appointing planning administrators, and to change the functions of such administrators, so that a council's development consent powers and other decision-making functions are maintained, except in the limited circumstances where an administrator can exercise them (namely, if the planning administrator is of the opinion that the council has exercised the functions in a manner that fails to comply with the council's obligations under the planning legislation or in a manner that is not in the best interests of the community served by the council). The Bill also abolishes planning assessment panels.

### BACKGROUND

2. It was noted in the Bill's Agreement in Principle speech that it:

...seeks to provide positive options to address problems when a council is identified as having problems with exercise of planning functions. The bill also provides for a mechanism to assess objectively whether there is indeed a problem, to identify key issues that need to be addressed and to oversight corrective action. The bill proposes an approach in stark contrast to the reactive and negative methods that had become increasingly used by the previous Government. Planning and development consent has become increasingly complex for some years and until the election of this new Government there was resistance to addressing this complexity by reviewing and redrafting the State's planning laws.<sup>13</sup>

### 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 *Environmental Planning and Assessment Act 1979*

5. Schedule 1 [4] inserts the following new provisions concerning planning administrators:

<sup>13</sup> Mr G M Piper MP, Legislative Assembly *Hansard*, 6 May 2011.

*Subdivision 1 Preliminary*

6. Proposed section 117C defines terms used in the proposed provisions. In particular, it defines prescribed planning functions, which are the only functions that a planning administrator can exercise, as follows:
  - (a) the refusal of consent to a development application,
  - (b) the granting of consent to a development application,
  - (c) the imposition of conditions on a development consent,
  - (d) the modification of conditions imposed on a development consent,
  - (e) the extension of the term of a development consent
  - (f) any other function as a consent authority conferred by an environmental planning instrument,
  - (g) a function of a relevant planning authority relating to the making of an environmental planning instrument under Part 3 of the *Environmental Planning and Assessment Act 1979*,
  - (h) a function of a council relating to the making of an environmental planning instrument under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*,
  - (i) a function relating to the preparation, making and approval of a development control plan,
  - (j) a function relating to the preparation and approval of a contributions plan.

*Subdivision 2 Appointment of planning administrators*

7. Proposed section 117D constitutes the Panel for the Review of Councils, the functions of which are to advise the Minister of the need to provide assistance to councils in the exercise of their prescribed planning functions and to advise the Minister of the need to appoint planning administrators for particular councils.
8. Proposed section 117E provides that the Panel may advise the Minister as to whether or not to appoint a planning administrator for a particular council. The Panel may provide such advice at the request of the Minister, if the Independent Commission Against Corruption has made certain recommendations in relation to the council or of its own volition.
9. Proposed section 117F provides for the Minister to appoint a planning administrator for a particular council, after giving notice to the council.

*Subdivision 3 Functions of planning administrators*

10. Proposed section 117G confers functions on a planning administrator appointed for a particular council, which include providing advice to the council in relation to the exercise by the council of its prescribed planning functions and assisting the council in making improvements to its governance and to the process by which it exercises its prescribed planning functions. In certain limited circumstances, the planning

administrator can reverse the exercise of one or more of the prescribed planning functions of the council or seek the revocation by the Minister of any delegation of a prescribed planning function made by a council to its general manager.

11. Proposed section 117H provides that a planning administrator appointed for a particular council may reverse the exercise of a planning function of the council and exercise the planning function in the place of the council, but only if the planning administrator is of the opinion that the council has exercised a prescribed planning function in a manner that fails to comply with the council's obligations under the planning legislation or in a manner that is not in the best interests of the community served by the council.
12. Proposed section 117I provides that the appointment of a planning administrator for a particular council does not affect any delegation of a prescribed planning function made by the council to its general manager, but the planning administrator may apply to the Minister for the revocation of any or all delegations by the council to its general manager in relation to prescribed planning functions.

#### *Subdivision 4 Reporting by planning administrators*

13. Proposed section 117J provides for a planning administrator to provide an interim review and progress report on the first 6 months of the administrator's appointment. That report must include an evaluation of the key performance indicators that relate to the decision-making of the council.
14. Proposed section 117K provides for a planning administrator to provide an annual report on the first 12 months of the administrator's appointment. That report must include an evaluation of the key performance indicators that relate to the decision-making of the council and a recommendation as to the need for the continuation or otherwise of the period of planning administration.
15. Proposed section 117L provides for the Minister to extend the term of appointment of the planning administrator if the administrator's annual report recommends the continuation.
16. Proposed section 117M makes it clear that the Minister can terminate the appointment of a planning administrator for any other reason.

#### *Subdivision 5 Miscellaneous*

17. Proposed section 117N makes it clear that the proposed provisions do not affect the power of the Governor to dismiss the mayor and councillors of a council.
18. Schedule 1 [1]–[3], [5]–[20] and [25] are consequential on the revision of provisions about planning administrators and the abolition of planning assessment panels.
19. Schedule 1 [21]–[24] extend a provision that protects the exercise of certain functions of the Minister so that it applies to planning administrators. The Minister may consent to the provision being over-ridden.
20. Schedule 1 [26] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

## LEGISLATION REVIEW COMMITTEE

### ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (MAINTENANCE OF LOCAL GOVERNMENT CONSENT POWERS) BILL 2011\*

21. Schedule 1 [27] revokes any existing appointments of planning administrators and planning assessment panels.
22. Schedule 1 [28] makes provision for the membership and procedure of the Panel for the Review of Councils.

#### **Schedule 2 Amendment of *Independent Commission Against Corruption Act 1988***

23. Schedule 2 makes a consequential amendment. It modifies the power of the Independent Commission Against Corruption to recommend that a person be appointed under the *Environmental Planning and Assessment Act 1979* to administer the functions of a council because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions under that Act. The amended provision instead provides for the Commission to recommend the appointment of a planning administrator or regional panel to exercise planning functions.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

# 11. Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011

Date introduced	16 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Brad Hazzard MP
Portfolio	Planning and Infrastructure

## PURPOSE AND DESCRIPTION

1. The *Environmental Planning and Assessment Amendment (Part 3A) Bill* passed both Houses on 22 June 2011, and received the Royal Assent on 27 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to repeal Part 3A of the *Environmental Planning and Assessment Act 1979* (the Principal Act). Following the repeal of that Part, development previously dealt with under that Part will be dealt with as follows:
  - (a) development that is not State significant development or infrastructure will be dealt with under Part 4 by the local council or a joint regional planning panel,
  - (b) development that is State significant development will be dealt with under Part 4 by the Minister,
  - (c) development that is State significant infrastructure will be dealt with under a new Part 5.1 by the Minister,
  - (d) development that has already been the subject of substantial assessment under Part 3A before its repeal will continue to be dealt with under transitional arrangements in accordance with the former provisions of that Part.
3. The Bill also makes a number of miscellaneous amendments to provisions of the Principal Act relating to the Planning Assessment Commission and joint regional planning panels (including specifying in the Principal Act the development that a regional panel may be authorised by a planning instrument to deal with in place of the local council).

## BACKGROUND

4. The Minister noted in his In Principle Agreement Speech that the Bill:

... is an interim, but necessary, measure to rebuild confidence in a new planning system for New South Wales - a planning system based on the public interest, not private interests; a planning system that is transparent, where planning rules are certain and decisions are taken on merit and in a timely way. [The Bill] provides the framework to correct the imbalance in the New South Wales planning system -

delivering the balance between the decisions that should be made by local communities and the decisions that are genuinely of State significance.<sup>14</sup>

## OUTLINE OF PROVISIONS

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

### **Schedule 1 Amendment of *Environmental Planning and Assessment Act 1979***

#### ***Schedule 1.1 Repeal of Part 3A***

7. The subschedule repeals Part 3A of the Principal Act.

#### ***Schedule 1.2 State significant development***

8. The subschedule provides for the proposed scheme for State significant development for which the Minister is the consent authority under Part 4 of the Principal Act.
9. Schedule 1.2 [20] inserts a new Division 4.1 (proposed sections 89C–89L) into Part 4 of the Principal Act, which makes special provision for State significant development.
10. Proposed section 89C defines State significant development for the purposes of the Principal Act as development that is declared to be State significant development by a State environmental planning policy. The Minister may, by order, also call in specified development on specified land as State significant development on the advice of the Planning Assessment Commission (the PAC).
11. Proposed section 89D makes the Minister the consent authority for State significant development. However, section 23 enables the Minister to delegate this function to the PAC, the Director-General or any other public authority. The proposed section also provides that the Minister may determine, in the case of a staged development application, that a subsequent stage of the development is to be determined by the relevant council.
12. Proposed section 89E provides for the following matters in relation to a development application for State significant development:
  - (a) the Minister may determine the application by granting consent, with or without modifications or conditions, or by refusing to grant consent,
  - (b) the Minister cannot grant consent if the development concerned is wholly prohibited by an environmental planning instrument (but may grant consent even if it is partly prohibited),
  - (c) if part of the development requires development consent and the other part may be carried out without consent, the entirety of the development is taken to require consent.

---

<sup>14</sup> Hon B R Hazzard MP, Minister for Planning and Infrastructure, Legislative Assembly *Hansard*, 16 June 2011.



13. The proposed section also provides for procedures relating to the making of concurrent applications for consent for prohibited development and the making of a planning instrument to remove the prohibition (in which case only the PAC may make the instrument and grant consent).
14. Proposed section 89F provides for the public exhibition (of not less than 30 days) of a development application for consent to carry out State significant development, including the procedures for the making of submissions in relation to the application.
15. Proposed section 89G enables regulations to be made for or with respect to the procedures and other matters concerning State significant development, including with respect to environmental impact statements to accompany development applications for State significant development.
16. Proposed section 89H applies the standard provision in section 79C for the evaluation of development applications to applications in respect of State significant development.
17. Proposed section 89I allows the Minister when granting approval to State significant development to impose certain conditions in respect of biobanking. Equivalent provision is made in relation to State significant infrastructure. (See proposed section 115ZC.)
18. Proposed section 89J exempts State significant development that is authorised by a development consent from any requirement for the authorisations, and from any order, referred to in the proposed section. Similar provision is made in relation to State significant infrastructure.
19. Proposed section 89K provides that the authorisations listed in the proposed section must be given consistently with any development consent for State significant development. Equivalent provision is made in relation to State significant infrastructure.
20. Proposed section 89L provides that provisions relating to State significant development prevail over other provisions in Part 4.
21. Schedule 1.2 [1]–[10], [12], [13], [17]–[19], [21], [22], [23] and [26] make consequential amendments.
22. Schedule 1.2 [11] provides that a development application for State significant development is to be accompanied by an environmental impact statement in the form prescribed by the regulations.
23. Schedule 1.2 [14] provides that an environmental planning instrument cannot require a consent authority to obtain the consent or concurrence of a person before granting development consent to State significant development unless the requirement in the instrument specifies that it applies to State significant development.
24. Schedule 1.2 [15] provides that the requirements in section 79BA of the Principal Act relating to bush fire prone land do not apply to State significant development.
25. Schedule 1.2 [16], [24] and [25] relocate the provisions relating to reviews by the PAC and appeals by applicants and objectors for designated development where the PAC conducts a public hearing. At present such appeals are excluded if the Planning Assessment Committee merely conducts a review.

26. Schedule 1.2 [25] ensures that appeal rights for objectors in relation to designated development are not excluded merely because the development becomes State significant development and thereby ceases to be designated development.
27. Schedule 1.2 [27] ensures that the Minister is the certifying authority for the purposes of Part 4A only if the Minister is the only person authorised to issue the certificate concerned.
28. Schedule 1.2 [28] ensures that the deemed refusal period, for the purposes of an appeal against a refusal to issue a subdivision certificate where the subdivision constitutes State significant development, is the same as for designated development.

*Schedule 1.3 State significant infrastructure*

29. Schedule 1.3 [3] inserts a new Part 5.1 into the Principal Act which provides for the proposed scheme for State significant infrastructure. The new Part 5.1 contains the following provisions:
30. Proposed section 115T sets out definitions for the purposes of the proposed Part, including infrastructure, which is defined to mean development for the purposes of infrastructure, including development for the purposes of any of the following:
  - (a) railways,
  - (b) roads,
  - (c) electricity transmission or distribution networks,
  - (d) pipelines,
  - (e) ports,
  - (f) wharf or boating facilities,
  - (g) telecommunications,
  - (h) sewerage systems,
  - (i) stormwater management systems,
  - (j) water supply systems,
  - (k) waterway or foreshore management activities,
  - (l) flood mitigation works,
  - (m) public parks or reserves management,
  - (n) soil conservation works,
  - (o) other purposes prescribed by the regulations.
31. Proposed section 115U defines State significant infrastructure for the purposes of the Act. The proposed section provides that development may be declared to be State

significant infrastructure by a State environmental planning policy (SEPP) if it can be carried out without consent under Part 4 and is either infrastructure, or other development that would be an activity under Part 5 requiring an environmental impact statement. Specified development on specified land may also be declared to be State significant infrastructure by a SEPP or by Ministerial order (including on the recommendation of the PAC or Infrastructure NSW).

32. Proposed section 115V enables State significant infrastructure to be declared to be critical State significant infrastructure if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons. Proposed sections 115ZF (4), 115ZG (3) and 115ZK make special provision for critical State significant infrastructure. Schedule 1.3 [2] ensures that the Minister cannot delegate the Minister's functions of determining an application for approval to carry out critical State significant infrastructure.
33. Proposed section 115W provides that the Minister's approval is required for the carrying out of State significant infrastructure.
34. Proposed sections 115X–115ZA set out procedures relating to applications for the Minister's approval of development that is State significant infrastructure, including the procedures relating to the environmental assessment of that development and the public exhibition of the environmental impact statement that the proponent must submit to the Director-General under proposed section 115Z.
35. Proposed section 115Z also enables the Director-General to require the proponent to submit a response to submissions and a report (a preferred infrastructure report) that outlines any proposed changes to the development to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned.
36. Proposed section 115ZB deals with the Minister's determination of an application for approval to carry out State significant infrastructure. The Minister is required to consider the Director-General's report, any advice provided by the Minister having portfolio responsibility for the proponent, and any findings or recommendations of the Planning Assessment Commission following any review of the infrastructure.
37. Proposed section 115ZC deals with biobanking and is equivalent to proposed section 89I, which relates to State significant development.
38. Proposed sections 115ZD and 115ZE provide for staged infrastructure applications, which set out concept proposals for proposed infrastructure, leaving more detailed proposals for subsequent applications for approval under the Part. This aspect of the scheme for staged infrastructure applications is similar to the scheme for staged development applications set out in Division 2A of Part 4 of the Principal Act.
39. Proposed section 115ZF generally provides that Parts 3, 4 and 5 of the Principal Act do not apply (except as otherwise provided) to or in respect of State significant infrastructure. The proposed section also provides that Division 2A (Orders) of Part 6 of the Principal Act does not apply to critical State significant infrastructure.
40. Proposed section 115ZG is similar to proposed section 89J, which relates to State significant development. Proposed section 115ZG (1) and (2) exempt approved State

significant infrastructure from any requirement for the authorisations, and from any order, referred to in the proposed subsections.

41. Proposed section 115ZG (3) exempts critical State significant infrastructure from the orders, directions or notices listed in the proposed subsection.
42. Proposed section 115ZH is equivalent to proposed section 89K, which relates to State significant development.
43. Proposed sections 115ZI–115ZM set out miscellaneous provisions. Among other things, these provisions provide for the modification of approvals granted under the proposed Part, the public availability of documents relating to State significant infrastructure, the lapsing and surrender of approvals, the exclusion of third-party appeals in respect of critical State significant infrastructure and regulation-making powers.

#### *Schedule 1.4 Planning Assessment Commission*

44. Schedule 1.4 makes the following amendments in relation to the Planning Assessment Commission (the PAC):
  - (a) to confer on the PAC, in addition to other functions conferred by section 23D of the Principal Act, any function delegated to the Commission under the Principal Act (including delegation of the Minister's function of determining development applications for State significant development) (Schedule 1.4 [1]),
  - (b) to enable the Director-General (and not just the Minister) to request the Commission to exercise certain of its functions (Schedule 1.4 [2]), including the following functions (inserted by Schedule 1.4 [3]):
    - i the review of any development, activity, infrastructure or project to which the Principal Act applies,
    - ii the holding of a public hearing into any matter the subject of any advice to be given, or review to be made, by the Commission,
  - (c) to clarify that the minimum number of Commission members is 4 and the maximum number is 9 (Schedule 1.4 [6]),
  - (d) to provide that a person may not hold office as a member of the Commission for more than 6 years in total (Schedule 1.4 [7]),
  - (e) to enable the Minister to appoint any of the members of the Commission on either a full-time or part-time basis (Schedule 1.4 [8]),
  - (f) to provide that the remuneration of the full-time members of the PAC is to be determined by Statutory and Other Offices Remuneration Tribunal (Schedule 1.4 [9]).
45. Schedule 1.4 [4] and [5] make consequential amendments.

#### *Schedule 1.5 Joint Regional Planning Panels*

46. Schedule 1.5 makes the following amendments in relation to Joint Regional Planning Panels:

- (a) to enable an environmental planning instrument to confer on a regional panel consent authority functions, in place of a council, only if the development concerned is of a class or description set out in proposed Schedule 4A (Schedule 1.5 [1] and [5]),
  - (b) to provide that the Minister may only appoint the chairperson of the regional panel with the concurrence of the Local Government and Shires Associations (Schedule 1.5 [4]).
47. Schedule 1.5 [2] makes a provision for the manner of taking legal proceedings by or against a regional panel.
48. Schedule 1.5 [3] makes a consequential amendment.

*Schedule 1.6 Miscellaneous amendments of Principal Act*

49. Schedule 1.6 makes minor and consequential amendments, including:
- (a) to clarify that the cases in which the Minister may direct that the Director-General, rather than the council, is the relevant planning authority for the preparation of a local environmental plan, include cases where the Planning Assessment Commission or a joint regional planning panel has recommended to the Minister that a proposed instrument should be submitted for a determination under section 56 (Gateway determination) of the Principal Act (Schedule 1.6 [2]), and
  - (b) to clarify that section 82A of the Principal Act, which requires a consent authority who is a council to review a determination of a development application at the request of the applicant concerned, does not apply where a regional panel exercises a council's functions as the consent authority (Schedule 1.6 [3]).

*Schedule 1.7 Transitional arrangements for existing Part 3A projects*

50. Schedule 1.7 provides for transitional arrangements consequent on the repeal of Part 3A of the Principal Act by Schedule 1.1, including the following:
- (a) the continued application of Part 3A of the Principal Act to approved projects, and projects for which environmental assessment requirements were notified or adopted before the repeal of the Part, other than specified projects declared to be State significant infrastructure,
  - (b) the transitional arrangements relating to development (other than development referred to in paragraph (a)) that was the subject of a Part 3A project application and that becomes State significant development,
  - (c) transitional arrangements with respect to concept plans under Part 3A.

*Schedule 2 Consequential and other amendments*

51. Schedule 2 makes amendments to other Acts and instruments that are generally consequential on the amendments made by Schedule 1.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Exclusion of claims for compensation*

52. Proposed Sch 6A to the Act provides for the transitional arrangements arising from the repeal of Part 3A. Clause 9 of Sch 6A provides that compensation is not payable by or on behalf of the State:

- (a) because of the enactment, making or operation of any of the following:
  - i the Environmental *Planning and Assessment Amendment (Part 3A Repeal) Act 2011*,
  - ii *State Environmental Planning Policy (Major Development) Amendment 2011* or any other environmental planning instrument, regulation or decision relating to the removal of any project from the operation of Part 3A (whether made before or after the commencement of this clause), or
- (b) because of any consequence of any such enactment, making or operation, or
- (c) because of any statement or conduct relating to any such enactment, making or operation, or
- (d) because of any other statement or conduct relating to the repeal or proposed repeal of Part 3A (including the termination of consideration of any application or proposal under that Part in anticipation of its repeal).

53. The Committee notes that not only does cl 9 of proposed Sch 6A exclude compensation, but it excludes it in respect of any act or omission, whether unconscionable, misleading, deceptive or otherwise; and any statement made verbally or in writing, and whether negligent, false, misleading or otherwise.

**The Committee notes that compensation is excluded even in the event of deliberate deception.**

**The Committee refers to Parliament the question as to whether the exclusion of claims for compensation under cl 9 of proposed Sch 6A constitutes an undue trespass on personal rights and liberties.**

### Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

#### *Provide the executive with unfettered control over the commencement of an Act.*

54. The Bill is to commence on a day or days to be appointed by proclamation [proposed s2].
55. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the Bill is an interim measure which will be complemented by further legislation. Accordingly, the Committee does not**

**consider that the Bill gives rise to an inappropriate delegation of legislative power.**

## 12. Evidence Amendment (Journalist Privilege) Bill 2011

Date introduced	27 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The *Evidence Amendment (Journalist Privilege) Bill* passed both Houses on 16 June 2011, and received Royal Assent on 21 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend the *Evidence Act 1995* with respect to the disclosure of the identity of persons who give information to journalists. If a journalist has promised not to reveal an informant's identity, the Bill provides that the journalist (and his or her employer) will not be compelled to disclose the informant's identity in any proceedings in a NSW court, unless the court determines otherwise in accordance with a specified public interest test.
3. The Bill also makes an amendment to the general provisions relating to professional confidential relationship privilege that was agreed to by the Standing Committee of Attorneys General as part of the Model Uniform Evidence Bill.

### BACKGROUND

4. The Bill implements recent amendments to the *Model Uniform Evidence Bill* in New South Wales. The following background was given in the Agreement in principle speech:

In their work, journalists often depend on assistance from sources who may wish to remain anonymous. In many instances, sources may only be willing to provide important information on condition that their identity remains confidential. Journalists' ethical standards recognise that it is preferable, where possible, to attribute published information to its source, expect when information is provided on the basis of anonymity and good faith requires that a journalist withhold the identity of the source. Laws that allow journalists to preserve the anonymity of their sources - when they have made a promise to do so - are essential to support the work of journalists. This bill strengthens the capacity of journalists to maintain the anonymity of their sources by creating a presumption that they may withhold the identity of their sources in proceedings in New South Wales courts.<sup>15</sup>

### OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.

<sup>15</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 27 May 2011.



6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1 Amendment of *Evidence Act 1995***

7. Schedule 1 [3] inserts proposed Division 1C into Part 3.10 of the *Evidence Act 1995* relating to journalist privilege. A journalist (and his or her employer) will not be compelled to give evidence in any court proceeding that would disclose an informant's identity if the journalist has promised not to disclose the informant's identity. However, the protection will not apply if the court is satisfied that the public interest in having the informant's identity disclosed outweighs both any likely adverse effect of the disclosure on the informant (or on any other person) and the public interest in the communication of facts and opinion to the public by the news media (including the ability of the news media to access sources of facts). Journalist privilege is limited to persons who are engaged in the profession or occupation of journalism. The proposed provisions extend to information given by an informant before the commencement of the proposed Act but will not apply in relation to a proceeding the hearing of which has already commenced.
8. Schedule 1 [4] amends section 131A of the *Evidence Act 1995* to extend it to journalist privilege. The Act generally applies to the giving or adducing of evidence in court proceedings (including evidence of the contents of documents). Section 131A extends privileges in relation to the giving or adducing of evidence in court proceedings to the disclosure requirements made by subpoenas, pre-trial discovery and other pre-trial court processes.
9. Schedule 1 [2] amends the general provisions relating to professional confidential relationship privilege, which also apply to journalists, in accordance with the agreement of the Standing Committee of Attorneys General. A court will be required to take into account the public interest in preserving the confidentiality of protected confidences and protected identity information when it is deciding whether to make a direction that evidence may not be adduced because of professional confidential relationship privilege.
10. Schedule 1 [1] omits a redundant note.
11. Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

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

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

# 13. Evidence Amendment (Protection of Journalists' Sources) Bill 2011\*

Date introduced	6 May 2011
House introduced	Legislative Council
	Mr David Shoebridge MLC
	*Private Member

## PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Evidence Act 1995* to protect journalists' sources from disclosure in legal proceedings and, in so doing, enhance the ability of journalists to undertake investigative work. As a result of the proposed Act, a journalist will not be compelled to answer any question or produce any document that would disclose an informant's identity if the journalist has promised not to disclose the informant's identity. However, such protection will not apply if the court is satisfied that the public interest in having the informant's identity disclosed outweighs both any likely adverse effect of the disclosure on the informant (or any other person) and the public interest in the communication of facts and opinion by the news media to the public (including the ability of the news media to access sources of facts).

## BACKGROUND

2. The following background was given in the Bill's Second Reading speech:

For journalists, bloggers and online writers to be able to do their job, and give the public information about the workings of government and other powerful interests in our society, they must have people willing to give them information on a confidential basis. Unless people can feel sure that journalists will not be compelled to divulge the source of their information, the sources of information will dry up and secrecy will prevail. A core function of news outlets, whether online or print, is to hold the government of the day to account. This function is severely limited if a government is able to muzzle news reporters by demanding that they reveal their sources. Journalists' sources need to be able to speak freely, without fear of retribution from their employers or governments. Without this freedom we simply will not have people willing to come forward and speak the truth in the face of government or, indeed, well-heeled private pressure.

...The capacity to weigh the public interest and the accepted public interest against forensic interests that a party may have is appropriately at the court's discretion. The Parliament should not be scared to give the courts the power to weigh the public interest, to assume that the public interest is found in non-disclosure and then to allow for the disclosure of material in a limited class of cases where there is an overwhelming interest to do so. Currently there is no protection either at common law or in statute. This bill is a major advance for the people of New South Wales in ensuring they have open access to information.<sup>16</sup>

<sup>16</sup> Mr D Shoebridge MLC, Legislative Council *Hansard*, 6 May 2011.

## 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. Schedule 1 amends the Evidence Act 1995 in the manner described in the paragraph 1.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

# 14. Firearms Legislation Amendment Bill 2011\*

Date introduced	14 June 2011
House introduced	Legislative Council
	Hon Robert Borsak MLC
	*Private Member

## PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Firearms Act 1996* and the *Firearms Regulation 2006* as follows:
  - (a) to exempt air rifles from certain requirements under the *Firearms Act* (namely, registration and the need for a permit to acquire such firearms) and to allow persons under the age of 18 years to use air rifles under supervision at approved shooting ranges without a firearms licence or permit,
  - (b) to clarify the operation of existing exemptions in relation to antique firearms,
  - (c) to make a number of other amendments of an administrative, minor or consequential nature.
2. The Bill also amends the *National Parks and Wildlife Regulation 2009* to enable unloaded firearms to be conveyed in vehicles travelling through national parks.

## BACKGROUND

3. In the Second Reading speech, Hon Robert Borsak MLC stated that the Bill:

...proposes a number of amendments to the Firearms Act 1996 and the Firearms Regulation 2006. These amendments will introduce some minor improvements to some of the unnecessary restrictions suffered by ordinary people, who choose to collect, hunt or shoot using firearms. Some of these amendments were raised previously by my predecessor, the late Hon. Roy Smith. I hope that the new Government takes a more reasonable view on the legitimate use of firearms by private citizens. The amendments will not have any adverse impact on public safety.<sup>17</sup>

## Amendment of *Firearms Act 1996 No 46*

### *Amendments relating to air rifles*

4. Schedule 1 [6] exempts air rifles from the registration requirements under the *Firearms Act*. A permit to acquire will not be required in relation to an air rifle, though the general requirement for a licence or permit to possess or use an air rifle will remain. Special provision is made however to allow persons who are under the age of 18 years to use an

<sup>17</sup>The Hon R Borsak, Legislative Council *Hansard*, 14 June 2011.

air rifle at an approved shooting range under the direct supervision of persons who are licensed to use air rifles.

5. Schedule 1 [1] is a consequential amendment that distinguishes air rifles from air pistols for the purposes of the *Firearms Act* (noting that the proposed amendments relating to air rifles do not affect existing licensing and registration requirements in relation to air pistols).
6. Schedule 1 [7] is a consequential amendment that makes it clear that category A licence holders are authorised to possess or use an unregistered air rifle.

*Amendments relating to antique firearms*

7. Schedule 1 [2]–[5] modify existing exemptions relating to antique firearms (ie firearms manufactured before 1900). A licence or permit is currently not required to possess an antique firearm, but this exemption will not apply in the case of a pistol that is capable of discharging breech-loaded metallic cartridges or a percussion lock pistol equipped with a revolving cylinder (presently referred to as an “antique revolver”). Schedule 1 [8] is a consequential amendment.

*Miscellaneous amendments*

8. Schedule 1 [9]–[11] amend the genuine reason of vertebrate pest animal control so that persons (such as professional contract shooters) who fall under that genuine reason will be able to control vertebrate pest animals on any land that is owned, occupied or managed by a public or local authority (and not just rural land).
9. Schedule 1 [13] is a consequential amendment.
10. Schedule 1 [12] provides that the requirement for a person to surrender a firearm when the person’s licence or permit is suspended or revoked (or otherwise ceases to be in force) applies only after the person is directed by the Commissioner in writing to surrender the firearm.
11. Schedule 1 [14] and [15] remove the restrictions on the types of pistols that the holder of a probationary pistol licence is allowed to acquire after the first 6 months of the licence.
12. Schedule 1 [16] provides for the recognition of interstate registered firearms on a transitional basis to assist interstate residents who move to New South Wales with firearms that are not registered under the *Firearms Act*.
13. Schedule 1 [17] exempts firearms dealers from having to make a record of all transactions or dealings involving firearms that are not required to be registered or that do not involve a change in ownership of a firearm (such as taking possession of a firearm for the purposes of repair). Schedule 1 [19] is a consequential amendment.
14. Schedule 1 [18] provides that this exemption for dealers also applies in relation to firearms for which a licence or permit is not required.
15. Schedule 1 [20] removes certain firearms (namely, certain longarms with a revolving ammunition cylinder) from the list of prohibited firearms so that they will be treated as ordinary firearms that are required to be registered.

16. Schedule 1 [21] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

### ***Amendment of Firearms Regulation 2006***

17. Schedule 2 [1] removes the requirement for the holder of an approval for a shooting range to record the name and licence number of each licensed shooter who is practising at the range and who is not otherwise participating in competitions or activities conducted by a shooting club. The current requirement for such persons to be supervised while practising at the range is retained.
18. Schedule 2 [2] makes it clear that it is not necessary for the approval of a shooting range to specify the name of each particular shooting event or practice activity that may be conducted or carried out at the shooting range.
19. Schedule 2 [3] is consequential on the amendments made by Schedule 1 [2]–[5].

### ***National Parks and Wildlife Regulation 2009***

20. Schedule 3 [1] removes a superfluous reference to airguns in an offence provision relating to the possession or use of certain weapons on national park land (noting that airguns are firearms within the meaning of the *Firearms Act* and are already covered by the existing prohibition under the National Parks and Wildlife Regulation of carrying, discharging or possessing a firearm on such land).
21. Schedule 3 [2] provides that it will not be an offence for a person to carry or possess a firearm on national park land if the firearm is not loaded and is being conveyed in a vehicle travelling on a road traversing that land and so long as the person is authorised under the *Firearms Act* to possess the firearm. The amendment also provides for a similar exemption in relation to the possession of ammunition on national park land.

## **ISSUES CONSIDERED BY THE COMMITTEE**

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

# 15. Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011

Date introduced	1 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Katrina Hodgkinson MP
Portfolio	Primary Industries

## PURPOSE AND DESCRIPTION

1. The *Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill* passed both Houses on 15 June 2011, and received the Royal Assent on 21 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The *Gene Technology (GM Crop Moratorium) Act 2003* is due to expire on 1 July 2011. The object of this Bill is to postpone the expiry of that Act until 1 July 2021.

## BACKGROUND

3. In the Agreement in Principle speech the Minister stated:

The bill seeks to extend the operation of the Gene Technology (GM Crops Moratorium) Act 2003 for a further 10-year period. The Act is due to expire on 1 July this year. If the Act expires on 1 July, it will mean that genetically modified [GM] food crops approved by the Commonwealth Government will be able to be cultivated in New South Wales without needing approval by this Government.<sup>18</sup>

4. The Minister indicated that the Commonwealth and New South Wales governments have distinct roles when it comes to the regulation of GM crops. The Gene Technology Agreement signed in 2001, between the Commonwealth and all Australian States and Territories, defines these roles.
5. Under the Gene Technology Agreement the role of the Commonwealth is to ensure that genetically modified organisms are safe for people and the environment. The role of the New South Wales Government is to manage market or trade issues affecting genetically modified crops.

The approval process for a genetically modified food crop happens at two levels. First, the Commonwealth must grant a licence for commercial release. Secondly, the genetically modified food crop must be approved for commercial cultivation in New South Wales by the New South Wales Minister for Primary Industries. The New South Wales Gene Technology (GM Crop Moratorium) Act 2003 provides a blanket prohibition on the cultivation of all genetically modified food crops in New South

<sup>18</sup> Hon K A Hodgkinson, Minister for Primary Industries, Legislative Assembly *Hansard*, 1 June 2011.

Wales, except those that have been specifically approved. The Act ensures a balanced approach to the management of genetically modified food crop cultivation in this State.<sup>19</sup>

## OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Clause 3 amends section 43 of the *Gene Technology (GM Crop Moratorium) Act 2003* to give effect to the above object of the Bill.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

---

<sup>19</sup> Hon K A Hodgkinson, Minister for Primary Industries, Legislative Assembly *Hansard*, 1 June 2011.



## 16. Government Advertising Bill 2011

Date introduced	22 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to regulate Government advertising campaigns by:
  - (a) providing for Government advertising guidelines, and
  - (b) prohibiting Government advertising campaigns and other material that could influence support for a political party, and
  - (c) requiring cost benefit analyses and peer reviews of Government advertising campaigns to be carried out for campaigns costing more than a specified amount, and an advertising compliance certificate to be given, before a campaign is commenced, and
  - (d) requiring a political party, whose parliamentary representatives are Ministers in the Government of this State (a ***governing party***), to pay the costs of Government advertising that contravenes the prohibitions relating to political advertising, and
  - (e) providing a right to seek a Supreme Court review of the liability to pay those costs, and
  - (f) requiring the Auditor-General to audit Government advertising activities of Government agencies and to report the findings to Parliament, and
  - (g) requiring advertising compliance certificates to be made publicly available as open access information.

### BACKGROUND

2. In the Agreement in Principle speech the Premier commented:

Governments in New South Wales have long used advertising campaigns to deliver important messages to the community. Such advertising campaigns should always be designed to benefit the community: for instance, to encourage people to be healthier, to be safer on our roads, to protect our environment or to take part in civic activities. The people of New South Wales should be able to expect that each dollar spent on a campaign is spent for their benefit, and not for the benefit of politicians or political parties.<sup>20</sup>

---

<sup>20</sup>The Hon B O'Farrell, Premier, Legislative Assembly *Hansard*, 22 June 2011.

3. The provisions of the Bill will apply to a wide range of government agencies including public service departments, statutory bodies representing the Crown, the New South Wales Police Force, the teaching services and the NSW Health services.

## OUTLINE OF PROVISIONS

### Preliminary

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 defines certain words and expressions used in the proposed Act. For the purposes of the proposed Act, a Government agency will include public service Departments, statutory bodies representing the Crown, the NSW Police Force, the Teaching Service, the NSW Health Service and other public bodies prescribed by regulations made under the proposed Act.
7. Clause 4 defines Government advertising campaign to mean the dissemination to members of the public of information about a government program, policy or initiative or any public health or safety or other matter that is funded by or on behalf of a Government agency and is disseminated under a commercial advertising distribution agreement by means of radio, television, the Internet, newspapers, billboards, cinemas or other media. Reports required to be published by Acts and private campaigns sponsored by Government agencies will not be Government advertising campaigns. Regulations will be able to be made exempting Government advertising campaigns, or classes of Government advertising campaigns, from the whole or specified provisions of the proposed Act or regulations made under the proposed Act.

### Government advertising campaigns

8. Clause 5 requires the Minister to prepare Government advertising guidelines and to publish them in the Government Gazette and make them publicly available on a Government website. The guidelines must not be inconsistent with the proposed Act or regulations made under the proposed Act.
9. Clause 6 prohibits a Government advertising campaign from being designed so as to influence (directly or indirectly) support for a political party. It also prohibits Government advertising from containing the name, or giving prominence to the voice or image, of a Minister or other member of Parliament or a candidate for election, as well as prohibiting the use of the name, logo or slogan of a political party. Service announcements or other information required for the purposes of a State election will not be subject to the proposed section.
10. Clause 7 requires the head of a Government agency to ensure that a cost benefit analysis is carried out of a proposed Government advertising campaign of the agency if its cost is likely to exceed \$1,000,000 and a peer review is carried out of any such proposed campaign if its cost is likely to exceed \$50,000. A cost benefit analysis or peer review may be given after commencement of the campaign in the case of urgent public health or safety matters or other urgent circumstances.

11. Clause 8 requires the head of a Government agency to issue an advertising compliance certificate for a Government advertising campaign of the agency before the campaign commences. The advertising compliance certificate is a certificate that the campaign complies with the proposed Act, regulations under the proposed Act and the Government advertising guidelines, contains accurate information, is necessary to achieve a public purpose, is supported by analysis and research and is an efficient and cost effective means of achieving that public purpose. A certificate may be given after commencement of the campaign in the case of urgent public health or safety matters or other urgent circumstances.
12. Clause 9 provides that the head of a Government agency is not subject to Ministerial control when determining or approving the method, medium or volume of a Government advertising campaign or determining whether to issue an advertising compliance certificate. This will not apply to budgetary or financial limits on campaigns. The head of a Government agency is also not to be subject to Ministerial control in relation to the taking of debt recovery action against a governing party under proposed Part 3.
13. Clause 10 prohibits Government advertising campaigns from being conducted after Australia Day and before election day in a year in which a State election is to be held. Advertising for public health or safety matters, service announcements or information, legal notices, jobs or tenders will be permitted.

### **Enforcement of Government advertising requirements**

14. Clause 11 provides that, if the content or other circumstances of a Government advertising campaign constitute a breach of proposed section 6 or regulations under that section, the amount of the cost of the campaign may be recovered as a debt due to the Crown and, in the case of a coalition of governing parties, each party is jointly and severally liable for the debt. Each governing party may recover amounts paid from other governing parties, according to the number of seats held by each party in the Legislative Assembly.
15. Clause 12 enables regulations to be made with respect to arrangements under which a governing party liable to pay the cost of a Government advertising campaign may offset the liability against amounts that would otherwise be paid to the party under the *Election Funding, Expenditure and Disclosures Act 1981* or any other Act.
16. Clause 13 gives a governing party the right to apply to the Supreme Court for a review of its liability to pay the whole or part of the cost of a campaign. On an application, the Supreme Court may determine whether there has been such a breach and determine the cost and may relieve the governing party of the obligation to pay the whole or part of the cost.

### **Miscellaneous**

17. Clause 14 requires the Auditor-General to carry out an annual performance audit of the activities of one or more Government agencies in relation to their Government advertising campaigns in order to determine whether the agencies have carried them out effectively and have done so economically and efficiently and in compliance with the proposed Act, regulations under the proposed Act, other laws and the Government advertising guidelines. The Auditor-General may determine, when reporting on a

performance audit, that the content or other circumstances of a Government advertising campaign constitute a breach of proposed section 6 or regulations under that section (which relate to political advertising) and must, in such a case, specify the cost of the campaign.

18. Clause 15 enables the Governor to make regulations for the purposes of the proposed Act.
19. Clause 16 provides for the review of the proposed Act in 5 years.

### **Savings, transitional and other provisions**

20. Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### ***Amendment of Government Information (Public Access) Regulation 2009***

21. Schedule 2 amends the *Government Information (Public Access) Regulation 2009* to make advertising compliance certificates information that is open access information under the *Government Information (Public Access) Act 2009*. The effect of this is that the certificates will be required to be made publicly available and free of charge on a website of the agency concerned.

## **ISSUES CONSIDERED BY THE COMMITTEE**

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

*Provide the executive with unfettered control over the commencement of an Act.*

22. The Bill is to commence on a day or days to be appointed by proclamation [proposed s2].
23. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.**

# 17. Graffiti Legislation Amendment Bill 2011

Date introduced	1 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith MP
Portfolio	Attorney General

## PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to amend the *Children (Community Service Orders) Act 1987* and the *Crimes (Sentencing Procedure) Act 1999* to require a court making a community service order under those Acts in relation to persons guilty of offences under the *Graffiti Control Act 2008* to impose a condition requiring the persons to remove or obliterate graffiti and restore the appearance of buildings, vehicles, vessels or places consequent on the removal or obliteration of graffiti (unless it is not reasonably practicable for such work to be performed by the persons),
- (b) to amend the *Graffiti Control Act 2008* to enable a court to make certain orders with respect to the driver licence of a person who has committed an offence under section 4 (Damaging or defacing property by means of graffiti implement) or 5 (Possession of graffiti implement) of that Act instead of or in addition to imposing a fine, sentence of imprisonment or community service order on the offender,
- (c) to amend the *Young Offenders Act 1997* to remove the power for investigating officials and specialist youth officers to deal with young offenders who have committed graffiti offences by way of caution, warning or youth justice conference instead of court proceedings,
- (d) to make various other consequential amendments.

## BACKGROUND

2. In the Agreement in Principle Speech, the Attorney General noted that the Bill:

- delivers on the Government's election commitment to tackle graffiti in local communities;
- strengthens the capacity of the courts to sentence graffiti offenders to do graffiti clean-up work;
- expands the penalties available to a court for graffiti by providing for driving licence sanctions; and

- ensures that young offenders realise the seriousness of graffiti offences by requiring them to appear before a court.<sup>21</sup>

### Amendments to *Children (Community Service Orders) Act 1987*

3. The *Children (Community Service Orders) Act 1987* (the 1987 Act) applies to a person who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence by, a court and who was a child when the offence was committed and was under the age of 21 years when charged with the offence. Section 5 of the 1987 Act enables a court to make a community service order requiring such a person to perform community service work instead of imposing a sentence of imprisonment on, or making an order under the *Children (Criminal Proceedings) Act 1987* in respect of, the person. Section 11 of the 1987 Act provides that the court may impose conditions on any community service order made by it. Schedule 1.1 [4] amends section 11 to require a court that makes such a community service order in respect of a person who has committed an offence under the *Graffiti Control Act 2008* to impose a condition that the work to be performed by the person include the removal of graffiti from buildings, vehicles, vessels and places and the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them unless it is not reasonably practicable for such work to be performed by the person. Schedule 1.1 [1]–[3] contain consequential provisions. Schedule 1.1 [5] and [6] enable the making of savings and transitional regulations and contain a savings provision.

### Amendments to *Crimes (Sentencing Procedure) Act 1999*

4. Section 8 of the *Crimes (Sentencing Procedure) Act 1999* enables a court to make a community service order directing an offender other than one to whom the *Children (Community Service Orders) Act 1987* applies to perform community service work instead of imposing a sentence of imprisonment on the offender. Section 90 of the *Crimes (Sentencing Procedure) Act 1999* provides that a court may impose such conditions on any order made by it as it considers appropriate. Schedule 1.2 [2] amends section 90 to require a court that makes such a community service order in respect of a person who has committed an offence under the *Graffiti Control Act 2008* to impose a condition that the work to be performed by the offender include the removal or obliteration of graffiti from buildings, vehicles, vessels and places and the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them unless it is not reasonably practicable for such work to be performed by the offender. Schedule 1.2 [1] and [3]–[5] contain consequential, savings and transitional provisions.

### Amendments to *Fines Act 1996*

5. Schedule 1.3 amends the *Fines Act 1996* as a consequence of the amendments to the *Children (Community Service Orders) Act 1987* described above (section 11 of that Act extends to certain community service orders made under the *Fines Act 1996*).

### Amendments to *Graffiti Control Act 2008*

6. Section 4 of the *Graffiti Control Act 2008* makes it an offence to intentionally damage or deface any premises or other property by means of a graffiti implement (that is, spray paint, a marker pen or any implement designed or modified to produce a mark that is

---

<sup>21</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 1 June 2011.

not readily removable by wiping or by use of water or detergent). Section 5 of that Act makes it an offence to possess a graffiti implement with the intention that it be used to damage or deface premises or other property. Section 15 of that Act provides that a court may, instead of imposing a fine or sentencing a person to imprisonment for such an offence, impose a community service order recommending that the work to be performed by the offender include the removal or obliteration of graffiti from buildings, vehicles, vessels and places and the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them. Schedule 1.4 [2] omits section 15 from the *Graffiti Control Act 2008*, and Schedule 1.4 [1] inserts Part 4A into that Act to provide the court with an additional power to make an order extending the period of the offender's learner or provisional licence for a period of 6 months (or a lesser period specified in the order), suspending the offender's driver licence for a period of 6 months (or a lesser period specified in the order) or, as an alternative to suspension of an unrestricted licence, requiring the driver not to equal or exceed a specified threshold number of demerit points for an equivalent period (a driver licence order). Schedule 1.4 [3] and [4] enable the making of savings and transitional regulations and contain savings provisions.

### ***Amendments to Road Transport (Driver Licensing) Act 1998***

7. Schedule 1.5 [1] inserts section 16AB into the Act. The proposed section provides for the suspension of the unrestricted licence of a person who is subject to a driver licence order made under proposed section 13C (1) (c) of the *Graffiti Control Act 2008* if the person equals or exceeds a specified threshold number of demerit points during the period the order has effect. Schedule 1.5 [2] amends section 20 of the *Road Transport (Driver Licensing) Act 1998* to enable the making of regulations with respect to driver licences the subject of the proposed driver licence orders.

### ***Amendment to Road Transport (Driver Licensing) Regulation 2008***

8. Schedule 1.6 amends clause 31C (7) of the Regulation to make it clear that the subclause does not apply to extensions of provisional licence periods by a driver licence order.

### ***Amendments to Young Offenders Act 1997***

9. The *Young Offenders Act 1997* provides an alternative process to court proceedings for children alleged to have committed offences through the use of formal cautions, warnings and youth justice conferences. Schedule 1.7 [2], [3] and [5] amend sections 13, 18 and 31, respectively, of that Act so that formal cautions (other than cautions by courts) and warnings cannot be used in relation to offences against the *Graffiti Control Act 2008*. Schedule 1.7 [4] and [6] make consequential amendments. Schedule 1.7 [7] amends section 37 to ensure that a child who is alleged to have committed a graffiti offence has no entitlement to be dealt with by conference before criminal proceedings are commenced. Schedule 1.7 [8]–[10] amend section 38 to make it clear that a specialist youth officer cannot refer a child who is alleged to have committed a graffiti offence to a conference or for caution. Schedule 1.7 [11] amends section 40 of that Act so that a court will continue to be able to refer a matter involving a child who is alleged to have committed such an offence to a conference administrator for a youth justice conference. Schedule 1.7 [1] is a consequential provision that inserts a definition of graffiti offence. Schedule 1.7 [12] and [13] enable the making of savings and transitional regulations and contain savings provisions.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Youth justice conferencing*

10. The Bill amends the *Young Offenders Act* so that:

- formal cautions (other than cautions by courts) and warnings cannot be used in relation to offences against the Act [new ss 13, 18 & 31];
- a child who is alleged to have committed a graffiti offence has no entitlement to be dealt with by conference before criminal proceedings are commenced [new s 37];
- a specialist youth officer cannot refer a child who is alleged to have committed a graffiti offence to a conference or for caution [new s 38]; and
- a court will continue to be able to refer a matter involving a child who is alleged to have committed such an offence to a conference administrator for a youth justice conference [new s 40].

**The Committee notes that the Bill restricts the use of non-judicial proceedings for children who are alleged to have committed a graffiti offence. Accordingly, the Committee refers to Parliament cl 1.7 of Schedule 1 to the Bill.**

### Delegation of legislative powers [s 8A(1)(b)(iv) *LRA*]

#### *Provide the executive with unfettered control over the commencement of an Act.*

11. The Bill is to commence on a day or days to be appointed by proclamation [proposed s 2]
12. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee is particularly concerned where there may be uncertainty in the community as to the applicability of a law which provides for penalties, and refers to Parliament whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**



## 18. Health Services Amendment (Local Health Districts and Boards) Bill 2011

Date introduced	5 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Jillian Skinner MP
Portfolio	Health

### PURPOSE AND DESCRIPTION

1. The *Health Services Amendment (Local Health Districts and Boards) Bill* passed both Houses on 11 May 2011, and received the Royal Assent on 16 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The objects of this Bill are:
  - (a) to amend the *Health Services Act 1997*:
    - i to constitute local health districts and establish boards for such districts, and
    - ii to provide for certain statutory health corporations to be specialty networks with boards, and
    - iii to make related amendments and other minor amendments, and
    - iv to enact provisions of a savings or transitional nature, and
  - (b) to make consequential amendments to certain other Acts and statutory rules.

### BACKGROUND

3. The Minister in the Agreement in Principle speech stated:

The key changes in this bill are to provide for local health districts and district health boards in lieu of the 15 geographic-based local health networks and their governing councils. I trust that the Parliament will support this legislation so that local clinicians and local communities will have a greater say in how their local health services are run and another election commitment is kept. The revised structures will allow us in an orderly process and fashion to transfer greater degrees of responsibility and accountability to locally based decision-makers where the interests and involvement of patients and community can find a more immediate expression and response. As I previously indicated, changes were made to the structure of the New South Wales public health system in 2010, including the abolition of the area health services. The focus of these changes was to bring the New South Wales governance structures in line with the April 2010 Council of Australian Governments agreement on health reform, to which I previously referred.<sup>22</sup>

<sup>22</sup> Hon J G Skinner MP, Minister for Health, Legislative Assembly *Hansard*, 5 May 2011.

## OUTLINE OF PROVISIONS

### *Amendment of Health Services Act 1997*

#### *Principal amendments*

4. Schedule 1.1 amends the *Health Services Act 1997* (the Principal Act):
  - (a) to constitute local health districts to replace existing local health networks (see Schedule 1.1 [1], [6] and [7]), and
  - (b) to provide for the establishment of boards for each local health district instead of the existing system of local health network governing councils (see Schedule 1.1 [2]), and
  - (c) to provide for certain statutory health corporations to be specialty networks with boards (see Schedule 1.1 [3], [4], [5] and [8]), and
  - (d) to update certain definitions as a consequence of these amendments (see Schedule 1.1 [11]), and
  - (e) to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act (see Schedule 1.1 [9]), and
  - (f) to enact provisions of a savings and transitional nature including, for example, provisions providing for existing local health networks to be reconstituted as local health districts (see Schedule 1.1 [10]).

#### *Related amendments updating references and other minor amendments*

5. Schedule 1.2 makes general amendments to the Principal Act so as to update provisions by replacing references to terms that have changed as a result of the amendments made by Schedule 1.1. Schedule 1.2 also makes some other minor amendments to the Principal Act.

### **Consequential amendments of other Acts and statutory rules**

6. Schedule 2 makes amendments to various other Acts and statutory rules that are consequential on the amendments made to the Principal Act by the proposed Act.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Provide the executive with unfettered control over the commencement of an Act.*

7. The Bill is to commence on a day or days to be appointed by proclamation [proposed s2].
8. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.**



# 19. Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011

Date introduced	24 May 2011
House introduced	Legislative Council
Minister responsible	Hon Greg Pearce MLC
Portfolio	Finance and Services

## PURPOSE AND DESCRIPTION

1. The *Industrial Relations Amendment (Public Sector of Employment) Bill* passed both Houses on 16 June 2011, and received the Royal Assent on 17 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.<sup>23</sup>
2. The object of this Bill is to amend the *Industrial Relations Act 1996* [the Act] to require the Industrial Relations Commission to give effect to aspects of government policy declared by the regulations relating to NSW public sector conditions of employment.

## BACKGROUND

3. The Minister noted the following in the Second Reading Speech in the Legislative Council:

Underpinning the need for fiscal restraint is the Government's wages policy... Our policy and legislative response will ensure that wage increases of 2.5 per cent are available each year to our hardworking public sector employees. Increases in excess of 2.5 per cent are available but will be required to be funded through employee-related savings.

...The policy intention is to ensure an appropriate balance between public sector wage increases and the availability of funds for the delivery of the Government's commitments and value for money for New South Wales taxpayers. Where agencies and unions are able to identify agreed employee-related savings, these will be able to be passed on in higher wages.<sup>24</sup>

## 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.

<sup>23</sup> See also the *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Bill 2011*.

<sup>24</sup> Hon G S Pearce MLC, Minister for Finance and Services, Legislative Council *Hansard*, 24 May 2011.

6. Schedule 1 [2] inserts proposed s 146C into the Act to give effect to the object of the proposed Act. The proposed section requires the Industrial Relations Commission (*the Commission*) when making or varying an award or order to give effect to any policy on conditions of employment of public sector employees:
  - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and
  - (b) that applies to the matter to which the award or order relates.
7. The proposed section will not apply to proceedings before the Commission in Court Session (known as the Industrial Court).
8. The proposed section extends to proceedings on appeal to the Full Bench of the Commission and to proceedings pending on the commencement of the proposed section. *Public sector employees* are defined to cover the Government Service, the Teaching Service, the NSW Police Force, the NSW Health Service, the service of Parliament and other public sector employees.
9. Schedule 1 [1] makes a related amendment to the unfair contracts jurisdiction of the Commission to provide that a contract is not unfair merely because it gives effect to the declared government policies referred to in proposed s 146C.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Matters in regulation which should be included in legislation*

10. New s 146C(1) provides that the Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees:
  - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and
  - (b) that applies to the matter to which the award or order relates.
11. Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation [s 146C(2)].
12. The Committee notes that s 146C requires the Industrial Relations Commission to give effect to aspects of government policy declared by the regulations.
13. The Committee also notes that the regulation containing government policy is subject to a form of Parliamentary scrutiny, i.e., disallowance.

**The Committee refers to Parliament whether provision for the declaration of the government's policy in regulation constitutes an inappropriate delegation of legislative power.**

## 20. Infrastructure NSW Bill 2011

Date introduced	26 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The *Infrastructure NSW Bill* passed both Houses on 22 June 2011, and received the Royal Assent on 27 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to establish Infrastructure NSW as a government agency for the purposes of:
  - (a) securing the efficient, effective, economic and timely planning, co-ordination, selection, funding, implementation, delivery and whole-of-lifecycle asset management of infrastructure that is required for the economic and social well-being of the community, and
  - (b) ensuring that decisions about infrastructure projects are informed by expert professional analysis and advice.

### BACKGROUND

3. The Premier noted the following in the Bill's Agreement in Principle speech:

If we are to grow our economy, improve our quality of living and make the most of our opportunities, we must invest well in economic infrastructure, aligned with our strategic objectives... Through Infrastructure NSW, we want to maximise investment by and involvement of the private sector to overcome the State's infrastructure backlog we have inherited. We will do so using a board that understands how to catalyse the innovation of the non-government sector in balance with the assessment and management of risk and opportunity essential to defending public value and the interests of taxpayers and government.<sup>25</sup>

### OUTLINE OF PROVISIONS

#### Part 1 Preliminary

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 sets out the objects of the proposed Act.

---

<sup>25</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 26 May 2011.

7. Clause 4 defines certain words and expressions used in the proposed Act. The expression “major infrastructure project” is defined as an infrastructure project:
  - (a) that has a capital investment value of more than \$100 million, or
  - (b) that is nominated by the Premier as a special project requiring oversight or co-ordination by Infrastructure NSW.

## **Part 2 Constitution and management of Infrastructure NSW**

8. Clause 5 constitutes Infrastructure NSW as a body corporate.
9. Clause 6 makes Infrastructure NSW a NSW Government agency, which has the effect of conferring the status, privileges and immunities of the Crown on Infrastructure NSW.
10. Clause 7 makes Infrastructure NSW subject to the control and direction of the Premier.
11. Clause 8 constitutes the Board of Infrastructure NSW and sets out its functions. The Board will consist of the following members:
  - (a) the Chairperson (appointed by the Premier),
  - (b) not more than 5 persons appointed by the Premier from the private sector who together have skills and experience in infrastructure planning, funding and delivery,
  - (c) the Chief Executive Officer and Co-ordinator General,
  - (d) the Director-General of the Department of Premier and Cabinet,
  - (e) the Secretary of the Treasury,
  - (f) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services,
  - (g) the Director-General of the Department of Planning and Infrastructure.
12. The Board has the function of determining the general policies and strategic direction of Infrastructure NSW and of advising the Premier and the Chief Executive Officer and Co-ordinator General on:
  - (a) the strategies, plans and statements under Part 4 of the proposed Act, and
  - (b) progress in the delivery of major infrastructure projects identified in those strategies, plans and statements, and
  - (c) any other matter relating to infrastructure requested by the Premier or Chief Executive Officer and Co-ordinator General or on its own initiative.
13. The Board may advise the Premier against any amendment made by the Premier to the strategies, plans and statements submitted by Infrastructure NSW, and make that advice publicly available.

14. Clause 9 establishes the office of the Chief Executive Officer and Co-ordinator General, Infrastructure NSW, who is to manage and control the affairs of Infrastructure NSW in accordance with the general policies and strategic direction determined by the Board. Any act, matter or thing done in the name of, or on behalf of Infrastructure NSW by the Chief Executive Officer is taken to have been done by Infrastructure NSW.
15. Clause 10 provides for the staff of Infrastructure NSW.

### **Part 3 Functions of Infrastructure NSW**

16. Clause 11 sets out the general and specific functions of Infrastructure NSW, which include the preparation of infrastructure strategies, plans and statements for submission to the Premier, overseeing and monitoring the delivery of major infrastructure projects, reviewing infrastructure proposals by government agencies and the private sector, co-ordinating the State's infrastructure funding submissions and advising the Premier on funding models for infrastructure projects and other matters relating to infrastructure.
17. Clause 12 enables Infrastructure NSW to accept a delegation of the functions of a government agency relating to the planning, funding, delivery or maintenance of infrastructure.
18. Clause 13 enables Infrastructure NSW to delegate its functions to a member of the staff of Infrastructure NSW or a person, committee of persons or a person of a class approved by the Premier or prescribed by the regulations.
19. Clause 14 provides for the exercise of Infrastructure NSW's functions through partnerships, joint ventures or other associations with government agencies or other persons or bodies.
20. Clause 15 imposes obligations on government agencies in relation to Infrastructure NSW, including to co-operate with, and provide information to, Infrastructure NSW.

### **Part 4 Infrastructure strategies and planning**

#### ***Division 1 20-year State infrastructure strategy***

21. Clause 16 requires Infrastructure NSW to prepare and submit to the Premier a 20-year State infrastructure strategy.
22. Clause 17 sets out the content of the 20-year State infrastructure strategy.
23. Clause 18 provides that the Premier must consider any 20-year State infrastructure strategy submitted to the Premier and adopt the strategy with or without amendments or refer it back to Infrastructure NSW for further consideration. The strategy is to be made publicly available.

#### ***Division 2 5-year infrastructure plans***

24. Clause 19 requires Infrastructure NSW to prepare and submit to the Premier a 5-year major infrastructure projects plan, which is to identify specific major infrastructure projects to be undertaken as a priority in the following 5 years.
25. Clause 20 sets out the content of a 5-year infrastructure plan.



26. Clause 21 provides that the Premier must consider any 5-year infrastructure plan submitted to the Premier and adopt the plan with or without amendments or refer it back to Infrastructure NSW for further consideration. The adopted plan must be made publicly available.
27. Clause 22 provides for Infrastructure NSW to prepare and submit to the Premier other plans at the direction of the Premier.

### **Division 3 Sectoral State infrastructure strategy statements**

28. Clause 23 requires Infrastructure NSW to prepare and submit to the Premier a sectoral State infrastructure strategy statement for any particular sector or sectors that the Premier considers significant for the State.
29. Clause 24 sets out the content of a sectoral State infrastructure strategy statement.
30. Clause 25 provides that the Premier must consider any sectoral State infrastructure strategy statement submitted to the Premier and adopt a statement with or without amendments or refer it back to Infrastructure NSW for further consideration. The adopted statement must be made publicly available.

### **Division 4 Project implementation plans**

31. Clause 26 provides for the preparation by or at the direction of Infrastructure NSW of project implementation plans for major infrastructure projects identified under this proposed Part in order to facilitate the oversight and monitoring of the delivery of those projects.
32. Clause 27 sets out the content of a project implementation plan.

### **Part 5 Step-in powers for delivery of major infrastructure projects**

33. Clause 28 defines certain words and expressions used in the proposed Part and proposed Schedule 2.
34. Clause 29 confers step-in functions on Infrastructure NSW to carry out major infrastructure projects and to be responsible for projects carried out by other government agencies.
35. Clause 30 authorises the Premier to make project authorisation orders.
36. Clause 31 provides that a project authorisation order may authorise Infrastructure NSW to carry out a major infrastructure project specified in the order.
37. Clause 32 provides that a project authorisation order may, in the case of a major infrastructure project being carried out by another government agency, declare Infrastructure NSW to be responsible for the government agency's functions in relation to the carrying out of the project.
38. Clause 33 provides for the transfer of assets, rights and liabilities of a government agency to Infrastructure NSW if a project authorisation order is made.

- 39. Clause 34 authorises Infrastructure NSW to acquire land for the purpose of a major infrastructure project as authorised by a project authorisation order in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- 40. Clause 35 authorises the Premier to make a project divesting order to direct that the assets, rights and liabilities of Infrastructure NSW in relation to a major infrastructure project are to be transferred to another government agency.
- 41. Clause 36 provides that project authorisation orders and project divesting orders may apply to the whole or a specified part of a major infrastructure project.

## **Part 6 Miscellaneous**

- 42. Clause 37 provides that the proposed Act binds the Crown.
- 43. Clause 38 requires disclosure of conflicts of interest of members of the Board of Infrastructure NSW or the Chief Executive Officer and Co-ordinator General, and provides for the management of any such conflict of interest.
- 44. Clause 39 excludes Infrastructure NSW, the Board of Infrastructure NSW, the Chief Executive Officer and Co-ordinator General or a person acting under their direction from personal liability for an act or omission done in good faith for the purpose of executing the proposed Act.
- 45. Clause 40 enables the Governor to make regulations for the purposes of the proposed Act.
- 46. Clause 41 provides for the review of the proposed Act in 5 years.

## **Schedule 1 Members and procedure of Board of Infrastructure NSW**

- 47. Schedule 1 contains provisions relating to members and procedure of the Board of Infrastructure NSW.

## **Schedule 2 Transfer of assets, rights and liabilities**

- 48. Schedule 2 contains provisions relating to the transfer of assets, rights and liabilities in relation to project authorisation orders and project divesting orders.

## **Schedule 3 Amendment of other Acts**

- 49. Schedule 3 amends the *Public Finance and Audit Act 1983* to provide for financial auditing and annual reporting by Infrastructure NSW and to make an amendment consequent on the repeal in Schedule 4. Schedule 3 also amends the *Statutory and Other Offices Remuneration Act 1975* to provide that the remuneration payable to the Chairperson of the Board of Infrastructure NSW is to be determined by the Statutory and Other Offices Remuneration Tribunal.

## **Schedule 4 Repeal of *Infrastructure Implementation Corporation Act 2005* No 89**

- 50. Schedule 4 repeals the *Infrastructure Implementation Corporation Act 2005*.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 21. Law Enforcement (Powers and Responsibilities) Amendment (Move On Directions) Bill 2011

Date introduced	10 May 2011
House introduced	Legislative Council
Minister responsible	Hon Michael Gallacher MLC
Portfolio	Police

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to authorise a police officer to direct an intoxicated person to move on from a public place. At present, such a direction may only be given to an intoxicated person who is in a group of 3 or more intoxicated persons.

### BACKGROUND

2. The Minister for Police in the Bill's Second Reading speech stated:

Current move-on powers in section 198 of the Law Enforcement (Powers and Responsibilities) Act restrict police to give directions to persons in groups of three or more intoxicated people. The proposed amendment enables police to give directions to intoxicated individuals regardless of whether they are by themselves or part of a group. Move-on powers give police an effective enforcement tool to address drunk and disorderly behaviour before it becomes a public safety issue. Giving police the power to encourage intoxicated individuals to go home will help to reduce the incidence of violence around entertainment and licensed venues.<sup>26</sup>

### 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 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to give effect to the object set out in the Overview above omit "in a group of 3 or more intoxicated persons" from section 198 (1).

### ISSUES CONSIDERED BY THE COMMITTEE

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

<sup>26</sup> Hon M J Gallacher MLC, Minister for Police, Legislative Council *Hansard*, 10 May 2011.

## 22. Library Amendment Bill 2011

Date introduced	25 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon George Souris MP
Portfolio	Arts

### PURPOSE AND DESCRIPTION

1. The *Library Amendment Bill* passed both Houses on 31 May 2011, and received the Royal Assent on 7 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend the *Library Act 1939* to enable 2 or more local councils to enter into arrangements for the provision, control and management of libraries and library services in any of the areas of the councils.

### BACKGROUND

3. The Minister stated in the Agreement in Principle speech that the object of this Bill is to, 'enable two or more local authorities to enter into an arrangement for the provision, control and management of libraries, library services and information services in any of their respective local government areas.'<sup>27</sup>

The bill provides an alternative to the current situation under section 12 of the Library Act 1939 whereby two or more local authorities may enter into an agreement with regard to which one of the local authorities should undertake these functions in the area of any local authority that is party to the arrangement.<sup>28</sup>

4. The Minister indicated that there are 19 libraries in New South Wales controlled or managed between 70 local authorities under agreements. By sharing resources regional libraries provide services for communities that would be difficult or impossible for any individual council to fund.

### OUTLINE OF PROVISIONS

#### Amendment of *Library Act 1939*

5. Currently, the *Library Act 1939* provides that 2 or more local councils may enter into an agreement under which one of the councils undertakes the function of providing, controlling and managing a library, library services or information services in the area or areas of the other local council or councils. Similar agreements can also be entered into under which a local council's library-related functions are exercised for or on behalf of that council by another local council.

<sup>27</sup> Hon G Souris, Minister for the Arts, Legislative Assembly *Hansard*, 25 May 2011.

<sup>28</sup> Hon G Souris, Minister for the Arts, Legislative Assembly *Hansard*, 25 May 2011.

6. Schedule 1 [4] provides that local councils will be able to enter into alternative arrangements for the provision, control and management of a library, library service or information service in the area of any local council that is a party to the arrangement. Such an arrangement cannot be entered into without the approval of the Minister for the Arts, who must have the agreement of the Minister for Local Government.
7. Schedule 1 [1]–[3] are consequential amendments.

#### ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 23. Liquor Amendment (3 Strikes) Bill 2011

Date introduced	22 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon George Souris MP
Portfolio	Tourism, Major Events, Hospitality and Racing

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to establish a 3 strikes disciplinary system in respect of liquor licences for venues at which multiple breaches of the Liquor Act 2007 are alleged to have occurred.
2. Clause 1 sets out the name (also called the short title) of the proposed Act.
3. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### BACKGROUND

4. In the Agreement in Principle speech, the Minister for Tourism, Major Events, Hospitality and racing stated:

The aim of the Government's three strikes policy is for its deterrent effect to complement these regulatory and enforcement programs, thereby leading to improved compliance with the law, safer licensed premises and reduced levels of alcohol-related harm – including alcohol related violence and antisocial behaviour. It is therefore appropriate that the three strikes system targets licensed venues that are repeatedly associated with serious offences under the Liquor Act. The bill establishes a three strikes system under which strikes can be incurred where repeated non-compliance with these offence provisions is reported. The prescribed offences include: permitting intoxication or violent conduct on licensed premises, selling or supplying alcohol to an intoxicated person or to a minor, allowing alcohol to be sold or supplied to a minor, permitting the sale, possession or use of illicit drugs on licensed premises and breaching key liquor licence conditions, including a condition imposed under the new three strikes system.<sup>29</sup>

5. Features of the three strikes systems include:
  - a first strike is automatically incurred where there are three prescribed offences within a 12-month period. Alternatively the director general has discretion to decide that a first strike should be incurred after only one alleged offence because of the seriousness of that offence or because of the seriousness of any harm that may have resulted from or been associated with the commission of that offence.

<sup>29</sup> Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 22 June 2011.

- a second strike is automatically incurred where there are two additional alleged offences in the 12 months since the first strike and those offences are the same type of offences as those which led to the first strike. The director general also has discretion to decide that a second strike should be incurred where two additional offences are not the same type having regard to the circumstances of the alleged offences.
  - a third strike is discretionary due to the serious consequences that result.
6. A third strike results in:
- cancellation of the liquor licence, except in the case of a registered club.
  - permanent disqualification of the licensee or approved manager from holding a liquor licence or being an approved manager of licensed premises, except in specified circumstances, and it results in
  - a 12-month prohibition on an application being granted for a liquor licence for the same premises where the applicant or a close associate of the applicant was the business owner or was a close associate of the business owner under the cancelled licence at the time of the offence.
7. For registered clubs a third strike results in permanent disqualification of the secretary from being a club secretary or an approved manager of a licensed premises. The Minister stated that:
- A separate penalty regime for a third strike incurred by a registered club recognises the severe impact that cancellation of a club's liquor licence and a prohibition on a licence for a club's premises can have on club members who ultimately own the club's property.<sup>30</sup>

## OUTLINE OF PROVISIONS

### Amendment of *Liquor Act 2007*

8. Schedule 1 [3] inserts a new Part into the Liquor Act 2007 (the Principal Act) that sets out a 3 strikes disciplinary system.
9. Proposed section 144A makes it clear that the proposed Part operates alongside Part 9 (Disciplinary action) of the Principal Act and does not affect the operation of that Part.
10. Proposed section 144B defines the terms business owner (the person who owns the business carried on under the liquor licence), prescribed offence (certain specified offences under the Principal Act or offences under the Principal Act or the regulations that are prescribed by the regulations) and relevant person (the licensee, and manager of the licensed premises and any employees or agents of those persons) and sets out the circumstances in which a person is taken to be charged with a prescribed offence and the circumstances in which those charges are taken to be withdrawn or dismissed. The proposed section also sets out when offences occurring close together in time are taken

---

<sup>30</sup> Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 22 June 2011.



to be a single offence and when an alleged offence is taken to cause a strike to be incurred.

11. Proposed section 144C sets out the consequences of 3 strikes being incurred in respect of a licence under the Principal Act (a licence). The licence is automatically cancelled (unless the licence is a club licence) and within 12 months after that cancellation, a person cannot be granted a licence in respect of the premises to which the cancelled licence related (the subject premises) if the applicant for the new licence or a close associate of the applicant was the business owner (or was a close associate of the business owner) under the cancelled licence. In addition, the licensee and the manager of the subject premises are permanently prohibited from being the licensee or manager, or an employee or agent of the licensee or manager, of the subject premises. Each of those persons is also permanently prohibited from holding any other licence or being a manager of any other licensed premises, unless the person was not the licensee or manager when the first 2 strikes were incurred, in which case the prohibition is for the period (if any) decided by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the Director-General). If a club licence incurs 3 strikes, the secretary of the club is permanently prohibited from being the secretary of the club or from being the manager of the club, or from being an employee or agent of the club or the manager of the club. The person is also permanently prohibited from being a secretary of any other club, holding any other licence or being a manager of any other licensed premises, unless the person was not the secretary when the first 2 strikes were incurred, in which case the prohibition is for the period (if any) decided by the Director-General.
12. Proposed section 144D permits the Director-General to impose certain conditions on a licence that has incurred one or 2 strikes. These range from requiring the use of plans of management and incident registers through to prohibiting the sale or supply of liquor on the licensed premises at all times for a period of up to 6 months.
13. Proposed section 144E sets out the circumstances in which a first strike is incurred in respect of a licence. A first strike is incurred if 3 prescribed offences are alleged to have occurred on 3 separate occasions within a 12-month period and one or more relevant persons are charged with those offences. Alternatively, a first strike may be incurred if a relevant person is charged with a prescribed offence and the Director-General decides that a strike should be incurred because of the seriousness of the alleged offence or because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the alleged offence.
14. Proposed section 144F sets out the circumstances in which a second strike is incurred in respect of a licence. A second strike is incurred if relevant persons are charged with 2 or more prescribed offences that are alleged to have occurred within 12 months after a first strike coming into force and each of the new prescribed offences is the same type of offence (being an offence charged under the same provision) as an offence that caused the first strike. Alternatively, a strike is incurred if a relevant person is charged with committing a prescribed offence that is alleged to have occurred within 12 months after the first strike came into force and the Director-General decides that a strike should be incurred. The Director-General may decide that a strike should be incurred because of the seriousness of the alleged offence or because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the alleged offence. The Director-General may also decide that a strike should be incurred if

one or more other prescribed offences are alleged to have been committed by relevant persons since the first strike came into force and the Director-General is satisfied that a strike should be incurred in the circumstances.

15. Proposed section 144G sets out the circumstances in which a third strike is incurred in respect of a licence. A third strike may only be incurred if a relevant person is charged with a prescribed offence and the Director-General decides that a strike should be incurred in the circumstances. Before making such a decision the Director-General must be satisfied that since the date of the first alleged offence that caused the first strike, at least 6 charges for prescribed offences by one or more relevant persons have been proven by the payment of an amount under a penalty notice in respect of the offence or a finding of guilt (whether or not this finding of guilt has proceeded to conviction). However, if a strike has been imposed in respect of a single charge because of the seriousness of the alleged offence or its harm, the charge for that offence if proven counts as 3 charges towards that required total of 6.
16. Proposed section 144H sets out when strikes are in force with respect to a licence and makes it clear that a strike can only cease to be in force when the Director-General decides. A strike does not automatically cease to be in force even if all of the charges that caused the strike to be incurred are withdrawn or dismissed.
17. Proposed section 144I sets out the matters that must be taken into account when the Director-General makes a decision under the proposed Part. It also requires the Director-General to notify the licensee, manager and certain other persons of any decision along with reasons for the decision and information about rights to have the decision reviewed.
18. Proposed section 144J provides for reviews of decision of the Director-General by the Administrative Decisions Tribunal. An application for such a review does not operate to stay any decision of the Director-General unless the Administrative Decisions Tribunal otherwise directs.
19. Schedule 1 [6] provides that the proposed Part does not apply to offences occurring before the commencement of that Part.
20. Schedule 1 [4] makes a consequential amendment.
21. Schedule 1 [1], [2] and [7] update references to Departments.
22. Schedule 1 [5] permits the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

## ISSUES CONSIDERED BY THE COMMITTEE

### Trespasses on personal rights and liberties [s 8A(1)(b)(i) LRA]

23. The Bill provides that 'strikes' are incurred where a relevant person is charged with committing a prescribed offence - not when such a person has been tried and found guilty of that offence - and where other prescribed offences are alleged to have been committed [e.g., proposed s 144E(1)].
24. Also, an offence is taken to cause a strike if a person is charged with the offence and that charge (or that charge along with other charges) causes a strike to be incurred,

regardless of whether the charge is subsequently withdrawn or dismissed [proposed s 144B(2)(d)].

25. First and second strikes come into effect on the day on which an offence is alleged to have occurred being the last (or only) offence that caused the strike [proposed s 144H(1)(a)].
26. However, a strike ceases to be in force on the day decided by the Director-General and notified in writing to the licensee [proposed s 144H(2)]; a strike does not automatically cease to be in force even if all of the charges that caused the strike to be incurred are withdrawn or dismissed [proposed s 144H(5)].

**The Committee notes the potential considerable impact which a strike may have on a business owner or licensee, and considers that basing decision-making on alleged offences, and charges rather than conviction, effectively trespasses against the right to the presumption of innocence. The Committee also notes the disparity between a strike coming into effect and ceasing to be in effect.**

**The Committee refers to Parliament whether the Bill trespasses unduly on the personal rights and liberties of persons involved in the conduct of businesses subject to the provisions of proposed Part 9A.**

### **Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers [s 8A(1)(b)(iii) LRA]**

27. The Bill sets out in detail the matters which the Director General must take into account when making a decision under Part 9A [proposed s 144I(c)]. However, nothing prevents the Director-General from taking into account any other matter that the Director-General thinks is relevant to his or her proper making of a decision [proposed s 144I(2)].
28. An application for the review of a decision of the Director-General may be made to the Administrative Decisions Tribunal [ADT] by any person that the Director-General is required to notify under proposed s 144I<sup>31</sup> in respect of the decision [proposed s 144J(1)].
29. However, the Committee notes that Part 2 of Chapter 5 of the Administrative Decisions Tribunal Act 1997 does not apply to any such application to the ADT for a review. Accordingly, the Director-General will not be bound by any of the notification, etc., requirements under that Part.
30. Moreover, any such application does not operate to stay the decision of the Director-General unless the ADT otherwise directs [proposed s 144J(4)], so that a person affected will have to await the outcome of the ADT process.

**The Committee notes that the Bill gives very wide decision-making powers to the Director General. The full scope of these powers is not set out in the Bill,**

---

<sup>31</sup> That is, the licensee; the manager (if any) of the premises to which the licence relates; if the Director-General is deciding whether a third strike should be incurred, the business owner and the owner of the premises to which the licence relates and any former licensee or manager who may be adversely affected by the decision, and any other person prescribed by the regulation: proposed s 144I(1).

**and are not subject to the notification, etc., requirements of Part 2 of Chapter 5 of the Administrative Decisions Tribunal Act 1997.**

**The Committee refers to Parliament whether the Bill makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.**

## 24. Lobbying of Government Officials Bill 2011

Date introduced	4 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The *Lobbying of Government Officials Bill* passed both Houses on 11 May 2011, and received the Royal Assent on 16 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to prohibit the giving or receipt of success fees for lobbying by lobbyists who lobby Ministers, Parliamentary Secretaries and other Government officials.

### BACKGROUND

3. The Premier stated in the Agreement in Principle speech that:

[t]he Lobbying of Government Officials Bill will make it a criminal offence, punishable by a fine, for a lobbyist to be paid a success fee—a payment that is contingent on the outcome of the lobbying of a government official.<sup>32</sup>

4. The Premier further commented that payment of success fees can create the perception that access to government has been bought and may also improve the ability of all stakeholders to present their views in relation to policy development.
5. Features of the Bill include:
  - third party lobbyists include persons or organisations that carry on the business of lobbying on behalf of others.
  - it will apply to communications by a lobbyist with government officials, whether they are made in person, by telephone, electronically or in writing.
  - it will apply to communications with government officials for the purpose of representing the interests of another person in relation to legislation proposed or actual legislation or a government decision or policy or proposed government decision or policy.
  - it will apply to planning applications and it will apply to the exercise by the official of his or her official functions.

---

<sup>32</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 4 May 2011.

6. Giving or receiving a success fee and agreeing to give or receive a success fee will be an offence punishable by a fine of a maximum of \$55,000 for a corporation and a maximum of \$22,000 for an individual.

## 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 a day or days to be appointed by proclamation.
9. Clause 3 defines certain words and expressions used in the proposed Act. A Government official is defined as a Minister, a Parliamentary Secretary, a staff member of a Minister or Parliamentary Secretary, a chief executive officer or senior executive officer within the meaning of the *Public Sector Employment and Management Act 2002* or a person employed under Chapter 1A of that Act, a member of a statutory body and a contractor providing services to or on behalf of a Division of the Government Service. Lobbying a Government official means communicating with the official for the purpose of representing the interests of another person or body in relation to certain specified Government activities or decisions. A lobbyist is defined as a person or body that carries on the business of lobbying Government officials on behalf of third parties and that generally does so for money or other valuable consideration.

## Ban on success fees for lobbying

10. Clause 4 defines a success fee for the lobbying of a Government official as an amount of money or other valuable consideration the giving or receipt of which is contingent on the outcome of the lobbying of a Government official by or on behalf of a lobbyist or on the outcome of a matter about which such lobbying is carried out.
11. Clause 5 makes it an offence to give, or agree to give, a success fee for the lobbying of a Government official to a lobbyist or any other person at the direction or with the agreement of the lobbyist. It will also be an offence for a lobbyist or any other person to receive, or agree to receive, such a success fee and for a lobbyist to agree that another person is to receive such a success fee.
12. Clause 6 provides for a success fee to be forfeited to the Crown if a person is found guilty of an offence under the proposed Part, unless the court otherwise orders. A court may, in proceedings or on appeal, order that a success fee not be forfeited or that a forfeited success fee be returned.
13. Clause 7 excludes fees paid primarily for the provision of professional advice or services from the effect of the proposed Part.

## Miscellaneous

14. Clause 8 enables the Governor to make Regulations for the purposes of the proposed Act.
15. Clause 9 provides for proceedings for offences under the proposed Act to be dealt with summarily before the Local Court.

16. Clause 10 makes directors of a corporation or persons concerned in the management of a corporation liable for offences by the corporation under the proposed Act if they knowingly authorise or permit the relevant contraventions.
17. Clause 11 provides for the review of the proposed Act after 5 years.

### **Savings, transitional and other provisions**

18. Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

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

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

*Provide the executive with unfettered control over the commencement of an Act.*

19. The Bill is to commence on a day or days to be appointed by proclamation [proposed s2].
20. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the Bill to commence on proclamation, and considers that it does not give rise to an inappropriate delegation of legislative power.**

## 25. Local Government Amendment (Elections) Bill 2011

Date introduced	15 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Donald Page MP
Portfolio	Local Government

### PURPOSE AND DESCRIPTION

1. The *Local Government Amendment (Elections) Bill* passed both Houses on 20 June 2011, and received the Royal Assent on 27 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend the *Local Government Act 1993* (the Principal Act) as follows:
  - (a) to provide that councils, in general, are to administer council elections, council polls and constitutional referendums rather than the New South Wales Electoral Commissioner (the *Electoral Commissioner*),
  - (b) to enable a council in certain circumstances to make an application to the Minister for Local Government (the *Minister*) for approval to reduce the number of its councillors without the need for approval at a constitutional referendum,
  - (c) to enable a council in certain circumstances to make an application to the Minister for approval to abolish all wards in the council's area without the need for approval at a constitutional referendum,
  - (d) to provide that a by-election need not be held to fill a casual vacancy in the office of a councillor (but not a mayor elected by the electors) if a constitutional referendum has approved a reduction in the number of councillors for the council area but the reduction has not yet taken effect,
  - (e) to increase the period before the next ordinary election of the councillors during which a council may apply to the Minister to dispense with the requirement to hold a by-election for a casual vacancy in the office of a councillor (including a mayor elected by the electors of an area) from the current effective 12 months to 18 months,
  - (f) to make amendments of a consequential, savings and transitional nature.

### BACKGROUND

3. The Minister in the Agreement in Principle speech stated that the Bill seeks to provide a transparent and effective legislative framework for the administration of local government in New South Wales. Key features include:



- returns autonomy to local councils by giving them back the powers to conduct their own elections.
  - councils in certain circumstances do not need to fill casual vacancies by way of by-elections, resulting in savings on the costs of holding those by-elections.
  - provides a window of opportunity to those councils that wish to reduce their councillor numbers and abolish wards without the need to hold a constitutional referendum.
4. The Minister commented that the proposals in the bill:
- ...have been developed to address recurring and significant issues identified in the review of local government election provisions that was conducted following the last council ordinary elections. The bill will address concerns raised by the public, councils and the Local Government and Shires Associations of New South Wales regarding the conduct and cost of local government elections.<sup>33</sup>

## OUTLINE OF PROVISIONS

### *Amendment of Local Government Act 1993*

#### *Councils to administer council elections, council polls and constitutional referendums*

5. Schedule 1 [9] provides that council elections (and, by operation of section 18 of the Principal Act, council polls and constitutional referendums) are to be administered by the general manager of the council concerned.
6. The general manager is to appoint a returning officer and a substitute returning officer for each such election. The returning officer is to appoint one or more electoral officials. An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council. A general manager cannot be appointed as a returning officer, substitute returning officer or electoral official for any area.
7. However, a council may, within 12 months after an ordinary election of councillors for the area, resolve that the council is to enter into a contract or make arrangements with the Electoral Commissioner for the Electoral Commissioner to administer all elections for the council (other than elections of mayors and deputy mayors by councillors). If such a contract is entered into or such arrangements made, the Electoral Commissioner is to administer all the elections of the council until the conclusion of the following ordinary election for councillors.
8. Schedule 1 [17] inserts a savings and transitional provision into the Principal Act to provide that a council may resolve, before 31 October 2011 (or such later date as may be prescribed by the regulations under the Principal Act), to retain the Electoral Commissioner to administer its elections (other than elections of mayors and deputy mayors by councillors), council polls and constitutional referendums until the conclusion of the 2012 ordinary election for councillors.
9. Schedule 1 [5], [6], [10]–[13] and [15] make consequential amendments.

---

<sup>33</sup> Hon D L Page MP, Minister for Local Government, Legislative Assembly *Hansard*, 15 June 2011

10. Schedule 1 [1] makes a consequential amendment to provide that a council need not invite tenders before entering into a contract with the Electoral Commissioner for the administration of the council's elections, council polls and constitutional referendums.
11. Schedule 1 [14] provides that the Director-General of the Department of Premier and Cabinet (the Director-General) may recover the reasonable expenses incurred by the Director-General in, or in respect of, the preparation a Departmental representative's report under Division 1 (Inquiries and reviews) of Part 5 (Inquiries, reviews and surcharging) of Chapter 13 (How are councils made accountable for their actions?) of the Principal Act that relates to the administration of an election by a general manager, including investigation expenses of the Director-General or the Departmental representative.

*Ministerial approvals for reduction in number of councillors without constitutional referendum*

12. Section 224A of the Principal Act (Approval to reduce number of councillors) was inserted into that Act by the *Local Government Amendment Act 2005* and provides that the Minister may approve a reduction in the number of councillors of a council without the need for approval at a constitutional referendum. Under the section, at least 21 days' public notice of the council's proposal is required and submissions made to the council by interested members of the public must be forwarded to the Minister. An application for reduction under that section could be made by a council only within the period of 12 months after the section's commencement (that is before 15 July 2006).
13. Schedule 1 [4] provides that a new application may be made under section 224A during the 5 month period after the proposed Act's commencement.
14. Schedule 1 [3] provides that at least 42 days' public notice (rather than 21 days) of the council's proposal is required.

*Ministerial approvals for abolition of wards without constitutional referendum*

15. Schedule 1 [2] enables the Minister, on application by a council, to approve the abolition of all wards of the council's area. At least 42 days' public notice of the council's proposal is required to be given and submissions made to the council by interested members of the public must be forwarded to the Minister. An application for approval of such an abolition may be made by a council only within the period of 5 months after the commencement of the proposed Act.

*Casual vacancies need not to be filled where councillor numbers reduced and approved by constitutional referendum*

16. Schedule 1 [8] provides that a by-election is not to be held to fill a casual vacancy in the office of a councillor (but not a mayor elected by the electors) if a constitutional referendum has approved a reduction in the number of councillors for the council area but the reduction has not yet taken effect.

*Increase of period during which by-elections may be dispensed with*

17. Section 294 of the Principal Act provides that a council may apply to the Minister to dispense with the requirement to hold a by-election for a casual vacancy in the office of a councillor (including a mayor elected by the electors of an area) that has occurred during the 12 months before an ordinary election of the councillors. Schedule 1 [7]

provides that such an application may be made if the casual vacancy occurs 18 months (rather than 12 months) before an ordinary election of the councillors.

*Savings and transitional provisions*

18. Schedule 1 [16] and [17] make amendments of a savings and transitional nature.

**ISSUES CONSIDERED BY THE COMMITTEE**

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 26. Local Government (Shellharbour and Wollongong Elections) Bill 2011

Date introduced	5 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Donald Page MP
Portfolio	Local Government

### PURPOSE AND DESCRIPTION

1. The *Local Government (Shellharbour and Wollongong Elections) Bill* passed both Houses on 9 May 2011, and received the Royal Assent on 10 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The mayors and councillors of Shellharbour City Council and Wollongong City Council were dismissed by proclamations of the Governor during 2008. Under those proclamations ordinary elections for those positions were due to be held on Saturday, 8 September 2012.
3. The object of this Bill is to provide for elections for Shellharbour City Council and Wollongong City Council on Saturday 3 September 2011.
4. The Bill also provides for the following:
  - (a) the abolition of wards in the Shellharbour City Council area—the electors in that area are to constitute a single electorate,
  - (b) the reduction in the number of councillors for the Shellharbour City Council from 13 to 7,
  - (c) the election of the mayor of the Shellharbour City Council by its councillors rather than directly by the electors,
  - (d) the alteration of the ward boundaries of the Wollongong City Council area to reduce the number of wards from 6 to 3.

### BACKGROUND

5. The Minister for Local Government stated in the Agreement in Principle speech that:

The Local Government (Shellharbour and Wollongong Elections) Bill will ensure that fresh elections for both councils are held on 3 September of this year. The bill will make sure that the ratepayers of both councils are not faced with the cost of another council election within 12 months. It provides for a one-off, five-year term for both councils, saving Wollongong City Council an estimated amount of \$943,000 and Shellharbour City Council an estimated amount of \$307,000. The next local government elections for these councils after 2011 will be in September 2016. This

will bring these two councils back into line with the local government elections cycle for the rest of the State.<sup>34</sup>

6. The Bill also addresses concerns raised in the Shellharbour public inquiry report about the structure of Shellharbour City Council.

## 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. Clause 3 defines certain words and expressions used in the proposed Act.

## Elections for Shellharbour and Wollongong City Councils

10. Clause 4 provides for fresh elections for the councillors for the Shellharbour City Council area, and the mayor and councillors for the Wollongong City Council area, to be held on Saturday 3 September 2011. The provision makes it clear that those civic office holders will have a 5 year term by providing that elections for those positions are not to be held during 2012. As a consequence, the next ordinary elections for Shellharbour and Wollongong City Councils are to be held on the second Saturday of September in 2016.

## Shellharbour City Council

11. Clause 5 abolishes all the wards of the Shellharbour City Council area.
12. Clause 6 provides that Shellharbour City Council is to have 7 councillors for the term of office commencing from the 2011 elections.
13. Clause 7 provides that the mayor of the Shellharbour City Council area is to be elected by the councillors from among their number.

## Wollongong City Council

14. Clause 8 provides that the administrators of Wollongong City Council must, before 24 June 2011, alter the ward boundaries of the Wollongong City Council area to reduce the number of wards from 6 to 3. The proposed section also outlines certain preparatory steps that must be taken before the alteration is made. Those preparatory steps broadly mirror provisions in sections 210 and 210A of the *Local Government Act 1993*.

## Miscellaneous

15. Clause 9 enables the Governor to make regulations for the purposes of the proposed Act, including regulations relating generally to the 2011 Shellharbour and Wollongong City Council elections and regulations of savings or transitional nature. Section 320 of the *Local Government Act 1993* and section 66FA of the *Parliamentary Electorates and Elections Act 1912* operate together to provide that a political party that is registered on the Local Government Register of Political Parties does not receive the benefits of that registration for a period of one year. Clause 9 also provides that regulations may be

---

<sup>34</sup> Hon D L Page MP, Minister for Local Government, Legislative Assembly *Hansard*, 5 May 2011.

made to reduce that period for the purposes of the Shellharbour and Wollongong City Council elections in 2011.

16. Clause 10 is a transitional provision to validate preparatory actions taken before the commencement of the proposed Act to enable the alteration of the ward boundaries of the Wollongong City Council area referred to in clause 8 above.
17. Clause 11 provides for the repeal of the proposed Act on 1 January 2013.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 27. Marine Parks Amendment (Moratorium) Bill 2011\*

Date introduced	6 May 2011
House introduced	Legislative Council
	Hon Robert Brown MLC
	*Private Member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to impose a moratorium on the declaration of additional marine parks or the expansion of sanctuary zones within existing marine parks.

### BACKGROUND

2. It was noted in the Second Reading speech that the Bill:

...provides for a five-year moratorium on the declaration of additional marine parks and prevents the Government from making a regulation that would extend the area within a marine park that comprises a sanctuary zone during that period commencing on the commencement of the proposed Act.<sup>35</sup>

### OUTLINE OF PROVISIONS

#### Amendment of *Marine Parks Act 1997*

3. Schedule 1 [1] prevents the Governor from making a proclamation declaring an area to be a marine park during the period of 5 years commencing on the commencement of the proposed Act.
4. Schedule 1 [3] prevents the Governor from making a regulation that would extend the area within a marine park that comprises a sanctuary zone during the period of 5 years commencing on the commencement of the proposed Act. Schedule 1 [2] makes a consequential amendment.

### ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

---

<sup>35</sup> Hon R L Brown MLC, Legislative Council *Hansard*, 6 May 2011.

## 28. Miscellaneous Acts Amendment (Directors' Liability) Bill 2011

Date introduced	4 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The *Miscellaneous Acts Amendment (Directors Liability) Bill* passed both Houses on 5 May 2011, and received the Royal Assent on 10 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend certain Acts that impose directors' liability, and to amend certain regulations made under those Acts, so as to:
  - (a) change the type of directors' liability that is imposed for certain offences under those Acts and regulations, from accessorial liability to deemed liability, and
  - (b) change the type of directors' liability that is imposed for certain offences under those Acts and regulations, from deemed liability to accessorial liability, and
  - (c) remove the imposition of directors' liability in respect of certain offences, and
  - (d) make minor amendments in connection with paragraph (c).

### BACKGROUND

3. Various Acts currently impose, on directors and other individuals concerned in the management of corporations, personal liability for certain offences committed by corporations (directors' liability). Each of those Acts generally provides for one of the following types of directors' liability:
  - (a) if a corporation commits an offence under the Act (or under regulations made under the Act), the director or other individual is taken to have committed the offence if he or she knowingly authorised or permitted the offence (*accessorial liability*),
  - (b) if a corporation commits an offence under the Act (or under regulations made under the Act), the director or other individual is taken to have committed the offence unless he or she establishes that:
    - i the corporation committed the offence without his or her knowledge, or
    - ii he or she was not in a position to influence the conduct of the corporation in relation to its offence, or



- iii he or she was in such a position but used all due diligence to prevent the offence (*deemed liability*).
- 4. The Bill relates to a COAG agreement with respect to the harmonisation across Australian jurisdictions of legislation imposing directors' liability, as noted in the Bill's Second Reading speech:

The principles aim to produce reform on a national basis of legislation imposing personal liability for corporate fault, which maintains high standards of corporate governance, ensures an appropriate attitude to risk and a compliance culture, decreases the compliance burden on businesses due to the increased harmonisation in the imposition of this type of liability, removes liability for offences for which it is not appropriate that directors and executive officers be liable, and ensures the consistent treatment of directors and executive officers— criminal liability attaches to significant offences rather than all potential statutory breaches by a corporation.<sup>36</sup>

## OUTLINE OF PROVISIONS

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

## Schedule 1 Amendment of Acts and Regulations

- 7. Schedule 1 amends the following Acts and Regulations to give effect to the object set out in paragraph 2 above:
  - (a) *Agricultural Industry Services Act 1998*,
  - (b) *Animal Diseases (Emergency Outbreaks) Act 1991*,
  - (c) *Apiaries Act 1985*,
  - (d) *Building and Construction Industry Long Service Payments Act 1986*,
  - (e) *Children and Young Persons (Care and Protection) Act 1998*,
  - (f) *Classification (Publications, Films and Computer Games) Enforcement Act 1995*,
  - (g) *Conveyancers Licensing Act 2003*,
  - (h) *Electricity (Consumer Safety) Act 2004*,
  - (i) *Fertilisers Act 1985*,
  - (j) *Food Act 2003*,
  - (k) *Food Regulation 2010*,
  - (l) *Funeral Funds Act 1979*,

---

<sup>36</sup> Hon G S Pearce MLC, Minister for Finance and Services, Legislative Council *Hansard*, 4 May 2011.

- (m) Funeral Funds Regulation 2006,*
- (n) Holiday Parks (Long-term Casual Occupation) Act 2002,*
- (o) Home Building Act 1989,*
- (p) Industrial Relations Act 1996,*
- (q) Land Sales Act 1964,*
- (r) Mining Act 1992,*
- (s) Motor Vehicle Repairs Act 1980,*
- (t) Noxious Weeds Act 1993,*
- (u) Parramatta Park Trust Act 2001,*
- (v) Poultry Meat Industry Act 1986,*
- (w) Prices Regulation Act 1948,*
- (x) Private Health Facilities Act 2007,*
- (y) Property, Stock and Business Agents Act 2002,*
- (z) Public Health Act 1991,*
- (aa) Public Health (Disposal of Bodies) Regulation 2002,*
- (bb) Public Health (Swimming Pools and Spa Pools) Regulation 2000,*
- (cc) Racing Administration Act 1998,*
- (dd) Residential Parks Act 1998,*
- (ee) Retirement Villages Act 1999,*
- (ff) Rice Marketing Act 1983,*
- (gg) Road Transport (General) Act 2005,*
- (hh) Totalizator Act 1997,*
- (ii) Wine Grapes Marketing Board (Reconstitution) Act 2003.*

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 29. Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Bill 2011

Date introduced	22 June 2011
House introduced	Legislative Council
Minister responsible	Hon Greg Pearce MLC
Portfolio	Finance and Services

### PURPOSE AND DESCRIPTION

1. The *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Bill* passed both Houses on 22 June 2011, and received the Royal Assent on 2 August 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to amend the *Parliamentary Remuneration Act 1989*, the *Local Government Act 1993*, the *Statutory and Other Offices Remuneration Act 1975* and the *Health Services Act 1997* to apply the same government public sector wages cap that binds the Industrial Relations Commission to the determination of the remuneration for Ministers and other members of Parliament, local councillors, statutory officers, public sector executives and hospital visiting medical officers.<sup>37</sup>

### BACKGROUND

3. The following background was given in the Bill's Second Reading speech:

This bill will extend the Government's public sector wages policy to elected officials, State parliamentarians and local mayors and councillors, senior executives in the public service and statutory officeholders. The Government's public sector wages policy is about delivering fair wage increases to hardworking public servants...

Last week this Parliament passed the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011. That legislation requires the Industrial Relations Commission to give effect to the Government's wages policy when making decisions relating to public sector salaries. The reasons that bill was necessary are the very same reasons that it is now appropriate to extend the policy to other officeholders who are paid from the public purse. If the policy is good enough for public servants it is certainly also good enough for senior executives and for elected officials. That is why, for the first time, the Government's wages policy will be formally extended to apply to elected officials and senior bureaucrats.

The independent tribunals that set the remuneration of those officials will be required to give effect to the same policy on salary increases that the Industrial Relations Commission is required to apply to public servants. Obviously, the

---

<sup>37</sup> See also the *Industrial Relations Amendment (Public Sector of Employment) Bill 2011*.

Government does not pretend that a cap on salary increases is felt in the same way by highly paid executives as it is by ordinary public servants. However, the point is that we should not apply a policy to workers that we would not be willing to apply to ourselves.<sup>38</sup>

## 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.

### Amendment of *Parliamentary Remuneration Act 1989*

6. Currently the basic salary of a Member of Parliament is \$136,140, which is equivalent to the annual salary payable to a backbench member of the Commonwealth House of Representatives less \$500. Schedule 1 [1] provides that the Parliamentary Remuneration Tribunal is to determine the basic salary of a member of Parliament at such times as the Tribunal thinks fit or the Premier directs.
7. In making a determination, the Tribunal will be required to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under s 146C of the *Industrial Relations Act 1996* (as inserted by the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011*) when making or varying awards or orders relating to the conditions of employment of public sector employees. The Tribunal will not be required to give effect to a policy that provides for increases in remuneration based on employee-related savings.
8. Schedule 1 [2] is a consequential amendment.
9. Schedule 1 [3] enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.
10. Schedule 1 [4] ensures that any increase in the basic salary due to a Commonwealth determination after the introduction of the Bill for the proposed Act and before the Tribunal makes its first determination is capped at 2.5%.

### Schedule 2 Amendment of *Local Government Act 1993*

11. Schedule 2 requires the Local Government Remuneration Tribunal, when making determinations relating to the fees to be paid to mayors and councillors, to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to when making or varying awards or orders relating to the conditions of employment of public sector employees. The Remuneration Tribunal will not be required to give effect to a policy that provides for increases in remuneration based on employee-related savings.

---

<sup>38</sup> Hon G S Pearce MLC, Minister for Finance and Services, Legislative Council *Hansard*, 22 June 2011.

### **Schedule 3 Amendment of *Statutory and Other Offices Remuneration Act 1975***

12. Schedule 3 applies to determinations by the Statutory and Other Offices Remuneration Tribunal that vary the remuneration to be paid to statutory officers, chief executives and senior executives, but does not apply to determinations relating to judicial officers. The Tribunal will be required to give effect to the same policies.

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

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

##### *Matters in regulation which should be included in legislation*

13. As the Committee noted in respect of the the *Industrial Relations Amendment (Public Sector of Employment) Bill 2011*, new s 146C(1) of the *Industrial Relations Act 1996* provides that the Industrial Relations Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees.
14. New s 146C(1) provides that the Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees:
  - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and
  - (b) that applies to the matter to which the award or order relates.
15. Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation [s 146C(2)].
16. The *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Bill 2011* inserts the following provision into the *Parliamentary Remuneration Act 1989*; *Local Government Act 1993*, *Statutory and Other Offices Remuneration Act 1975* and *Health Services Act 1997*:

In making a determination, the Tribunal is to give effect to the same policies or increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.
17. The Committee notes that the above sections require the Parliamentary Remuneration Tribunal, Local Government Tribunal and Statutory and Other Officers Tribunal to give effect to aspects of government policy declared by the regulations.
18. The Committee also notes that the regulation containing government policy is subject to a form of Parliamentary scrutiny, i.e., disallowance.

**The Committee refers to Parliament whether provision for the declaration of the government's policy in regulation constitutes an inappropriate delegation of legislative power.**

## 30. Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011

Date introduced	14 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to assist in the creation of new jobs by establishing a payroll tax rebate scheme that gives employers an incentive to increase the number of their full time equivalent employees for a period of at least 2 years.
2. It is intended that the rebate scheme assist in the creation of 100,000 new jobs, with 60% of those jobs being in the metropolitan area and 40% of those jobs being in the non-metropolitan area.

### BACKGROUND

3. In the Agreement in Principle speech, the Treasurer stated the Bill will provide:

a payroll tax rebate to employers of up to \$4, 000 per full-time employee. In the case of a part-time employee, the amount of the rebate will be pro rata, based on the number of hours worked compared with the standard hours of the particular employer's full-time employees. Employers will receive the rebate in two equal parts, which will be paid after the first and second anniversaries of the hire of a new employee. The rebate scheme will apply to new positions filled on or after 1 July 2011 and will continue until 100, 000 new jobs are created in New South Wales.<sup>39</sup>

4. The Treasurer also made the following comments about the Bill:
  - 40 000 of the new jobs will be created in non-metropolitan New South Wales and 60 000 in metropolitan areas. Metropolitan areas are defined as the local government areas in the Sydney Statistical Division and the local government areas of Newcastle and Wollongong.
  - An eligible position must be a genuine new position and the employer must have maintained the increased employment levels on the first and second anniversary of the employment.
  - Certain employment arrangements will not be eligible for the rebate, for example, employing people under a labour hire arrangement where the liability for payroll tax applies to employment agencies, engaging independent contractors who are not employees and employing people for seasonal work where the position will not be filled for two years.

<sup>39</sup> Hon M B Baird MP, Treasurer, Legislative Assembly *Hansard*, 14 June 2011.

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Clause 3 provides for the object of the proposed Act, as set out in the overview above above.
8. Clause 4 defines certain words and expressions used in the proposed Act.

### Part 2 Rebate scheme

9. Clause 5 establishes a rebate scheme for payroll tax paid or payable by employers who employ people in new jobs on or after 1 July 2011.
10. Clause 6 provides that an employer is entitled to a rebate under the rebate scheme (subject to the other provisions of the proposed Act) in respect of the employment of a person if the employment is eligible employment.
11. Clause 7 provides that employment is eligible employment if:
  - (a) a person is employed (as a full time or part time employee) in a position that is a new job, and
  - (b) the employment commences on or after 1 July 2011, and
  - (c) the employment is maintained for the minimum employment period, and
  - (d) the services of the employee are performed wholly or mainly in New South Wales, and
  - (e) the employment satisfies any further eligibility criteria set out in the rebate criteria, and
  - (f) the employment is not excluded from the rebate scheme.
12. Clause 8 defines what is meant by a new job. A position is a new job if the employment of a person in that position results in a sustained increase in the number of the employer's full time equivalent employees (that is, an increase that is sustained for 2 years).
13. Clause 9 provides for the calculation of the number of full time equivalent employees of an employer.
14. Clause 10 provides for the minimum employment period in respect of a new job. The minimum employment period is 2 years starting on the date eligible employment is claimed to commence. A person must be employed in the position for which the rebate is claimed for the whole of the minimum employment period (disregarding short vacancies).



15. Clause 11 authorises the Minister, by order published on the NSW legislation website, to determine further criteria for the payment of rebates under the proposed Act. This order constitutes the rebate criteria.
16. Clause 12 sets out the types of employment that are excluded from the rebate scheme.
17. Clause 13 provides for the closure of the rebate scheme on a date or dates appointed by the rebate criteria (or on 30 June 2013, if no date is appointed).

### **Part 3 Calculation of rebate**

18. Clause 14 provides that the rebate can be claimed for the first and second year of employment only. The first year of employment is the period commencing on the date the eligible employment is claimed to commence and ending on the first anniversary of that date. The second year of employment is the period commencing the day after that first anniversary and ending on the second anniversary of the date the eligible employment is claimed to commence.
19. Clause 15 provides that the rebate payable is \$2,000 a year for each full time employee and a proportional amount for a part time employee.
20. Clause 16 provides that the maximum rebate payable for a year of employment is the employer's net payroll tax liability for the financial year in which the claim for the rebate is made.
21. Clause 17 enables the Chief Commissioner of State Revenue (the Chief Commissioner) to determine the number of full time equivalent employees of an employer, and the amount of the rebate, by agreement with the claimant in certain cases.

### **Part 4 Payment of rebate**

#### ***Division 1 Registration and claim for rebate***

22. Clause 18 provides that an employer must be registered as a claimant to claim a rebate under the rebate scheme.
23. Clause 19 enables the Chief Commissioner to register an employer as a claimant in respect of the employment of any specified person.
24. Clause 20 sets out the procedure for applying to be registered as a claimant.
25. Clause 21 provides that a person cannot be registered as a claimant for a rebate in respect of the employment of a person if the application for registration is made after the scheme closure date for the area in which the person is employed.
26. Clause 22 sets out the procedure for making a claim for a rebate.

#### ***Division 2 Decision with respect to claim***

27. Clause 23 provides that the Chief Commissioner is to decide whether a rebate is payable in respect of a claim and the amount of the rebate payable.
28. Clause 24 gives the Chief Commissioner power to refuse a claim if the Chief Commissioner is of the opinion that a claimed increase in the number of full time

equivalent employees of an employer is contrived for the purpose of claiming a rebate under the rebate scheme.

29. Clause 25 sets out how the rebate is to be paid.
30. Clause 26 enables the Chief Commissioner to apply the amount of a rebate or part of a rebate towards a liability of an employer for payroll tax or any tax of the State, instead of paying the rebate.
31. Clause 27 enables the Chief Commissioner to correct a decision relating to a claim.
32. Clause 28 requires the Chief Commissioner to notify a claimant of a decision to grant or refuse a claim or vary or reverse an earlier decision on a claim.

## **Part 5 Repayment of rebate**

33. Clause 29 authorises the Chief Commissioner to require a claimant to repay a rebate in certain circumstances. The provision also authorises the Chief Commissioner to charge interest on an overdue payment and to charge a penalty for a dishonest claim.
34. Clause 30 authorises the Chief Commissioner to require a person (other than the claimant) to whom a rebate is paid in error to repay the rebate. The provision also authorises the Chief Commissioner to charge interest on an overdue payment.
35. Clause 31 authorises the Chief Commissioner to recover from a relevant third party any amount that is payable by a rebate recipient but remains unpaid.
36. Clause 32 authorises the Chief Commissioner to enter into an arrangement for the payment of a liability under the proposed Act by instalments.
37. Clause 33 authorises the Chief Commissioner to write off liabilities under the proposed Act.
38. Clause 34 authorises the Chief Commissioner to remit, in whole or in part, an amount a person is required to pay under the proposed Act.

## **Part 6 Objections and reviews**

### ***Division 1 Objections***

39. Clause 35 enables an objection to be made to decisions made by the Chief Commissioner under the proposed Act.
40. Clause 36 sets a time limit for the lodging of an objection.
41. Clause 37 requires the grounds for an objection to be stated in the objection.
42. Clause 38 provides that an objector has the onus of proving an objector's case.
43. Clause 39 provides that the Chief Commissioner may allow or disallow an objection and reverse, vary or confirm the original decision.
44. Clause 40 requires the Chief Commissioner to give an objector notice of the determination of an objection.

*Division 2 Reviews*

- 45. Clause 41 enables an objector who is dissatisfied with the Chief Commissioner's determination of an objection to apply to the Administrative Decisions Tribunal for a review of the Chief Commissioner's original decision.
- 46. Clause 42 provides that the Administrative Decisions Tribunal may confirm, vary or reverse the original decision and make further orders as to costs or otherwise.

**Part 7 Administration**

*Division 1 Administration generally*

- 47. Clause 43 provides that the Chief Commissioner is responsible to the Minister for the administration of the rebate scheme.
- 48. Clause 44 authorises the Chief Commissioner to delegate functions related to the administration of the rebate scheme.
- 49. Clause 45 authorises the Chief Commissioner to appoint persons as authorised officers. A person who is an authorised officer for the purposes of a taxation law (as referred to in section 68 of the *Taxation Administration Act 1996*) is taken to be an authorised officer for the purposes of the proposed Act.

*Division 2 Powers of investigation*

- 50. Clause 46 authorises the Chief Commissioner to carry out an authorised investigation for the purpose of the proposed Act, including in relation to whether an application or a claim has been properly made, whether a claimant who has received a rebate was eligible for the rebate and any other matter reasonably related to the administration of the proposed Act.
- 51. Clause 47 authorises the Chief Commissioner to exercise certain powers in connection with authorised investigations.
- 52. Clause 48 gives the Chief Commissioner access to public documents without the payment of fees.
- 53. Clause 49 authorises the Chief Commissioner to enter premises if the Chief Commissioner has reason to believe or suspect that there are documents at the premises that are relevant to the administration of the proposed Act. Entry cannot be made to residential premises without either consent or a search warrant.
- 54. Clause 50 provides that an officer who has entered premises under the proposed Part may require records to be produced, ask questions and require reasonable assistance and facilities to be provided.
- 55. Clause 51 authorises the Chief Commissioner or an authorised officer to take possession of a document and to take copies, extracts or notes of it.
- 56. Clause 52 deals with applications for search warrants.
- 57. Clause 53 makes it an offence to prevent the Chief Commissioner or an authorised officer from exercising a function under the proposed Part, to hinder or obstruct the

Chief Commissioner or an authorised officer in the exercise of such a function, or to refuse or fail to comply with a requirement made by the Chief Commissioner or an authorised officer. The maximum penalty is 100 penalty units (currently, \$11,000).

58. Clause 54 provides a defence to a prosecution for an offence under the proposed Part if the court is satisfied that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement concerned or that the defendant complied with the requirement to the extent of his or her ability to do so.
59. Clause 55 makes it clear that the powers conferred on the Chief Commissioner and authorised officers by the proposed Act can be exercised in conjunction with powers conferred by the *Taxation Administration Act 1996*.

## Part 8 Miscellaneous

60. Clause 56 makes it an offence to knowingly give false or misleading information to an authorised officer or in relation to an application or claim under the proposed Act. The maximum penalty is 100 penalty units (currently, \$11,000).
61. Clause 57 protects the confidentiality of certain information obtained in the course of work related to the administration of the proposed Act.
62. Clause 58 enables evidence relating to rebates or the imposition of penalties to be given by a certificate signed by the Chief Commissioner.
63. Clause 59 provides that offences under the proposed Act are to be dealt with summarily and proceedings for an offence may be commenced within 3 years of the date on which it is alleged an offence was committed.
64. Clause 60 provides for the appropriation of funds from the Consolidated Fund for the payment of rebates under the proposed Act.
65. Clause 61 protects persons involved in the administration of the proposed Act from personal liability.
66. Clause 62 confers power to make regulations under the proposed Act.
67. Clause 63 provides for the repeal of the proposed Act on 1 July 2018.

## Schedule 1 Savings, transitional and other provisions

68. Schedule 1 contains savings, transitional and other provisions.

## Schedule 2 Consequential amendments to other Acts

69. Schedule 2 makes the following consequential amendments:
- (a) an amendment to the *Administrative Decisions Tribunal Act 1997* allocating the exercise of the Administrative Decisions Tribunal's functions under the proposed Act to its Revenue Division,
  - (b) an amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* providing for the issue of search warrants under the proposed Act.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Search and seizure without a warrant*

70. Proposed s 49 allows the Chief Commissioner or an authorised officer with written delegation from the Chief Commissioner, to enter premises, without a search warrant, at any reasonable time if the Chief Commissioner suspects or believes that there are documents at the premises that are relevant to the administration of the Act.
71. Reasonable notice must be given to the owner or occupier of the premises unless consent is given to the entry or the Chief Commissioner considers that to provide notice would defeat the purpose for which it is intended to enter the premises.
72. The powers of entry under this section do not extend to residential premises unless the owner or occupier consents and entry is under the authority of a search warrant.

**The Committee will always be concerned where officials are granted powers of entry to property other than pursuant to a search warrant.**

**However, having regards to the limits on these powers, and the Chief Commissioner's role in ensuring compliance with rebate scheme, the Committee does not consider that the proposed section constitutes an undue trespass on privacy rights.**

## 31. Public Interest Disclosures Amendment Bill 2011; Independent Commission Against Corruption Bill 2011

Date introduced	21 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The *Public Interest Disclosures Amendment Bill* [PID Bill] amends the *Public Interest Disclosures Act 1994* [the PID Act] to:
  - include the Information Commissioner on the Public Interest Disclosures Steering Committee;
  - require each public authority to provide quarterly data to the Ombudsman on the authority's compliance with the PID Act;
  - require each public authority's public interest disclosures policy to require that a person who makes a public interest disclosure to the authority is to be provided, within 45 days of the person having made the disclosure, with a copy of the policy and an acknowledgment of the receipt of the disclosure;
  - clarify the process for the referral of evidence of an alleged reprisal for a public interest disclosure to the Commissioner of Police, the Police Integrity Commission [PIC], the Independent Commission Against Corruption [ICAC], the Attorney General and the Director of Public Prosecutions [DPP];
  - expand the matters in respect of which public interest disclosures may be made to the local government investigating authority;
  - make provision for the involvement of the Ombudsman in resolving disputes arising from a public interest disclosure having been made by a public official; and
  - clarify the responsibilities of the head of a public authority.
2. The second Bill's object is to strengthen, and clarify the ambit of, certain powers of ICAC and the Inspector of the Commission [the Inspector]. It does this by amending the *Independent Commission Against Corruption Act 1988* [ICAC Act] to:
  - clarify that the Commission has power to gather, assemble and furnish evidence to the DPP for use in prosecutions after the discontinuance or completion of its investigations [proposed s 14(1)(a)];

- broaden the powers of the Inspector by enabling the Inspector to report to Parliament at any time on any matter relating to the exercise of the Inspector's principal functions under s 57B of the ICAC Act if the Inspector considers a report to be in the public interest (**Schedule 1 [11]**);
- clarify that the Inspector may provide a report or recommendation (or any relevant part thereof) concerning any matter relating to the Inspector's principal functions to the Commission, an officer of the Commission, a person who made a complaint or any other affected person if the Inspector considers that the matter can be effectively dealt with by such a recommendation or report (**Schedule 1 [9]**);
- provide that s 40 of the *Surveillance Devices Act 2007* does not prevent the use, publication or communication of protected information within the meaning of that Act for the purpose of the exercise of the Inspector's functions under s 57B of the ICAC Act [proposed s 57F(2)];
- permit a person who has been summonsed to appear at a compulsory examination or public inquiry for the purpose of producing a document or thing to produce the document or thing without appearing if excused from appearance by the Commissioner for the Commission and for any document or other thing so produced in accordance with the Commissioner's directions to be privileged [proposed (Schedule 1 [3]–[8]); and
- clarify that the Industrial Relations Commission cannot deal with an application under Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* by an officer of the Independent Commission Against Corruption whose employment is terminated by the Commissioner (Schedule 1 [12]).

3. These Bills are cognate.

## BACKGROUND

4. The Premier introduced both Bills to the Legislative Assembly on 21 June 2011. In respect of the PID Bill he noted the following:

The Public Interest Disclosures Act 1994 plays a critical role in maintaining the integrity of public administration in this State. It does this by protecting public officials who disclose wrongdoing in the public sector in accordance with the Act. Known as "whistleblowers", they bring to the attention of Government and the community wrongdoing and corruption. They deserve to be protected. The Act makes it a criminal offence to take detrimental action against a public official substantially in reprisal for making a public interest disclosure.<sup>40</sup>

5. In respect of the *ICAC Bill*, the Premier noted that:

...a strong Independent Commission Against Corruption will proactively work to prevent corruption and fearlessly investigate allegations when they are made. The bill implements the recommendations from two reports released in 2010 by the Parliamentary Joint Standing Committee on the Independent Commission Against

<sup>40</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 21 June 2011.

Corruption, which are supported by the Independent Commission Against Corruption commissioner, as well as two more recent requests for amendments by the commissioner.<sup>41</sup>

6. The Premier also foreshadowed further legislation relating to in which court matters relating to jurisdiction will be heard.<sup>42</sup>

## ISSUES CONSIDERED BY THE COMMITTEE

### Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

*Provide the executive with unfettered control over the commencement of an Act.*

7. The *PID Bill* is to commence on a day or days to be appointed by proclamation [proposed s 2].
8. The Committee notes that this arrogates to the Executive the power to commence the Act on whatever day it chooses, or not at all.

**The Committee is always concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that there are sufficient reasons for the proposed Act to commence on proclamation, and considers that it does not give rise to inappropriate delegations of legislative power.**

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

*Powers in regulation which should be included in legislation*

9. Clause 15 of the *PID Bill* allows the regulations to confer functions on the Ombudsman in connection with the Ombudsman's role in the resolution of disputes arising as a result of a public official making a protected disclosure.

**The Committee is of the view that any functions concerned with the resolution of disputes involving protected disclosures should be comprehensive and include an adequate system of review and appeal of any decisions. Placing these functions in the primary legislation will assist in emphasising the importance of providing support for public officials who make public interest disclosures and transparent process for resolving disputes.**

**Therefore, the Committee considers that cl 15 may constitute an inappropriate delegation of legislative power and refers it to Parliament.**

---

<sup>41</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 21 June 2011.

<sup>42</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 21 June 2011. The Premier noted that this issue arose from suggestions from the ICAC Commissioner which are currently being considered by the Attorney General together with the Acting Director of Public Prosecutions.



## 32. Real Property Amendment (Torrens Assurance Levy Repeal) Bill 2011

Date introduced	9 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The *Real Property Amendment (Torrens Assurance Levy Repeal) Bill* passed both Houses on 24 May 2011, and received the Royal Assent on 25 May 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to abolish the tax on home buyers imposed on 1 July 2010 called the Torrens assurance levy (a Torrens assurance levy).

### BACKGROUND

3. The Treasurer in the Agreement in Principle speech provided a background to the objects of the Bill. He stated that:

... the Torrens Assurance Fund plays a key role in underpinning the security of the Torrens system of land registration that we have in New South Wales. The Torrens Assurance Fund is used to compensate landowners and others having an interest in land who are deprived of an interest and suffer loss or damage through fraud or an error of the Registrar General. The Torrens system, backed by the assurance fund, allows homeowners to have confidence in their land ownership. It simplifies the conveyancing process and underpins the economy of the State.<sup>43</sup>

4. The assurance fund has been funded by a flat amount of \$4 payable on all Torrens dealings and an ad valorem amount payable on transfers of land bought for more than \$500,000 known as the Torrens Assurance levy. The Bill removes all reference to the Torrens assurance levy from the *Real Property Act 1900* and will reintroduce the previous s 134(4) to enable the Registrar General's prescribed lodgement fees to include an amount to be paid to the Torrens Assurance Fund.

### OUTLINE OF PROVISIONS

#### Amendment of *Real Property Act 1900* No 25

5. Schedule 1 [5] repeals the provisions of the *Real Property Act 1900* (the Principal Act) that enable regulations to be made to require a Torrens assurance levy to be paid in respect of any dealing, caveat, withdrawal of caveat, instrument, application or request lodged under the Principal Act. Schedule 1 [1]–[4] and [6]–[8] are consequential amendments.

<sup>43</sup> Hon M B Baird MP, Treasurer, Legislative Assembly *Hansard*, 9 May 2011.

6. Schedule 1 [9] and [10] make provisions of a savings and transitional nature.

***Amendment of Real Property Regulation 2009***

7. Schedule 2 [3] repeals the requirement in the Real Property Regulation 2008 that a Torrens assurance levy be paid in respect of certain specified dealings, caveats, withdrawal of caveats, instruments, applications or requests lodged with the Registrar-General under the Principal Act. Schedule 2 [1], [2], [4]–[7] and [14] are consequential amendments.
8. Schedule 2 [8]–[13] increase certain other fees payable under the Principal Act by \$4 to reflect the previous arrangements that were in force for funding the Torrens Assurance Fund.

**ISSUES CONSIDERED BY THE COMMITTEE**

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 33. Regional Relocation (Home Buyers Grant) Bill 2011

Date introduced	22 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The *Regional Relocation (Home Buyers Grant) Bill* passed both Houses on 22 June 2011, and received the Royal Assent on 27 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The object of this Bill is to provide assistance to persons who purchase homes in regional areas, and are doing so as part of a relocation from a metropolitan area. For that purpose, this Bill authorises the payment of a regional relocation grant of \$7,000 in respect of an eligible home relocation.

### BACKGROUND

3. The Treasurer in the Agreement in Principle speech stated that the Bill:

...introduces a \$7,000 grant for families and individuals who relocate from the metropolitan areas of Sydney, Newcastle and Wollongong to regional New South Wales. The grant will be available to a person who purchases a home in regional New South Wales to be used as the applicant's principal place of residence, and sells his or her former home in the metropolitan area. The scheme will therefore assist with two complementary objectives: encouraging population growth in the regions and reducing population pressures in Sydney. The grant will be payable after settlement of the purchase of the home, and will compensate families for some of the substantial transaction costs involved in relocating.<sup>44</sup>

4. Key features of the Bill include:

- Eligibility for the grant will be subject to a number of criteria: the applicant must be an Australian citizen or permanent resident; the value of the property purchased in regional New South Wales must not exceed \$600,000; and the former home must have been sold within 12 months before, or be sold within 12 months after, the purchase of the home in regional New South Wales.
- The Bill provides that the metropolitan area includes local government areas in the Sydney statistical division plus the local government areas of Newcastle and Wollongong. Councils in regional areas that are concerned

<sup>44</sup>Hon M Baird, Treasurer, Legislative Assembly *Hansard*, 22 June 2011.

about local population pressures will have the choice of opting out of the scheme.

- The grant will apply to the purchase of a home between 1 July 2011 and 30 June 2015 and a maximum of 40,000 grants will be payable.

## OUTLINE OF PROVISIONS

### Preliminary

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Clause 3 defines certain words and expressions used in the proposed Act. A metropolitan area is defined as the Sydney metropolitan area, the Newcastle local government area and the Wollongong local government area.
8. Clause 4 defines a regional area as any part of the State that does not fall within a metropolitan area. However, a regional area does not include any local government area declared by the regulations to be an area for which the regional relocation grant is not available.

### Regional relocation grant

#### *Regional relocation grant*

9. Clause 5 provides that a regional relocation grant is payable, on application under the proposed Act, in respect of the purchase of a home if:
  - (a) the purchase is an eligible home relocation, and
  - (b) the applicant is an eligible applicant.
10. Clause 6 provides that the amount of the grant is \$7,000.
11. Clause 7 provides for a maximum of one grant per household.

#### *Eligible home relocation*

12. Clause 8 explains that Division 2 of Part 2 of the proposed Act sets out the requirements for an eligible home relocation.
13. Clause 9 requires the applicant to purchase a regional home (that is, a home in a regional area).
14. Clause 10 requires the purchase of the regional home to commence on or after 1 July 2011 and before 1 July 2015. A purchase of a regional home commences:
  - (a) in the case of a transfer of land that is made pursuant to an agreement for the sale or transfer of land—on the date the agreement is entered into, or
  - (b) in the case of a transfer of land that is made otherwise than pursuant to an agreement for the sale or transfer of land—on the date the transfer is first executed.

15. Clause 11 requires the purchase of the regional home to be completed. A purchase of a regional home is completed when the applicant becomes entitled to possession of the home and, if the interest in the land acquired by the applicant is registrable under a law of the State, the interest is so registered.
16. Clause 12 requires the regional home to be ready for use and occupation as a place of residence before the purchase is completed.
17. Clause 13 requires the value of the purchase not to exceed \$600,000 and sets out how the purchase is to be valued.
18. Clause 14 requires the purchase to comprise the whole of the parcel of land concerned.
19. Clause 15 requires the applicant to relocate from a metropolitan area. An applicant relocates from a metropolitan area if:
  - (a) the applicant is, within 12 months before the purchase of the regional home commences, an owner of a metropolitan home that is used and occupied by the applicant as a principal place of residence, and
  - (b) the applicant disposes of the metropolitan home before the purchase of the regional home is completed or within the period allowed for residence relocation.
20. Clause 16 requires the applicant to use and occupy the regional home that is purchased as a principal place of residence for a continuous period of at least 12 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after the purchase is completed.
21. Clause 17 provides that the regional home, and the land on which it is situated, must not be used or made available for use for any purpose that is not ancillary to use and occupation of the land for residential purposes. However, the purchase of a farming property that includes a home is not excluded.

### *Eligible applicant*

22. Clause 18 explains that Division 3 of Part 2 of the proposed Act sets out the requirements for an eligible applicant.
23. Clause 19 requires the applicant to be a natural person.
24. Clause 20 requires the applicant, or at least one of them, to be an Australian citizen or permanent resident.
25. Clause 21 excludes an applicant who has previously been paid the grant.
26. Clause 22 excludes an applicant who purchases a regional home as trustee.

### **Application for grant**

#### *Application for grant*

27. Clause 23 sets out the rules for making an application for a regional relocation grant to the Chief Commissioner of State Revenue (*the Chief Commissioner*).

- 28. Clause 24 requires all interested persons to be applicants.
- 29. Clause 25 enables the Chief Commissioner to require an applicant to provide information or further information about an application.

*Decision on application*

- 30. Clause 26 provides that the Chief Commissioner is to decide whether a regional relocation grant is payable in respect of an application.
- 31. Clause 27 enables the Chief Commissioner to authorise payment of a regional relocation grant in anticipation of compliance with any of the requirements for an eligible home relocation, subject to a defined condition. It is an offence to fail to comply with that condition when the grant is paid in advance.
- 32. Clause 28 enables the Chief Commissioner to impose other conditions on the payment of a regional relocation grant. It is an offence to fail to comply with such conditions.
- 33. Clause 29 provides for the method of payment of a regional relocation grant.
- 34. Clause 30 gives the Chief Commissioner power to vary or reverse a decision to pay the regional relocation grant.
- 35. Clause 31 requires the Chief Commissioner to give notice of a decision to authorise or refuse payment of a regional relocation grant or to vary or reverse a decision on an application.

**Repayment of grant**

- 36. Clause 32 authorises the Chief Commissioner to require an applicant to repay a grant in certain circumstances. The provision also authorises the Chief Commissioner to charge interest on an overdue payment and to charge a penalty for a dishonest claim.
- 37. Clause 33 provides that any liability of an applicant to pay or repay an amount to the Chief Commissioner under the proposed Act is a charge on the applicant's interest in the home that is the subject of the purchase for which the regional relocation grant was sought.
- 38. Clause 34 authorises the Chief Commissioner to require a person (other than the applicant) to whom a grant is paid in error to repay the grant. The provision also authorises the Chief Commissioner to charge interest on an overdue payment.
- 39. Clause 35 authorises the Chief Commissioner to recover from a relevant third party any amount that is payable by a grant recipient but which remains unpaid.
- 40. Clause 36 authorises the Chief Commissioner to enter into an arrangement for the payment of a liability under the proposed Act by instalments.
- 41. Clause 37 authorises the Chief Commissioner to write off liabilities under the proposed Act.
- 42. Clause 38 authorises the Chief Commissioner to remit, in whole or in part, an amount a person is required to pay under the proposed Act.

## Objections and reviews

### *Objections*

- 43. Clause 39 enables objections to be made to decisions made by the Chief Commissioner under the proposed Act.
- 44. Clause 40 sets a time limit for lodging an objection.
- 45. Clause 41 requires the grounds for an objection to be stated in the objection.
- 46. Clause 42 places the onus of proving the objector's case on the objector.
- 47. Clause 43 provides that the Chief Commissioner may allow or disallow an objection and reverse, vary or confirm the original decision.
- 48. Clause 44 requires the Chief Commissioner to give an objector notice of the determination of an objection.

### *Reviews*

- 49. Clause 45 enables an objector who is dissatisfied with the Chief Commissioner's determination of an objection to apply to the Administrative Decisions Tribunal for a review of the Chief Commissioner's original decision.
- 50. Clause 46 provides that the Administrative Decisions Tribunal may confirm, vary or reverse the original decision and make further orders as to costs or otherwise.

## Administration

### *Administration generally*

- 51. Clause 47 provides that the Chief Commissioner is responsible to the Minister for the administration of the scheme provided for by the proposed Act.
- 52. Clause 48 authorises the Chief Commissioner to delegate functions related to the administration of the scheme.
- 53. Clause 49 authorises the Chief Commissioner to appoint persons as authorised officers. A person who is an authorised officer for the purposes of a taxation law (as referred to in section 68 of the *Taxation Administration Act 1996*) is taken to be an authorised officer for the purposes of the proposed Act.

### *Powers of investigation*

- 54. Clause 50 authorises the Chief Commissioner to carry out an authorised investigation for the purpose of the proposed Act, including in relation to whether an application for a grant has been properly made, whether an applicant who received the grant was eligible for the grant and any other matter reasonably related to the administration of the proposed Act.
- 55. Clause 51 authorises the Chief Commissioner to exercise certain powers in connection with an authorised investigation.

- 56. Clause 52 authorises the Chief Commissioner to require a valuation to be provided, or to have a valuation made, of property for the purpose of determining the value of a purchase.
- 57. Clause 53 gives the Chief Commissioner access to public documents without the payment of fees.
- 58. Clause 54 authorises the Chief Commissioner or an authorised officer to take possession of a document and to take copies, extracts or notes from it.
- 59. Clause 55 makes it an offence to prevent the Chief Commissioner or an authorised officer from exercising a function under the proposed Part, to hinder or obstruct the Chief Commissioner or an authorised officer in the exercise of such a function, or to refuse or fail to comply with a requirement made by the Chief Commissioner or an authorised officer. The maximum penalty is 100 penalty units (currently \$11,000).

#### *Closure of scheme*

- 60. Clause 56 provides that the scheme established by the proposed Act is intended to assist in up to 40,000 eligible home relocations. Accordingly, the scheme target is 40,000 regional relocation grants.
- 61. Clause 57 authorises the Minister to appoint a date as the scheme closure date, by order published on the NSW legislation website, if it appears to the Minister that the number of regional relocation grants authorised to be paid under the proposed Act has exceeded or will exceed the scheme target.
- 62. Clause 58 provides that a regional relocation grant is not payable in respect of the purchase of a regional home if the purchase is commenced after the scheme closure date. However, the scheme target, or the appointment of a scheme closure date, does not affect the operation of the proposed Act in respect of purchases commenced on or before the scheme closure date.

#### *Miscellaneous*

- 63. Clause 59 makes it an offence to knowingly give false or misleading information to an authorised officer or in relation to an application under the proposed Act. The maximum penalty is 100 penalty units (currently \$11,000).
- 64. Clause 60 protects the confidentiality of certain information obtained in the course of work related to the administration of the proposed Act.
- 65. Clause 61 enables evidence relating to grants or the imposition of penalties to be given by certificate signed by the Chief Commissioner.
- 66. Clause 62 provides that proceedings for offences under the proposed Act are to be dealt with summarily and that proceedings for an offence may be commenced within 3 years of the date on which it is alleged an offence was committed.
- 67. Clause 63 provides for the appropriation of funds from the Consolidated Fund for the payment of grants under the proposed Act.



- 68. Clause 64 protects persons involved in the administration of the proposed Act from personal liability.
- 69. Clause 65 enables the Governor to make regulations for the purposes of the proposed Act.
- 70. Clause 66 provides for the repeal of the proposed Act on 1 January 2019.

### **Savings, transitional and other provisions**

- 71. Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **Amendment of acts**

- 72. Schedule 2 makes the following consequential amendments:
  - (a) an amendment to the *Administrative Decisions Tribunal Act 1997* allocating the exercise of the Administrative Decisions Tribunal's functions under the proposed Act to its Revenue Division,
  - (b) amendments to the *Taxation Administration Act 1996* that ensure that tax officers can disclose information obtained under or in relation to the administration of a taxation law in connection with the administration or execution of the proposed Act.

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

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the Legislation Review Act 1987.**

## 34. Restart NSW Fund Bill 2011

Date introduced	22 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to establish the Restart NSW Fund for the purpose of setting aside funding for and securing the delivery of major infrastructure projects and other necessary infrastructure.

### BACKGROUND

2. The Treasurer stated that the establishment of the Restart NSW Fund will be used to set aside funding for and secure the delivery of major infrastructure projects.
3. The projects that Restart NSW will fund include:
  - public transport infrastructure;
  - roads infrastructure that addresses urban congestion and missing links;
  - economic infrastructure to address the economic competitiveness of New South Wales, including freight, inter-modal facilities and water;
  - local infrastructure in regional areas that are affected by mining operations;
  - hospitals and health infrastructure;
  - improvements to workplaces for frontline workers including law and justice officers, teachers and nurses.
4. Restart NSW will be funded from:
  - appropriations by Parliament and the budget process, including any such money certified as windfall tax revenue;
  - realisation of the capital invested in assets, such as from the Sydney Desalination Plant;
  - potentially borrowings, including the issue of special bonds to the people of New South Wales such as Waratah bonds.
5. Under the Bill, the Auditor-General is required to report annually to Parliament to ensure that moneys have been invested in line with the fund's investment mandate.<sup>45</sup>

---

<sup>45</sup> Hon M B Baird MP, Treasurer, Legislative Assembly *Hansard*, 22 June 2011.

## OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Clause 3 sets out the object of the proposed Act.
9. Clause 4 defines certain words and expressions used in the proposed Act. The Fund is defined to mean the Restart NSW Fund.

### Restart NSW Fund

10. Clause 5 establishes the Restart NSW Fund in the Special Deposits Account.
11. Clause 6 sets out the purpose of the Fund, which is to improve economic growth and productivity in the State and for that purpose to fund major infrastructure projects and to fund infrastructure projects that will improve public transport, roads, infrastructure required for the economic competitiveness of NSW, local infrastructure in regional areas that are affected by mining operations, hospitals and workplaces for front-line service staff.
12. Clause 7 provides for payments into the Fund. This will include money advanced by the Treasurer or appropriated by Parliament for the purposes of the Fund (including windfall tax revenue in excess of Budget forecasts).
13. Clause 8 provides for payments out of the Fund. This will include money approved by the Minister on the recommendation of Infrastructure NSW to fund all or any part of the cost of any project that the Minister is satisfied promotes a purpose of the Fund.
14. Clause 9 requires annual reports to be prepared and presented to Parliament detailing payments from the Fund (the annual report will include details of payments in rural and regional areas and the audit of the Fund by the Auditor General). Infrastructure NSW is also to be regularly advised of the balance in the Fund.
15. Clause 10 authorises the Minister to invest money in the Fund.

### Miscellaneous

16. Clause 11 provides that the proposed Act binds the Crown.
17. Clause 12 enables the Governor to make Regulations for the purposes of the proposed Act.
18. Clause 13 provides for the review of the proposed Act in 5 years.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 35. Statute Law (Miscellaneous Provisions) Bill 2011

Date introduced	21 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Barry O'Farrell MP
Portfolio	Premier

### PURPOSE AND DESCRIPTION

1. The *Statute Law (Miscellaneous Provisions) Bill* passed both Houses on 23 June 2011, and received the Royal Assent on 27 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by Parliament or has become an Act.
2. The objects of this Bill are:
  - (a) to make minor amendments to various Acts and Regulations (Schedule 1), and
  - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and
  - (c) to amend various Acts to enable the repeal of legislation by Schedule 4 (including by transferring into them provisions of the legislation to be repealed that are of possible ongoing effect) (Schedule 3), and
  - (d) to repeal certain Acts and instruments and provisions of Acts and instruments (Schedule 4), and
  - (e) to make other provisions of a consequential or ancillary nature (Schedule 5).

### BACKGROUND

3. As stated in the Agreement in Principle speech:

[t]he *Statute Law (Miscellaneous Provisions) Bill 2011* continues the statute law revision program that is a cost-effective and efficient method for dealing with amendments of the kind included in the bill.<sup>46</sup>

4. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation being amended considers to be inconsequential to warrant the introduction of a separate amending bill. The schedule contains amendments to 13 Acts and three regulations.

---

<sup>46</sup> Hon B R O'Farrell MP, Premier, Legislative Assembly *Hansard*, 21 June 2011.

## OUTLINE OF PROVISIONS

### Minor Amendments

5. Schedule 1 makes amendments to the following Acts and Regulations:

*Adoption Act 2000 No 75*  
*Associations Incorporation Act 2009 No 7*  
*Children and Young Persons (Care and Protection) Act 1998 No 157*  
*Election Funding, Expenditure and Disclosures Act 1981 No 78*  
*Fire Brigades Act 1989 No 192*  
*Holiday Parks (Long-term Casual Occupation) Act 2002 No 88*  
*Police Act 1990 No 47*  
*Police Integrity Commission Act 1996 No 28*  
*Residential Tenancies Act 2010 No 42*  
*Residential Tenancies Regulation 2010*  
*Statutory and Other Offices Remuneration Act 1975 (1976 No 4)*  
*Swimming Pools Act 1992 No 49*  
*Water Management Act 2000 No 92*  
*Water Management (General) Regulation 2004*  
*Water Management (Water Supply Authorities) Regulation 2004*  
*Wild Dog Destruction Act 1921 No 17*

6. The amendments to each Act and Regulation are explained in detail in the explanatory note relating to the Act or Regulation concerned set out in Schedule 1.

### Amendments by way of statute law revision

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

### Amendments transferring provisions, and other amendments consequential on repeals

9. Schedule 3 contains amendments that enable, or are consequential on, the repeal of Acts and instruments by Schedule 4. The amendments include the transfer, into various Acts, of provisions of Acts and instruments repealed by clause 4 of Schedule 4.
10. Section 30A of the *Interpretation Act 1987* ensures that the transfer of a provision of an Act to another Act does not affect the operation (if any) or meaning of the provision.

### Repeals

11. Schedule 4 repeals a number of Acts and instruments and provisions of Acts and instruments.
12. Clause 1 repeals redundant Acts and instruments and redundant provisions of Acts. These include the repeal of the *Sports Drug Testing Act 1995* (which has been superseded by Commonwealth legislation and is repealed at the request of the portfolio concerned).

13. Clause 2 repeals Acts and instruments and provisions of Acts and instruments that contain only commenced amendments to other Acts and instruments.
14. Clause 3 repeals uncommenced provisions that cannot be commenced either because they amend Acts, instruments or provisions that have since been repealed, or for other reasons. These will include provisions of the *Superannuation Legislation Amendment (Family Law) Act 2003* (at the request of the portfolio concerned).
15. Clause 4 repeals Acts and instruments whose repeal is enabled by the transfer of provisions of those Acts and instruments by Schedule 3.
16. Section 30(2) of the *Interpretation Act 1987* ensures that the repeal of an Act or statutory rule does not affect the operation of any savings, transitional or validation provision contained in the Act or statutory rule, and that the repeal of an amending Act does not affect any amendment made by the Act. Section 5 (6) of the *Interpretation Act 1987* extends this provision to the repeal of an environmental planning instrument.
17. The Acts or instruments that were amended by the Acts being repealed are available electronically on the NSW legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

### General savings, transitional and other provisions

18. Schedule 5 contains savings, transitional and other provisions of a more general effect than those set out in Schedule 1. The Schedule includes a provision that, in conjunction with section 29A of the *Interpretation Act 1987*, enables the Governor, by proclamation, to revoke the repeal of any Act or instrument or provision of an Act or instrument repealed by the proposed Act and restore its operation.
19. The purpose of each provision is explained in detail in the explanatory note relating to the provision concerned set out in the Schedule.

### ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 36. Summary Offences Amendment (Intoxicated and Disorderly Conduct) Bill 2011

Date introduced	22 June 2011
House introduced	Legislative Assembly
Minister responsible	Hon Greg Smith MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The *Summary Offences Amendment (Intoxicated and Disorderly Conduct) Bill* amends the *Summary Offences Act 1988* and other legislation with respect to intoxicated and disorderly conduct.
2. The Bill makes it an offence for a person who has been given a move on direction under s 198 of the *Law Enforcement (Powers and Responsibilities) Act 2002* [LEPR Act] to be intoxicated and disorderly in the same or another public place within 6 hours after the direction is given [proposed s 9(1)].<sup>47</sup>
3. A person is intoxicated if:
  - the person's speech, balance, co-ordination or behaviour is noticeably affected; and
  - it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of alcohol or any drug [proposed s 9(1)].
4. However, 'disorderly' is not defined in the Bill, as is discussed below.
5. In proceedings for this offence, the prosecution must prove that a move on direction was given within 6 hours before the person was found to be intoxicated and disorderly. It is not necessary to prove that the person contravened the move on direction by being so intoxicated and disorderly [proposed s 9(3)].
6. The Bill also provides that:
  - if a police officer gives a move on direction to a person on the grounds that the person is intoxicated and disorderly in a public place, the police officer must give the person a warning that it is an offence to continue to be intoxicated and disorderly in a public place within 6 hours after the direction is given [proposed s 9(3)];

<sup>47</sup> The offence carries a maximum penalty of 6 penalty units.

- proceedings cannot be brought against a person for an offence against this section and an offence against s 199 of the LEPR Act (Failure to comply with direction) in relation to the same conduct [proposed s 9(4)]; and
  - it is a defence if a person can satisfy a court that there was a reasonable excuse for the alleged intoxicating and disorderly behaviour [proposed s 9(5)].
7. The Bill makes the offence a penalty notice offence under the *Criminal Procedure Act 1986* and the *Criminal Procedure Regulation 2010*, thereby giving police a choice in responding to any offending behaviour. Police may issue either a criminal infringement notice (\$200 on-the-spot fine) or a court attendance notice.
8. The Bill also amends s 198 of LEPR Act to provide that "disorderly" is a ground on which a police officer may make a move on direction, i.e., the intoxicated person's behaviour is disorderly.

## BACKGROUND

9. A move on direction under s 198 of the LEPR Act is a direction given by a police officer to an intoxicated person in a public place to leave the place and not return for a specified period of time. The police officer must believe on reasonable grounds that the intoxicated person's behaviour:
- is likely to cause injury to any other person or persons or damage to property, or;
  - otherwise give rise to a risk to public safety.<sup>48</sup>
10. As stated in the Agreement in Principle speech, the Bill's intention is to 'address alcohol-related violence and antisocial behaviour by extending police move-on powers to intoxicated individuals as a low-cost and effective enforcement tool,' in order to 'manage the excessive intoxicated behaviour seen in entertainment districts on weekends.'<sup>49</sup>
11. The Attorney General specifically stated that it is not the Bill's intention to target the homeless, mentally ill, Aboriginal or disadvantaged, but rather 'excessive intoxicated behaviour.'<sup>50</sup>
12. In addition, the Bill requires the NSW Ombudsman to prepare a report on the operation of the new provisions after 12 months.

---

<sup>48</sup> *Law Enforcement (Powers and Responsibilities) Act 2002*, s 198(1)(a)-(b). Section 198 of the LEPR Act was recently amended to remove the requirement that a move on direction could only be given to an intoxicated person who is in a group of 3 or more intoxicated persons.

<sup>49</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 22 June 2011.

<sup>50</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 22 June 2011.



## ISSUES CONSIDERED BY THE COMMITTEE

### **Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers [s 8A(1)(b)(ii) *LRA*]**

#### *Ill and wide defined powers*

13. As noted above, the Bill makes it an offence for a person who has been given a move on direction under s 198 of the LEPR Act to be intoxicated and disorderly in the same or another public place within 6 hours after the direction is given.

14. Although the Bill provides a definition of intoxicated, it does not define 'disorderly'. The Attorney General has indicated the absence of a statutory definition was intentional:

Behaviour that may not disturb or annoy others in one instance could amount to a criminal offence in another... It will be for police to determine the appropriate response according to the context in which the behaviour occurs.<sup>51</sup>

15. The intention of the Bill is to provide 'the maximum flexibility to allow the nature and gravity of the behaviour to guide and determine the appropriate process for dealing with intoxicated and disorderly behaviour.'

16. The Committee notes that there is no provision in the Bill for guidelines or supervision to be provided to police officers on what could constitute disorderly behaviour, although Members note the statement of the Attorney General to the following effect:

Police will develop comprehensive standard operating procedures to guide them in whether to deal with matters by an on-the-spot fine or court attendance notice and will retain discretion to deal with situations involving intoxicated individuals as they see fit.<sup>52</sup>

**The Committee acknowledges the Attorney General's assurance that police will develop guidelines concerning the operation of the proposed new offence.**

---

<sup>51</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 22 June 2011.

<sup>52</sup> Hon G E Smith MP, Attorney General, Legislative Assembly *Hansard*, 22 June 2011.

## 37. Work Health and Safety Bill 2011; Occupational Health and Safety Amendment Bill 2011

Date introduced	5 May 2011
House introduced	Legislative Assembly
Minister responsible	Hon Andrew Stoner MP
Portfolio	Deputy Premier

### PURPOSE AND DESCRIPTION

1. The *Work Health and Safety Bill 2011* [WHS Bill] and the *Occupational Health and Safety Amendment Bill 2011* [OHS Bill] passed both Houses on 1 June 2011 and received the Royal Assent on 7 June 2011. Under s 8A(2) of the *Legislation Review Act 1987* the Committee is not precluded from reporting on a Bill that has been passed by parliament or has become an Act.
2. This WHS Bill provides the basis for New South Wales' participation in the nationally harmonised system of work health and safety. It is cognate with the OHS Bill. The Bill enacts the nationally agreed Model Work Health and Safety Act in NSW. It will be supplemented by Model Work Health and Safety Regulations and Codes of Practice.
3. At the Safe Work Australia Members' meeting of 2 December 2010, members agreed to the Explanatory Memorandum to the Model Work Health and Safety Act available at:

[www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications//Pages/ExplanatoryMemorandum.aspx](http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications//Pages/ExplanatoryMemorandum.aspx)

### BACKGROUND

4. The Deputy Premier in the Agreement in Principle stated that the WHS Bill:
 

...represents the commitment of the Government of New South Wales to full participation in a nationally harmonised system of occupational health and safety. The bill enacts the nationally agreed model, the Work Health and Safety Act, with appropriate jurisdictional modifications. The Work Health and Safety Bill will be supplemented by model regulations and model codes of practice that are currently the subject of public consultation. It is proposed that this work health and safety legislation will be commenced by all Australian jurisdictions on 1 January 2012.<sup>53</sup>
5. The OHS Bill implements three key reforms that are contained in the WHS Bill 2011:
  - removing the reverse onus of proof in work health and safety prosecutions by requiring the prosecution to prove the "reasonably practicable" steps a defendant could have taken to avoid breaching the general duties to maintain a safe and healthy workplace and requiring duty holders in

<sup>53</sup>Hon A J Stoner MP, Deputy Premier, Legislative Assembly *Hansard*, 5 May 2011.

complying with the proposed Act to ensure health and safety "so far as is reasonably practicable";

- replacing the existing provision that deems directors and managers of a corporation to be guilty of offences committed by the corporation with a positive duty that officers of the corporation should exercise due diligence to ensure compliance by the corporation with health, safety and welfare duties; and
- removing the right of unions to bring proceedings for an offence under the Occupational Health and Safety Act.

## OUTLINE OF PROVISIONS – WORK, HEALTH AND SAFETY BILL 2011

### Part 1 Preliminary

6. The proposed Part (proposed sections 1–12A) sets out the name (also called the short title) of the proposed Act, provides for the commencement of the proposed Act on 1 January 2012, defines certain words and expressions used in the proposed Act, provides for the application of the proposed Act to the Crown and provides for offences to be strict liability offences.

### Part 2 Health and safety duties

#### *Division 1 Introductory*

7. Subdivision 1 of Division 1 (proposed sections 13–17) sets out the principles that apply to all duties under the proposed Act. The proposed Subdivision provides that duties are not transferable, that a person may have more than one duty, that more than one person may have the same duty and that a person who has a duty under the proposed Act must eliminate or reduce risks to health and safety so far as is reasonably practicable.
8. Subdivision 2 of Division 1 (proposed section 18) of the proposed Part sets out the matters to be considered when determining whether a reduction or elimination of a hazard or risk to health and safety is reasonably practicable.

#### *Division 2 Primary duty of care*

9. Clause 19 provides that a person conducting a business or undertaking has a duty of care with respect to the health and safety of workers engaged by the person, caused to be engaged by the person or whose activities in carrying out work are influenced or directed by the person.

#### *Division 3 Further duties of persons conducting businesses or undertakings*

10. Clause 20 provides that a person with management or control of a workplace has a duty, so far as is reasonably practicable, to ensure that the means of entering and exiting the workplace, and anything arising from the workplace, are without risks to the health and safety of any person.
11. Clause 21 provides that a person with management or control of the fixtures, fittings or plant at a workplace has a duty, so far as is reasonably practicable, to ensure that the fixtures, fittings or plant are without risk to the health and safety of any person.

12. Clause 22 provides that a person who designs plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure is designed to be without risks to the health and safety of certain persons.
13. Clause 23 provides that a person who manufactures plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure is manufactured to be without risks to the health and safety of certain persons.
14. Clause 24 provides that a person who imports plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure that is imported is without risks to the health and safety of certain persons.
15. Clause 25 provides that a person who supplies plant, or any substance or structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant, substance or structure that is supplied is without risks to the health and safety of certain persons.
16. Clause 26 provides that a person who installs, constructs or commissions plant or a structure that is reasonably expected to be used at a workplace, has a duty, so far as is reasonably practicable, to ensure that the plant or structure that is installed, constructed or commissioned is without risks to the health and safety of certain persons.

*Division 4 Duty of officers, workers and other persons*

17. Clause 27 provides that an officer of a person who has a duty under the proposed Act has a duty to exercise due diligence to ensure that the person is complying with that duty.
18. Clause 28 provides that a worker has a duty, while at work, to take reasonable care for the worker's own health and safety and that of other persons and to comply with reasonable instructions given by, and co-operate with the reasonable policy and procedure of, a person who has a duty under the proposed Act.
19. Clause 29 provides that a person at a workplace has a duty to take reasonable care for the person's own health and safety and that of other persons and to comply with reasonable instructions given by, a person who has a duty under the proposed Act.

*Division 5 Offences and penalties*

20. Clause 30 defines a term that is used in the proposed Division.
21. Clause 31 creates an offence for a person who has a duty under the proposed Act to engage in conduct that exposes an individual to whom the duty is owed to a risk of death or serious injury or illness if the person is reckless as to the risk.
22. Clause 32 creates an offence for a person who has a duty under the proposed Act to fail to comply with that duty if that failure exposes an individual to a risk of death or serious injury or illness.

- 23. Clause 33 creates an offence for a person who has a duty under the proposed Act to fail to comply with that duty.
- 24. Clause 34 provides a number of exceptions to the offence provisions including exemptions for volunteers and unincorporated associations in certain circumstances.

### **Part 3 Incident notification**

- 25. The proposed Part (proposed sections 35–39) creates an offence for a person conducting a business or undertaking for failing to notify the regulator of certain incidents (including the death, serious injury or illness of a person or a dangerous incident) arising out of the conduct of the business or undertaking.
- 26. The proposed Part also provides that the person with the management or control of a workplace at which such an incident occurs must, so far as is reasonably practicable, ensure that the site where the incident occurred is not disturbed before an inspector arrives or otherwise directs.

### **Part 4 Authorisations**

- 27. Clause 40 defines authorised, for the purposes of the proposed Part, as authorised by a licence, permit, registration or other authority required by the regulations.
- 28. Clause 41 creates an offence with respect to the carrying out of work at a workplace if the regulations require the workplace to be authorised and the workplace is not authorised.
- 29. Clause 42 creates offences with respect to the use of plant or a substance if the regulations require that the plant or substance or its design be authorised and the plant, substance or design is not authorised.
- 30. Clause 43 creates offences with respect to the carrying out of work if the regulations require that the work be carried out by, or on behalf of, a person who is authorised, and the person is not authorised.
- 31. Clause 44 creates offences with respect to the carrying out of work if the regulations require that the work be carried out or supervised by a person who has certain qualifications and the person does not have the qualifications or is not supervised by a person who has the qualifications.
- 32. Clause 45 creates an offence for failing to comply with the conditions that apply to an authorisation given under the regulations.

### **Part 5 Consultation, representation and participation**

#### ***Division 1 Consultation, co-operation and co-ordination between duty holders***

- 33. Clause 46 provides that if more than one person has a duty in relation to a matter under the proposed Act, each of the persons must consult, co-ordinate and co-operate with the other persons in relation to that matter.

#### ***Division 2 Consultation with workers***

- 34. Division 2 of Part 5 (proposed sections 47–49) provides for the consultation of workers on matters relating to work health and safety.

*Division 3 Health and safety representatives*

35. Subdivision 1 Request for election of health and safety representatives
36. Subdivision 1 of Division 3 (proposed section 50) provides that a worker may request that a person conducting a business or an undertaking facilitate the election of health and safety representatives for workers who work for the business or undertaking.

*Subdivision 2 Determination of work groups*

37. Subdivision 2 of Division 3 (proposed sections 51–54) provides for the determination of work groups. Each work group is to be represented by one or more health and safety representatives.

*Subdivision 3 Multiple-business work groups*

38. Subdivision 3 of Division 3 (proposed sections 55–59) provides for the determination of work groups in circumstances where workers are carrying out work for 2 or more persons at one or more workplaces.

*Subdivision 4 Election of health and safety representatives*

39. Subdivision 4 of Division 3 (proposed sections 60–67) deals with the election of health and safety representatives including eligibility to be elected, election procedures, eligibility to vote, the term of office of representatives, disqualification of representatives, immunity from liability for acts done in good faith by representatives and the election of deputy health and safety representatives.

*Subdivision 5 Powers and functions of health and safety representatives*

40. Subdivision 5 of Division 3 (proposed sections 68 and 69) provides that a health and safety representative for a work group has certain powers and functions relating to work health and safety in respect of that work group, including representing workers in matters relating to health and safety, monitoring compliance with duties under the proposed Act and inquiring into apparent risks to the health and safety of workers.

*Subdivision 6 Obligations of persons conducting business or undertaking to health and safety representatives*

41. Subdivision 6 of Division 3 (proposed sections 70–74) deals with consultation between a person conducting a business or undertaking and health and safety representatives for a work group of workers carrying out work for the person. The person is also required to allow the representatives to attend training in relation to work health and safety, provide financial assistance in certain circumstances and to maintain a list of health and safety representatives for each work group.

*Division 4 Health and safety committees*

42. Division 4 (proposed sections 75–79) provides for the establishment and constitution of health and safety committees. A health and safety committee has functions relating to the instigation of, and the development of, measures, standards, rules and procedures to ensure the health and safety of workers. A person conducting a business or undertaking must allow members of the health and safety committee to spend the time that is reasonably necessary to attend committee meetings and to carry out the functions of the committee.

*Division 5 Issue resolution*

43. Division 5 (proposed sections 80–82) provides a mechanism for the resolution of disputes relating to work health and safety. If the parties are unable to resolve the issue, and are unable to agree on a dispute resolution procedure, the dispute is to be resolved in accordance with the procedure prescribed by the regulations. If the parties remain unable to resolve the dispute, a party to the dispute may seek the appointment of an inspector to resolve the dispute.

*Division 6 Right to cease or direct cessation of unsafe work*

44. Division 6 (proposed sections 83–89) provides circumstances in which a worker may cease, or a health and safety representative may direct a worker to cease, unsafe work. A worker who ceases, or is directed to cease, unsafe work must notify the person conducting the business or undertaking that they have ceased the unsafe work and must remain available to perform other safe and appropriate duties.

*Division 7 Provisional improvement notices*

45. Division 7 (proposed sections 90–102) provides for the issue of a provisional improvement notice by a health and safety representative if the representative reasonably believes that a person is contravening provisions of the proposed Act and has consulted with the person. It is an offence for a person to contravene a provisional improvement notice.
46. The proposed Division also provides that a person who is issued with a provisional improvement notice, or the person conducting the business or undertaking affected by the notice, may apply to the regulator for the appointment of an inspector to review the notice. A notice may be cancelled by the health and safety representative who issued the notice or an inspector appointed by the regulator.

*Division 8 Part not apply to prisoners*

47. Division 8 (proposed section 103) provides that nothing in proposed Part 5 (Consultation, representation and participation) applies to a worker who is in lawful detention or custody.

*Part 6 Discriminatory, coercive and misleading conduct*

*Division 1 Prohibition of discriminatory, coercive or misleading conduct*

48. Division 1 (proposed sections 104–109) creates offences relating to engaging in discriminatory conduct for a prohibited reason and encouraging, authorising or assisting in discriminatory conduct for a prohibited reason and defines the terms discriminatory conduct and prohibited reason. The proposed Division also creates offences relating to coercing or inducing a person to exercise or not to exercise a power under the proposed Act and knowingly or recklessly misrepresenting a persons right or obligations.

*Division 2 Criminal proceedings in relation to discriminatory conduct*

49. Division 2 (proposed sections 110 and 111) creates a rebuttable presumption that, in criminal proceedings relating to discriminatory conduct for a prohibited reason, if it is adduced that discriminatory conduct was engaged in for a prohibited reason, that prohibited reason is the dominant reason for the conduct.

50. If a person is convicted or found guilty of an offence relating to discriminatory conduct for a prohibited reason, the court may order that the offender pay compensation or that a person be reinstated or reemployed, or both.

*Division 3 Civil proceedings in relation to discriminatory or coercive conduct*

51. Division 3 (proposed sections 112 and 113) provides that a person affected by discriminatory conduct for a prohibited reason (or his or her agent) may apply to the District Court for an order in relation to the person who has engaged in the conduct. The court may order an injunction, the payment of compensation to the affected person, reinstatement of the affected person or such other order as the court considers appropriate. Such an application must be made within 12 months after the applicant knew, or ought to have known, that the cause of action accrued.

*Division 4 General*

52. Division 4 (proposed sections 114 and 115) limits the circumstances in which the District Court may make orders relating to discriminatory conduct for a prohibited reason.

**Part 7 Workplace entry by WHS entry permit holders**

*Division 1 Introductory*

53. Division 1 (proposed section 116) defines certain terms that are used in proposed Part 7.

*Division 2 Entry to inquire into suspected contraventions*

54. Division 2 (proposed sections 117–120) provides that a WHS entry permit holder may enter a workplace for the purpose of inquiring into suspected contraventions of the proposed Act and may inspect any work system, plant, substance or structure, inspect employee records and consult with workers in relation to a suspected contravention.

*Division 3 Entry to consult and advise workers*

55. Division 3 (proposed sections 121 and 122) provides that a WHS entry permit holder may also enter a workplace for the purpose of consulting and advising on work health and safety and may warn any person whom the permit holder believes is exposed to a serious risk to his or her safety.

*Division 4 Requirements for WHS entry permit holders*

56. Division 4 (proposed sections 123–130) creates offences relating to the conduct of WHS entry permit holders including prohibitions on breaching conditions of the permit, failing to have the permit available for inspection and the time and place at which rights granted by the permit may be exercised.

*Division 5 WHS entry permits*

57. Division 5 (proposed sections 131–140) contains provisions relating to applications for and the issue of WHS entry permits to an official of a union, including the imposition of conditions on such a permit, the term of a permit and the expiry of the permit. The proposed Division also provides for the revocation of a WHS entry permit in certain circumstances.



### *Division 6 Dealing with disputes*

58. Division 6 (proposed sections 141–143) establishes a mechanism for resolving disputes arising from the exercise or purported exercise of the right of entry by a WHS entry permit holder. If the parties to the dispute are unable to resolve the matter, the authorising authority (the Industrial Relations Commission) may deal with the matter in any manner it thinks fit, including arbitration. If the authorising authority deals with the dispute by arbitration, the proposed Division creates an offence for contravening an order made under arbitration.

### *Division 7 Prohibitions*

59. Division 7 (proposed sections 144–148) creates offences relating to the exercise of powers by WHS entry permit holders including refusing or delaying entry of a permit holder or hindering or obstructing a permit holder. The proposed Division also provides that a WHS entry permit holder must not, in exercising or purported exercise of rights, unreasonably delay, hinder or obstruct any person, disrupt any workplace or otherwise act in an improper manner.

### *Division 8 General*

60. Division 8 (proposed sections 149–151) contains general provisions relating to WHS entry permits including the return of revoked, suspended or expired permits, the keeping of a register of permit holders and the provision of certain information about a permit holder to the authorising authority.

## **Part 8 The regulator**

### *Division 1 Functions of regulator*

61. Division 1 (proposed sections 152–154) sets out the functions and powers of the regulator. In addition to functions conferred on the regulator by other provisions of the proposed Act, the regulator has functions including advising the Minister of the operation and effectiveness of the proposed Act, monitoring and enforcing compliance with the proposed Act and the promotion and support of education and training on matters relating to work health and safety.

### *Division 2 Powers of regulator to obtain information*

62. Division 2 (proposed section 155) grants the regulator power to compel a person to provide any information, documents or other evidence that the person may have in relation to a possible contravention of the proposed Act.

## **Part 9 Securing compliance**

### *Division 1 Appointment of inspectors*

63. Division 1 (proposed sections 156–159) provides for the appointment, identification and accountability of inspectors. The proposed Division also provides for the suspension and ending of the appointment of inspectors.

### *Division 2 Functions and powers of inspectors*

64. Division 2 (proposed sections 160–162A) sets out the functions and powers of inspectors. The functions and powers of an inspector include providing information and advice about compliance with the proposed Act, assisting in the resolution of certain issues and the investigation of contraventions of the proposed Act. The powers of an

inspector are subject to the conditions specified in the inspector's instrument of appointment and directions from the regulator.

*Division 3 Powers relating to entry*

*Subdivision 1 General powers of entry*

65. Subdivision 1 of Division 3 (proposed sections 163–166A) enables inspectors, and persons assisting inspectors, to enter workplaces to determine whether the proposed Act is being complied with or contravened.

*Subdivision 2 Search warrants*

66. Subdivision 2 of Division 3 (proposed section 167) provides for the issue of search warrants.

*Subdivision 3 Limitation on entry powers*

67. Subdivision 3 of Division 3 (proposed section 170) prohibits entry into residential premises except with the consent of the person with management or control of the place or under a search warrant.

*Subdivision 4 Specific powers on entry*

68. Subdivision 4 of Division 3 (proposed sections 171–181) sets out the powers of inspectors to inspect and seize documents and other things and to deal with seized things.

*Division 4 Damage and compensation*

69. Division 4 (proposed sections 182–184) provides that inspectors are to minimise damage caused, and for the payment of compensation for loss or expense incurred, as results of the exercise of a power under the proposed Act.

*Division 5 Other matters*

70. Division 5 (proposed sections 185–187) sets out the powers of inspectors to require certain information, take affidavits and examine witnesses at a coronial inquest relating to the death of a worker while carrying out work.

*Division 6 Offences in relation to inspectors*

71. Division 6 (proposed sections 188–190) makes it an offence to hinder or obstruct an inspector, impersonate an inspector or assault, threaten or intimidate an inspector.

**Part 10 Enforcement measures**

*Division 1 Improvement notices*

72. Division 1 (proposed sections 191–194) provides for the issue of improvement notices by an inspector if the inspector believes that a person is contravening a provision of the proposed Act. The proposed Division also sets out the contents of an improvements notice and requires compliance with such a notice.

*Division 2 Prohibition notices*

73. Division 2 (proposed sections 195–197) provides for the issue of prohibition notices by an inspector if the inspector believes that an activity is occurring, or is likely to occur, at

a workplace that involves serious risk to health and safety. The proposed Division also sets out the contents of a prohibition notice and requires compliance with such a notice.

#### *Division 3 Non-disturbance notices*

74. Division 3 (proposed sections 198–201) provides for the issue of a non-disturbance notice by an inspector for the purpose of preserving, or preventing disturbance to, a site for a specified period. The proposed Division also sets out the contents of a non-disturbance notice, requires compliance with such a notice and provides for the issue of a subsequent notice after the expiry of the original notice.

#### *Division 4 General requirements applying to notices*

75. Division 4 (proposed sections 202–210) requires notices to be in writing and provides for changes to a notice by an inspector, the cancellation of a notice by the regulator, the preservation of a notice despite formal irregularities and the manner of issue and display of notices.

#### *Division 5 Remedial action*

76. Division 5 (proposed sections 211–213) grants the regulator power to carry out certain remedial work where a person has been issued with a prohibition notice and has failed to comply with that notice. The regulator may recover the costs of remedial work from the person to whom the notice was issued.

#### *Division 6 Injunctions*

77. Division 6 (proposed sections 214 and 215) authorises the regulator to apply to the District Court for an injunction compelling the person to comply with, or restrain the person from contravening an improvement notice, prohibition notice or non-disturbance notice.

### **Part 11 Enforceable undertakings**

78. Part 11 (proposed sections 216–222) authorises the regulator to accept undertakings given by a person in connection with a matter relating to a contravention of the proposed Act. If the regulator accepts an undertaking, proceedings cannot be brought against a person in relation to an offence under the proposed Act relating to a matter covered by that undertaking. If a person contravenes such an undertaking the regulator may apply to the District Court for an order directing compliance with, or discharging, the undertaking.

### **Part 12 Review of decisions**

#### *Division 1 Reviewable decisions*

79. Division 1 (proposed section 223) provides for the review of certain decisions made under the proposed Act and specifies who is entitled to seek such a review.

#### *Division 2 Internal review*

80. Division 2 (proposed sections 224–228) provides for the review of decisions (other than decisions made by the regulator or delegate of the regulator) by a person appointed by the regulator on the application of certain persons. On review, the decision may be confirmed or varied or may be set aside and substituted and reasons for the outcome of the review must be provided to the applicant.

*Division 3 External review*

81. Division 3 (proposed section 229) provides for an application for the review of certain decisions to be made to, and for the review of such a decision by, the Industrial Relations Commission.

**Part 13 Legal proceedings**

*Division 1 General matters*

82. Division 1 (proposed sections 229A–233) sets out the procedure for the commencement and carrying on of proceedings for offences against the proposed Act and provides a limitation on the period in which such proceedings may be brought against a person.

*Division 2 Sentencing for offences*

83. Division 2 (proposed sections 234–242) makes provision for the sentencing of a person convicted, or found guilty, of an offence against the proposed Act and for the making of further orders in relation to such an offence including adverse publicity orders, orders for restoration and training orders.

*Division 2A Sentencing guidelines*

84. Division 2A (proposed sections 242A–242H) provides for the making of guideline judgements by the District Court that set out the guidelines for the sentencing of offenders. Such guidelines are intended to be indicative only and are not intended to be applied in every case as if they were rules binding on judges but help to ensure consistency in sentencing decisions.

*Division 3 Penalty notices*

85. Division 3 (proposed section 243) enables penalty notices to be issued for offences under the proposed Act if they are prescribed by the regulations for that purpose.

*Division 4 Offences by bodies corporate*

86. Division 4 (proposed section 244) imputes conduct to a body corporate where a person is acting on behalf of, or with the apparent authority of the body corporate.

*Division 5 The Crown*

87. Division 5 (proposed sections 245–248) deals with the application of provisions to the Crown with respect to legal proceedings for offences and identifying officers and the designation of responsible agencies.

*Division 6 Public authorities*

88. Division 6 (proposed sections 249–253) deals with the application of provisions to public authorities with respect to legal proceedings for offences, imputing conduct to public authorities, identifying officers and proceedings against successors to public authorities.

*Division 7 WHS civil penalty provisions*

89. Division 7 (proposed sections 254–266) provides for proceedings for the contravention of a provision of the proposed Act that are designated as WHS civil penalty provisions. The contravention of such a provision is not an offence and the rules of court applying to civil proceedings are to apply to proceedings for a contravention. The proposed Division

also provides for double jeopardy, the commencement of proceedings and the recovery of monetary penalties ordered by the court.

*Division 8 Civil liability not affected by this Act*

90. Division 8 (proposed section 267) makes it clear that nothing in the proposed Act confers a right of action in civil proceedings, a defence in civil proceedings or otherwise affects a right of action in respect of the duties or obligations under the proposed Act.

**Part 14 General**

*Division 1 General provisions*

91. Division 1 (proposed section 268–273) deals with the general application of the proposed Act including an offence for giving false or misleading information in purported compliance with the proposed Act, maintaining legal professional privilege, immunity from liability for actions in good faith in execution of powers and functions under the proposed Act, and confidentiality with respect to information and documents obtained under the proposed Act.

*Division 2 Codes of practice*

92. Division 2 (proposed sections 274 and 275) provides for the approval of a code of practice and the use of an approved code of practice in proceedings for offences against the proposed Act.

*Division 3 Regulation-making powers*

93. Division 3 (proposed section 276) is a standard regulation-making power.

*Division 3A Miscellaneous*

94. Division 3A (proposed sections 276A–276C) allows for a regulation to prescribe a specified government department or agency as being the regulator in relation to the application of the proposed Act to a mining workplace or a coal workplace, provides for the review of the proposed Act after 5 years, and provides for the repeal of the Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001.

**Schedule 1 Application of Act to dangerous goods and high risk plant**

95. Schedule 1 provides for the special application of the proposed Act to the storage and handling of dangerous goods and the operation of high risk plant affecting public safety, even if the dangerous goods or plant are not stored, handled or operated at a workplace.

**Schedule 2 The regulator and local tripartite consultation arrangements and other local arrangements**

96. Schedule 2 is not included in NSW.

**Schedule 3 Regulation-making powers**

97. Schedule 3 contains regulation-making powers.

98. Schedule 4 Savings, transitional and other

99. provisions

**Schedule 4 enacts savings and transitional provisions.**

**Schedule 5 Amendment of other legislation**

100. Schedule 5 amends the legislation specified in the Schedule. Other Acts will require consequential amendment before the commencement of the proposed Act.

**OUTLINE OF PROVISIONS – OCCUPATIONAL HEALTH AND SAFETY  
AMENDMENT BILL 2011**

101. The object of this Bill is to amend the *Occupational Health and Safety Act 2000* (the OHS Act) to adopt the following proposed national work health and safety reforms pending the enactment in New South Wales of the proposed Work Health and Safety Act 2011:

- (a) the general duties under the OHS Act to ensure health, safety and welfare (and the duties under the regulations) will be qualified by the inclusion of “so far as is reasonably practicable” (thereby requiring the prosecution to prove what was reasonably practicable and removing the need for the defendant to establish that it was not reasonably practicable to comply with the duty),
- (b) a duty will be placed on officers of a corporation to exercise due diligence to ensure that the corporation complies with health, safety and welfare duties (with this duty to replace the existing provision that deems directors and managers of a corporation to be guilty of offences committed by the corporation),
- (c) the secretary of an industrial organisation of employees will no longer be entitled to institute proceedings for an offence under the OHS Act that concerns members of the organisation.

102. Clause 1 sets out the name (also called the short title) of the proposed Act.

103. Clause 2 provides for the commencement of the proposed Act on the date of assent.

**Schedule 1 Amendment of *Occupational Health and Safety Act 2000***

***Qualification of health and safety duties—onus of proof***

104. Currently, the duties under the OHS Act to ensure health and safety are expressed in unqualified terms (with provision of a defence in section 28 of the Act relating to reasonable practicality). Schedule 1 [2], [3] and [5]–[7] and Schedule 2 qualify these duties and the health and safety duties under the regulations so that they will apply only so far as is reasonably practicable. Schedule 1 [8] makes a similar amendment to the duty of employees to co-operate as necessary with health, safety and welfare requirements at work, so that the duty will be a duty to co-operate so far as is reasonably necessary to enable compliance with those requirements.

105. In addition Schedule 1 [1] inserts proposed section 7A into the OHS Act to clarify that a duty imposed to ensure health and safety so far as is reasonably practicable requires the elimination of risks so far as is reasonably practicable and the minimisation of those risks so far as is reasonably practicable (if elimination is not reasonably practicable). The matters that are relevant in determining what is reasonably practicable in relation to ensuring health and safety are also set out in proposed section 7A.

106. Schedule 1 [10] omits section 28 of the OHS Act which currently provides a defence in proceedings under the Act (in addition to the general provisions of the criminal law that exclude criminal liability) if it is not reasonably practicable for the person to comply with a duty or if the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision. The omission of the defence is consequential on the qualification of duties under the Act and regulations so that they apply “in so far as is reasonably practicable”.
107. Schedule 1 [13] amends section 90 of the OHS Act so that a failure of the occupier of premises to comply with an investigation notice is qualified by the defence of “reasonable excuse”.
108. Schedule 1 [11] makes a consequential amendment.

#### *Liability of officers of corporations*

109. Section 26 of the OHS Act currently provides that a director or person concerned in the management of a corporation is liable for any contravention of the Act or regulations by the corporation unless that person used all due diligence to prevent the contravention by the corporation or was not in a position to influence the conduct of the corporation in relation to its contravention of the provision. Schedule 1 [9] substitutes section 26, replacing the current provision with a new provision that imposes a duty on officers of a corporation to exercise due diligence to ensure that the corporation complies with its occupational health and safety duties. Schedule 1 [4] and [12] make consequential amendments. Proposed section 26 also provides that an officer who is a volunteer (that is, a person who does community work on a voluntary basis as defined in the *Civil Liability Act 2002*) is not liable to be prosecuted under the section.

#### *Prosecutions by trade unions*

110. Schedule 1 [14] abolishes the entitlement of the secretary of an industrial organisation of employees to institute proceedings for an offence concerning members of the organisation.

#### *Miscellaneous*

111. Schedule 1 [15] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
112. Schedule 1 [16] contains provisions of a savings and transitional nature. In particular, the amendments made by the proposed Act will not apply to contraventions occurring before the enactment of the proposed Act, except that the amendment relating to prosecutions by trade unions will apply on and from the date of introduction into Parliament of the Bill for the proposed Act.

#### *Schedule 2 Amendment of Occupational Health and Safety Regulation 2001*

113. Schedule 2 [2] provides (as outlined above) that any duty in the Occupational Health and Safety Regulation 2001 to take or refrain from taking any action for the protection of health or safety applies only so far as it is reasonably practicable to take or refrain from taking that action. Schedule 2 [1], [3] and [4] make consequential amendments.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Onus of proof: cl 110 of the Work Health and Safety Bill 2011*

114. An offence under cl 104 or cl 107 of the WHS Bill is committed where the prohibited reason for the discriminatory conduct is the dominant reason. Clause 110 provides that for offences under cl 104 or cl 107, once the prosecution proves that discriminatory conduct was engaged in for a prohibited reason, the onus shifts to the accused to prove, on the balance of probabilities, that the prohibited reason was not the dominant reason for the discriminatory conduct.
115. The Committee notes that a reversal of the onus of proof may be inconsistent with the presumption of innocence, which is recognised as a fundamental human right. However, the Committee notes that a reversal of the onus of proof may be appropriate in some circumstances, particularly where knowledge of the factual circumstances is in the possession of one party. The explanatory notes to the Bill state:

In the absence of such a provision it would be extremely difficult, if not impossible, to establish that a prohibited reason was the dominate reason as the intention of the person who engages in discriminatory conduct will be known to that person alone.

Subclause 110(3) is an avoidance of doubt provision declaring that the burden of proof on the defendant outlined in subclause 110(3), is a legal, not an evidential burden of proof.<sup>54</sup>

**The Committee will be 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 knowledge of certain factual circumstances are in the possession of one party. The Committee therefore does not consider the reversal of the onus of proof trespasses on personal rights and liberties.**

#### *Privilege against self-incrimination: clause 172 of the Work Health and Safety Bill 2011*

116. Clause 172(1) of the *Work Health and Safety Bill 2011* provides that a person is not excused from answering a question or providing information or a document on the ground that the answer, information or document may tend to incriminate the person. However, cl 172(2) provides that any question, document or information obtained under cl 172(1) is not admissible as evidence against that person in civil or criminal proceedings.
117. Clause 173(1) also provides that before a person is required to provide information, they must be warned that failure to comply with the request for information constitutes an offence and also informed of the effect of cl 172.

---

<sup>54</sup> Explanatory Memorandum – Model Work Health and Safety Bill, paragraphs 406-407, accessed at: <http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/ExplanatoryMemorandum.aspx>



**The privilege against self incrimination is considered a fundamental principle of the rule of law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest.**

**The Committee considers that without limiting the privilege against self incrimination, the ability of inspectors and the regulator to ensure ongoing work health and safety protections may be compromised. The Committee therefore does not consider the abrogation of the privilege against self incrimination to be a trespass on personal rights and liberties.**

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

*Delegation of legislative power: clauses 52, 56, 61, 70, 75, 276 of the Work Health and Safety Bill 2011*

118. Clauses 52, 56, 61, 70 and 75 create offences under the Act. The maximum penalties for these offences range from \$5,000 to \$10,000 for individuals and \$25,000 to \$50,000 for bodies corporate. Each of these clauses allow for matters concerning these offences to be prescribed by regulations.
119. In addition, cl 276(3)(h) provides that the regulations may prescribe a penalty not exceeding \$30,000 for any contravention of the regulations.

**As large monetary penalties may have the capacity to adversely affect some individuals, the Committee considers that any details which relate to the imposition of large monetary penalties are matters more appropriately dealt with by primary legislation considered by Parliament.**

**Accordingly, the Committee refers to Parliament the question as to whether clauses 52, 56, 61, 70, 75 and 276 inappropriately delegate legislative power.**

## Part Two – Regulations

The Committee has not reported on any Regulations.

## Appendix One – Index of Ministerial correspondence on Bills

The Committee currently has no Ministerial correspondence on Bills.

## **Appendix Two – Index of correspondence on Regulations on which the Committee has reported**

The Committee currently has no correspondence in respect of Regulations on which it has reported.