



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

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



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# Membership

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# Functions of the Committee

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

## 8A Functions with respect to Bills

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

## 9 Functions with respect to Regulations

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

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

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

# Guide to the Digest

## COMMENT ON BILLS

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

### Ministerial Correspondence – Bills previously considered

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

## COMMENT ON REGULATIONS

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

### Regulations for the special attention of Parliament

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

### Regulations about which the Committee is seeking further information

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

### Copies of Correspondence on Regulations

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

## APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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



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

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

# Conclusions

## PART ONE - BILLS

### 1. CHILDREN EDUCATION AND CARE SERVICES (SUPPLEMENTARY PROVISIONS) BILL 2011

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

#### *Commencement by proclamation*

The Committee considers that the implementation of the national system for the regulation of early childhood and education services will involve a number of administrative arrangements. Due to this Bill being closely related to the national system, discretion as to its commencement may be required. Accordingly, the Committee does not consider there to be an inappropriate delegation of legislative powers.

### 2. CHILDREN LEGISLATION AMENDMENT (CHILD DEATH REVIEW TEAM) BILL 2011

Trespasses on Personal Rights and Liberties [s 8A(1)(b)(i) LRA]

#### *Right to privacy*

In the context of individuals' right to privacy, the Committee notes that the powers of the Team to request documents can only be exercised in respect to carrying out functions stipulated by the Bill. Such documents will often be necessary in carrying out the Team's statutory functions. As such, the Committee is of the opinion that this is reasonable in the circumstances.

### 3. CLUBS, LIQUOR AND GAMING MACHINES LEGISLATION AMENDMENT BILL 2011

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

#### *Commencement by proclamation*

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.

### 4. CRIMES (SENTENCING PROCEDURE) AMENDMENT (CHILDREN IN VEHICLES) BILL 2011

The Committee makes no comment on the Bill in respect of the issues set out in s8A(1) of the *Legislation Review Act 1987*.

### 5. HERITAGE AMENDMENT BILL 2011

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

#### *Commencement by Proclamation*

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.

### 6. LIQUOR AMENDMENT (3 STRIKES) BILL 2011 (NO 2)

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

Committee notes that the Bill provides decision-making powers to the Director General and the Authority, with the full scope of these powers not outlined in the Bill and not subject to the notification and review requirements outlined in Part 2 of Chapter 5 of the Administrative Decisions Tribunal Act 1997.

The Committee notes that the Bill does not define all of the circumstances in which a licensee or business owner can be subject to a 'strike', with the Bill enabling the regulations to prescribe such circumstances.

The Committee refers to Parliament whether the Bill makes rights and liberties of licensees and business owners unduly dependent upon regulations.

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

*Commencement by proclamation*

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.

7. NATIONAL PARKS AND WILDLIFE LEGISLATION AMENDMENT (RESERVATIONS) 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. PAYROLL TAX REBATE SCHEME (DISABILITY EMPLOYMENT) BILL 2011

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

*Search and Seizure Powers; Privacy*

The Committee notes that provisions of this Act provide for rights of entry, as well as search and seizure powers, to be conferred onto the Chief Commissioner in relation to authorised investigations under the Act which appear to relate to possible instances of fraud.

The Committee also notes the potential effect of these powers with respect to privacy rights. The Committee refers this Act to Parliament for its further consideration.

9. REDFERN – WATERLOO AUTHORITY REPEAL BILL 2011

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

*Commencement by Proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that this Bill proposes a restructuring of Government agencies, including the repeal of an existing body, and appreciates that transitional and administrative arrangements need to take place before the Act can become operative.

10. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 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 NSW*.

## 11. WATER INDUSTRY COMPETITION AMENDMENT BILL

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

### *Common law property rights*

The Committee notes that the proposed amendments to section 64 clarify that water industry infrastructure is owned by the person who constructs or installs it, or any person who subsequently acquires it, even if the land over or under which the infrastructure passes is owned by another party. The Committee considers that this is appropriate in the circumstances.

Trespass on personal rights and liberties: s8A(1)(b)(i) of the LRA

### *Entry and Inspection of Property*

Given the public interest in ensuring that water industry infrastructure is appropriately inspected, maintained, repaired and that emergency work is undertaken when necessary - and the significant safeguards provided in the Bill - the Committee does not consider that the powers of entry and inspection unduly trespass on personal rights and liberties.

## 12. WORK HEALTH AND SAFETY LEGISLATION AMENDMENT BILL 2011

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

### *Commencement by Proclamation*

The Bill proposes to amend the commencement date of most of the *Work Health and Safety Act* from 1 January 2011 to '1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012'.

However, the Committee understands that it is still the intention of the Government to commence complete application of the Act on 1 January 2012, as is the intention of all other State and Territory jurisdictions, but has provided for this amendment as a contingency should any delay be required.

## PART TWO - REGULATIONS

### 1. PROPOSED POSTPONEMENT OF THE REPEAL OF THE ABORIGINAL LAND RIGHTS REGULATION 2002

That the Committee writes to the Minister for Aboriginal Affairs to advise that it does not have any concerns with the postponement of the repeal of the regulation.



## Part One - Bills

# 1. Children Education and Care Services (Supplementary Provisions) Bill 2011

Date introduced	20 October 2011
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads and Transport

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for the regulation of certain children's education and care services that are not subject to the *Children (Education and Care Services) National Law (NSW)* (the *National Law*) and to align the regulation of those services, where practicable, with the National Law.
2. The children's education and care services that are the subject of the proposed Act are:
  - (c) home based education and care services (other than family day care services), and
  - (d) mobile education and care services, and
  - (e) centre based education and care services, and
  - (f) other education and care services of a kind prescribed by the regulations.
3. Only children's education and care services that are not regulated by the National Law are covered. These services are referred to as State regulated education and care services. Those services, along with those children's education and care services that are regulated under the National Law (such as family day care services), are currently regulated under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*. That Chapter is repealed by the proposed Act. It will be replaced by the proposed Act and the National Law.

### BACKGROUND

4. In November 2010 the NSW Government passed legislation providing for a national system for the regulation of early childhood education and care services known as the National Quality Framework. Types of services covered by the National Quality Framework include: long day care, preschools, family day care and out of school hours care. These services, and others, were formally regulated by the *Children and Young Persons (Care and Protection) Act 1998*.
5. This Bill creates an Act to cover those early childhood education and care services which are not part of the National Quality Framework. Such education and care services

include: home based care, mobile services, centre based services, and others prescribed by the regulations.

6. The Second Reading Speech notes:

Members familiar with the care and protection Act will know it relates predominately to child protection. It makes good sense to place the services concerned – occasional care, home based care and mobile services – under a separate Act about early childhood education care. It is also a logical progression from the changes earlier in the year when the minister for education assumed responsibility for early childhood education and care services instead of the Minister for Community Services. These changes recognise that early childhood education and care services are mainstream services with a focus on early childhood education and development, and that they are available to all families, rather than forming part of the statutory child protection system.<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 a day or days to be appointed by proclamation.
9. Clause 3 defines certain words and expressions used in the proposed Act. The National Law Alignment Provisions are the provisions of the National Law that apply to State regulated education and care services by virtue of the proposed Act.
10. Clause 4 defines State regulated education and care service, as described in the overview.
11. Clause 5 provides for exemptions from the proposed Act.

### Part 2 Guiding principles

12. Clause 6 provides for the guiding principles of the proposed Act.
13. Clause 7 provides for the role of the guiding principles.

### Part 3 State regulated education and care services

#### *Division 1 Operation of State regulated education and care services*

14. Clause 8 makes it an offence for a person to provide a State regulated education and care service unless the person is an approved provider in respect of that service (that is, the holder of a provider approval) and the service is an approved education and care service (that is, the subject of a service approval).
15. Clause 9 makes it an offence for a person to advertise an education and care service unless the person is an approved provider in respect of that service and the service is an approved education and care service.

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<sup>1</sup> The Hon Duncan Gay MLC, New South Wales, Legislative Council, *Parliamentary Debates (Hansard)*, 20 October 2011.

16. Clause 10 requires each approved education and care service (other than a home based education and care service) to have at least one nominated supervisor who is a certified supervisor. Contravention of this requirement is not an offence but is a contravention of the proposed Act.

#### *Division 2 Provider approvals*

17. Clause 11 explains that the National Law Alignment Provisions make provision for the grant of provider approvals for State regulated education and care services and other matters relating to provider approvals.
18. Clause 12 makes it an offence for a person to contravene a condition of a provide approval. The penalty for the offence is aligned with the penalty for the corresponding offence under the National Law.

#### *Division 3 Service approvals*

19. Clause 13 explains that the National Law Alignment Provisions make provision for the grant of service approvals for State regulated education and care services and other matters relating to service approvals.
20. Clause 14 makes it an offence for a person to contravene a condition of a service approval. The penalty for the offence is aligned with the penalty for the corresponding offence under the National Law.

#### *Division 4 Supervisor certificates*

21. Clause 15 explains that the National Law Alignment Provisions make provision for the grant of supervisor certificates for State regulated education and care services and other matters relating to supervisor certificates.
22. Clause 16 makes it an offence for a person to contravene a condition of a supervisor certificate. The penalty for the offence is aligned with the penalty for the corresponding offence under the National Law.

### **Part 4 National Law alignment**

#### *Division 1 Alignment with National Law*

23. Clause 17 applies the National Law to State regulated education and care services as if those services were education and care services within the meaning of the National Law. The National Law applies as modified by the proposed Act and by any regulations under the proposed Act.
24. Clause 18 provides for the application of the *Children (Education and Care Services National Law Application) Act 2010* in respect of the National Law Alignment Provisions.
25. Clause 19 provides that the *Interpretation Act 1987* does not apply in respect of the National Law Alignment Provisions.
26. Clause 20 makes it clear that authorities granted under the National Law Alignment Provisions are not authorities for the purposes of the National Law.



*Division 2 Modification of National Law*

27. Clause 21 excludes the operation of various provisions of the National Law for the purposes of the National Law Alignment Provisions.
28. Clause 22 provides for references to education and care services under the National Law to be read as references to State regulated education and care services.
29. Clause 23 provides for references in the National Law to the law itself to be read as references to the proposed Act and the regulations under the proposed Act.
30. Clause 24 provides for references to the Regulatory Authority to mean the Regulatory Authority for this jurisdiction (that is, the Director-General of the Department of Education and Communities). The National Law Alignment Provisions do not confer powers on Regulatory Authorities of other jurisdictions.
31. Clause 25 provides for references to regulations in the National Law to be read as references to regulations under the proposed Act.
32. Clause 26 requires references in the National Law that relate to national scheme matters to be disregarded.
33. Clause 27 contains specific variations to the National Law in relation to home based education and care services.
34. Clause 28 enables the regulations to extend the list of reviewable decisions under the National Law, in relation to State regulated education and care services.
35. Clause 29 enables further modifications to be made to the National Law, in its application to State regulated education and care services, by regulation.

*Division 3 Recognition of matters provided for by National Law*

36. Clause 30 provides that a person who holds a provider approval under the National Law is taken to be an approved provider of State regulated education and care services under the proposed Act. Accordingly, there is no need for an approved provider under the National Law to obtain a separate provider approval under the proposed Act in order to provide State regulated education and care services.
37. Clause 31 provides that authorised officers appointed under the National Law by the Regulatory Authority for this jurisdiction are taken to be authorised officers for the purposes of the National Law Alignment Provisions.

**Part 5 Other operational requirements**

38. Clause 32 requires approved providers of State regulated education and care services to provide information about the service to parents of children enrolled in the service.
39. Clause 33 requires an approved provider of a State regulated education and care service to afford parents contact with their children.
40. Clause 34 requires the Regulatory Authority to be notified if an adult person is residing at the home of an approved provider of a home based education and care service for a lengthy period.

41. Clause 35 requires records to be kept in relation to State regulated education and care services.

### **Part 6 Miscellaneous**

42. Clause 36 enables the Governor to make regulations for the purposes of the proposed Act.
43. Clause 37 enables the regulations to adopt other publications, in particular, the national regulations made under the National Law.
44. Clause 38 provides that the State Records Act 1998 does not apply in respect of certain private children's services.
45. Clause 39 provides for the review of the proposed Act in 5 years.

### **Schedule 1 Savings, transitional and other provisions**

46. Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.
47. The provisions continue the operation of the *Children's Services Regulation 2004*, made under the *Children and Young Persons (Care and Protection) Act 1998*, as a Regulation taken to be made under the proposed Act.

### **Schedule 2 Amendment of Acts and Regulations**

48. Schedule 2 amends the Acts and Regulations specified in the Schedule.
49. The amendments provide for the repeal of Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998* and provide for various consequential matters relating to that repeal, the commencement of the National Law and the enactment of the proposed Act.
50. Amendments to the *Children (Education and Care Services National Law Application) Act 2010* also:
  - (a) ensure that Part 3A of the *Ombudsman Act 1974* (Child protection) continues to apply in respect of education and care services regulated under the National Law, and
  - (b) update the meanings of the expression Regulatory Authority, children's services law, education law and former education and care services law, and
  - (c) include an additional transitional provision in relation to nominated supervisors of approved education and care services to ensure that only one supervisor can be nominated.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by proclamation*

51. The Bill provides for the proposed Act to commence on a day or days to be appointed by proclamation. This may delegate to the Executive the power to commence the proposed Act on whatever day it chooses or not at all.
52. However, the Committee notes that the Bill is related to the national system for the regulation of early childhood and education and care services known as the National Quality Framework. The National Quality Framework is due to become operational from January 2012. Legislation in NSW supporting the National Quality Framework also provides for commencement by proclamation.

**The Committee considers that the implementation of the national system for the regulation of early childhood and education services will involve a number of administrative arrangements. Due to this Bill being closely related to the national system, discretion as to its commencement may be required. Accordingly, the Committee does not consider there to be an inappropriate delegation of legislative powers.**

## 2. Children Legislation Amendment (Child Death Review Team) Bill 2011

Date introduced	19 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Pru Goward MP
Portfolio	Family and Community Services

### PURPOSE AND DESCRIPTION

53. The object of this Bill is to transfer provisions relating to the Child Death Review Team (the *Team*) from the *Commission for Children and Young People Act 1998* to the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.
54. The Team was established to obtain information relating to child deaths in New South Wales and to review and analyse that information for the purpose of making recommendations as to measures to prevent or reduce child deaths.
55. The Bill transfers those provisions with the following modifications:
- (a) the functions of the Committee on Children and Young People in respect of the Team under the *Commission for Children and Young People Act 1998* are transferred to the Committee on the Office of the Ombudsman and the Police Integrity Commission;
  - (b) the requirement for the approval of the Minister in respect of research undertaken by the Team in the exercise of its functions (other than research in respect of reviewable deaths within the meaning of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*) is removed;
  - (c) the requirement for the Team to submit draft reports to the Minister is removed;
  - (d) the Community and Disability Services Commissioner is included as a member of the Team;
  - (e) the restriction on the disclosure of information acquired by reason of being a Team-related person is removed in a case where a member of the Team makes the disclosure to any person, body or organisation for the purpose of obtaining information, advice or comments in connection with draft reports prepared by the Team; and
  - (f) the maximum term of office of appointed members of the Team is extended from 2 to 3 years.

## BACKGROUND

56. According to the Minister's Agreement in Principle speech, "the Bill delivers on the Government's election commitment to support the Ombudsman's role in independently reviewing child deaths in New South Wales."<sup>2</sup>
57. The Child Death Review Team was established in 1996, with the primary objective of preventing or reducing the incidence of child deaths in New South Wales by identifying trends and patterns relating to the causes of child deaths and then making recommendations on legislation, policies, practices and services to government and non-government agencies and the community for the prevention of further child deaths.
58. In 2008, the Hon James Wood, AO, QC, handed down the report of the Special Commission of Inquiry into Child Protection Services in New South Wales which recommended that the Ombudsman be appointed as the Convenor of the Team, and that the secretariat and research functions associated with the team be transferred from the Commission for Children and Young People to the Ombudsman.
59. In April 2009 the New South Wales Parliament passed legislation that transferred responsibility for the New South Wales Child Death Review Team from the Commission for Children and Young People to the New South Wales Ombudsman.
60. On 4 November 2010 the Ombudsman released a report entitled "Unresolved Issues in the transfer of NSW Child Death Review team to the Office of the NSW Ombudsman", detailing the difficulties experienced by the Ombudsman due to the nature of the transfer.
61. The transfer came into effect on 11 February 2011. Since then, the Ombudsman has been the Convenor of the Child Death Review Team, and his office provides support and assistance to the Team in the exercise of its functions.
62. Some of the changes in this Bill were the focus of the special report to Parliament by the Ombudsman in November 2010. Other changes in the Bill were subsequently requested by the Ombudsman during consultation on the Bill.

## OUTLINE OF PROVISIONS

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

### **Schedule 1 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2**

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<sup>2</sup> The Hon P Goward MP, Minister for Family and Community Services and Minister for Women, Agreement in Principle, Legislative Assembly *Hansard*, 19 October 2011.

65. Schedule 1 [2] and [8] insert Part 5A (Child Death Review Team) and Schedule 2 (Provisions relating to the Child Death Review Team) into the Act which are the transferred provisions with modifications referred to above. Schedule 1 [1], [3] and [5] make consequential amendments.
66. Schedule 1 [4] makes an amendment by way of statute law revision.
67. Schedule 1 [6] and [7] contain provisions of a savings and transitional nature.

### Schedule 2 Amendment of other legislation

68. Schedule 2 makes amendments to other legislation that are consequential on the transfer of provisions relating to the Team from the *Commission for Children and Young People Act 1998* to the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

## ISSUES CONSIDERED BY COMMITTEE

### Trespasses on Personal Rights and Liberties [s 8A(1)(b)(i) LRA]

#### *Right to privacy*

69. Clause 34K of the Bill provides that it is the duty of named persons, such as the Director-General, Commissioner of Police, State Coroner etc. to provide the Child Death Review Team with full and unrestricted access to records that are under their control. This will also include confidential documents.
70. Subsection (3) provides that a provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection. As such, no rules of confidentiality or privacy would apply which may prima facie pose an issue.
71. However, these records must be reasonably required by the team for the purpose of exercising its functions (stipulated in 34D) and such powers are necessary in the exercise of functions such as maintaining a register of child deaths.
72. Further, section 34L provides that a Team-related person must not make a record of or disclose to any person information that was acquired by the person by reason of being a Team-related person and unless they fulfil one of the reasons i.e. disclosure made in good faith or authorised by the Convenor.
73. As such, the committee raises no concern in this regard.

**In the context of individuals' right to privacy, the Committee notes that the powers of the Team to request documents can only be exercised in respect to carrying out functions stipulated by the Bill. Such documents will often be necessary in carrying out the Team's statutory functions. As such, the Committee is of the opinion that this is reasonable in the circumstances.**

### 3. Clubs, Liquor and Gaming Machines Legislation Amendment Bill 2011

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

#### PURPOSE AND DESCRIPTION

74. The object of this Bill is to make miscellaneous amendments to certain Acts (including the *Registered Clubs Act 1976*, the *Liquor Act 2007* and the *Gaming Machines Act 2001*) for the following purposes:

- (a) to include additional requirements (particularly in relation to club corporate governance) that will apply in relation to clubs;
- (b) to modify the manner in which clubs can amalgamate and to provide a process under which amalgamated clubs can subsequently de-amalgamate;
- (c) to provide additional rules for clubs in relation to the election and membership of their governing bodies;
- (d) to confer honorary membership of all RSL or services clubs on former Defence Force personnel who are Service Members of the RSL;
- (e) to impose requirements in relation to certain loan contracts that are entered into by clubs and contracts involving the management of the affairs of a club by private persons or businesses;
- (f) to delete provisions relating to the holding of formal inquiries about corrupt or improper conduct in relation to clubs;
- (g) to modify the current exemption under which liquor may be sold or supplied without a licence when it is part of a gift;
- (h) to enable hotels to continue to provide services or facilities (including gambling and entertainment) during periods when liquor is not being sold or supplied in the hotel;
- (i) to enable the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the **Director-General**) to give directions relating to the operation of “sale on other premises” authorisations that are held by the holders of certain on-premises licences, such as licensed caterers, and that enable the sale or supply of liquor on premises other than the licensed premises;

- (j) to provide that it is a defence for club managers accused of certain liquor-related offences if it is proven that they took reasonable precautions to avoid the commission of the offence concerned;
- (k) to modify arrangements relating to gaming machine entitlements and permits that are held in respect of hotels and clubs;
- (l) to remove, in the case of a club that has more than one set of premises, the forfeiture requirements for gaming machine entitlement transfers between the different club premises;
- (m) to exempt de-amalgamating clubs from the local impact assessment process, and from forfeiture requirements, when gaming machine entitlements are being transferred to club premises as part of the de-amalgamation process;
- (n) to enable the Director-General to approve of arrangements for the transfer of permits that were issued under the former Liquor Act and continue to be held in respect of hotel licences;
- (o) to remove provisions relating to the approval of "hardship" gaming machines and the keeping of approved amusement devices;
- (p) to rename the Casino, Liquor and Gaming Control Authority (the **Authority**) as the Independent Liquor and Gaming Authority;
- (q) to rename the Act under which the Authority is constituted as the *Gaming and Liquor Administration Act 2007* and to transfer to that Act certain administrative provisions that apply generally to the gaming and liquor legislation (such as the review by the Authority of certain decisions of the Director-General under that legislation);
- (r) to make it clear that fees may be charged for services that are provided in connection with the administration of the gaming and liquor legislation; and
- (s) to make a number of other amendments of an administrative, minor or consequential nature.

## BACKGROUND

- 75. In introducing this Bill, the Minister for Tourism, Major Events, Hospitality and Racing stated that it "represents the second stage of reforms arising from the Government's historic memorandum of understanding with ClubsNSW".
- 76. He explained that "these reforms focus on ensuring enhanced corporate governance and management, protecting the community-owned status of clubs and removing barriers to clubs amalgamating or merged clubs separating".<sup>3</sup>

## OUTLINE OF PROVISIONS

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

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<sup>3</sup> Mr George Souris, Minister for Tourism, Major Events, Hospitality and Racing, Agreement in Principle, NSW Legislative Assembly, 17 October 2011.



2. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for certain specified amendments which will commence on the date of assent to the proposed Act.

### **Schedule 1 Amendment of Registered Clubs Act 1976 No 31**

3. Schedule 1 amends the *Registered Clubs Act 1976* as follows:
  - (a) to provide for additional requirements that must be met by clubs, including requirements that limit the membership of the governing body of a club to 9 persons and that restrict the class of persons who may manage or control the business conducted on club premises,
  - (b) to modify existing club requirements (including the factors to be considered in determining whether a club is being conducted in good faith),
  - (c) to provide that 2 or more clubs may choose to amalgamate by means of each of them dissolving and by the formation of a new club that will own or occupy the premises of at least one of the dissolved clubs (at present, an amalgamation is effected only by the continuation of a club and the dissolution of the other clubs involved in the merger),
  - (d) to provide a process under which an amalgamated club can de-amalgamate by the formation of a new club that owns or occupies the same premises as the premises owned or occupied by the club that was previously dissolved under the amalgamation,
  - (e) to ensure that similar rules apply to the process of de-amalgamation as those that apply to a club amalgamation,
  - (f) to enable club premises, in the case of a de-amalgamation, to be sold to the de-amalgamated club by private treaty,
  - (g) to provide that the rules of a club are, if the regulations so provide, to include the triennial rule (ie the rule that provides for the election of the governing body of a club on a 3-yearly basis) and that the regulations may prescribe the classes of members of the club who are eligible to vote at such an election,
  - (h) to provide that the rules of a club may provide for the appointment of additional members of the governing body of the club but only in accordance with the regulations,
  - (i) to confer honorary membership of all RSL or services clubs on former Defence Force personnel who are Service Members of the RSL,
  - (j) to impose requirements on clubs in relation to certain loan contracts and contracts that involve the management of the affairs of a club by private persons or businesses and to enable the Director-General to require a club to amend or terminate any such contract if it is not in the interests of the club or its members,

- (k) to delete provisions that allow the holding of royal commission style inquiries about corrupt or improper conduct in relation to clubs,
- (l) to provide for regulations to be made that require club directors, secretaries and managers to undergo training courses relating to financial management and other matters relevant to their functions,
- (m) to make consequential and other minor amendments.

## **Schedule 2 Amendment of Liquor Act 2007 No 90**

77. Schedule 2 amends the *Liquor Act 2007* as follows:

- (a) to expand the requirements relating to the exemption that currently allows liquor to be sold or supplied without a licence if the liquor is part of a gift of food or flowers delivered to a person other than the purchaser (ie the gift can only be delivered before 7pm and it must be a genuine gift),
- (b) to enable hotels to continue to operate and provide services and facilities (including entertainment, conferences and lawful gambling-related activities) during trading periods even though liquor is not being sold or supplied at that time,
- (c) to make it clear that the matters to be addressed by a community impact statement that is required to accompany an application for an extended trading (ie late hour) authorisation may include matters relating to gambling activities on the licensed premises during the period that the authorisation will be in force,
- (d) to provide that the conditions imposed by the Authority on a licence may prohibit the sale or supply of liquor on licensed premises or restrict trading hours,
- (e) to enable the Director-General to give directions relating to the operation of “sale on other premises” authorisations (including prohibiting or restricting the sale of liquor under the authorisation),
- (f) to provide that the protection from civil or criminal liability of certain persons (such as staff of licensed premises) when dealing with patrons who are participating in a self-exclusion scheme under section 76 of the Act does not apply in the case of negligence causing personal injury or death,
- (g) to provide for a maximum penalty of 100 penalty units for offences prescribed by the regulations that relate to the responsible service of alcohol,
- (h) to provide a general defence for the managers of club premises for prosecutions for offences under the Act,
- (i) to make consequential and other minor amendments.

### **Schedule 3 Amendment of Gaming Machines Act 2001 No 127**

78. Schedule 3 amends the *Gaming Machines Act 2001* as follows:

- (a) to replace references to poker machines (and poker machine entitlements and permits) with gaming machines and to modify terminology relating to club premises,
- (b) to consolidate provisions relating to the gaming machine entitlement scheme under the Act and to clarify the terminology and processes that support the scheme,
- (c) to remove provisions relating to approved amusement devices and hardship gaming machines and to phase-out the keeping of such devices and machines (including by providing that the approval of the keeping of a hardship gaming machine expires on the tenth anniversary of the approval),
- (d) to enable the Director-General to approve arrangements for the transfer of permits (currently referred to as Liquor Act poker machine permits) that were issued under the former Liquor Act in respect of poker machines and are still in operation in hotels,
- (e) to ensure that a hotel's gaming machine threshold is decreased when permits are transferred to another hotel,
- (f) to make it clear that permits may, in addition to gaming machine entitlements, be acquired by a hotel for the purposes of filling any increase in its gaming machine threshold,
- (g) to exempt de-amalgamating clubs from the local impact assessment process, and from forfeiture requirements, when gaming machine entitlements are being transferred as part of the de-amalgamation process,
- (h) to provide that the protection from civil or criminal liability of certain persons (such as staff of licensed premises) when dealing with persons who are participating in a self-exclusion scheme under section 49 of the Act does not apply in the case of negligence causing personal injury or death,
- (i) to enable the regulations to require the payment of fees in relation to applications, or certain other matters arising under the Act, in respect of which the Act does not currently require the payment of a fee,
- (j) to make consequential and other minor amendments.

### **Schedule 4 Amendment of Casino, Liquor and Gaming Control Authority Act 2007 No 91**

79. Schedule 4 amends the Casino, Liquor and Gaming Control Authority Act 2007 as follows:

- (a) to change the name of the Act to the *Gaming and Liquor Administration Act 2007*,

- (b) to rename the Casino, Liquor and Gaming Control Authority as the Independent Liquor and Gaming Authority,
- (c) to enable information acquired under the gaming and liquor legislation to be divulged to persons or bodies if the Director-General certifies that it is in the public interest to do so,
- (d) to restate provisions currently contained in the *Liquor Act 2007* that provide for the review by the Authority of certain decisions of the Director-General under the gaming and liquor legislation and that allow matters under that legislation to be dealt with on an informal basis,
- (e) to make it clear that fees may be charged for services provided in connection with the administration of the gaming and liquor legislation,
- (f) to update references to a former department and former positions as a consequence of recent administrative changes,
- (g) to make consequential and other minor amendments.

### Schedule 5 Consequential amendments to other Acts

80. Schedule 5 amends various Acts as a consequence of:
- (a) the renaming of the Casino, Liquor and Gaming Control Authority, and the Act under which the Authority is constituted, as the Independent Liquor and Gaming Authority and the *Gaming and Liquor Administration Act 2007*, respectively, and
  - (b) the changes made by Schedule 3 in relation to gaming machine terminology.

### Schedule 6 Repeal of Registered Clubs Amendment Act 2006 No 103

81. Schedule 6 repeals the *Registered Clubs Amendment Act 2006* which contains uncommenced amendments relating to the election of the governing bodies of clubs and to the eligibility of the members of such bodies.

## ISSUES CONSIDERED BY THE COMMITTEE

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

#### *Commencement by proclamation*

82. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation, except for certain specified amendments which are to commence on the date of assent. The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature.

**The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.**

## 4. Crimes (Sentencing Procedure) Amendment (Children in Vehicles) Bill 2011

Date introduced	20 October 2011
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads and Ports

### PURPOSE AND DESCRIPTION

83. The purpose of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* to make it an aggravating factor to be taken into account in sentencing an offender for certain traffic offences if the offence is committed while a child under 16 years of age is a passenger in the offender's vehicle.
84. The traffic offences concerned include drink driving, drug driving, driving in a police pursuit, dangerous driving under the influence of alcohol or drugs, and refusing to undergo a test for alcohol or drugs following suspected dangerous driving.

### BACKGROUND

85. This Bill has been introduced following a number of reported cases of adults driving while intoxicated, with young children present in their vehicles.
86. According to the Roads and Traffic Authority's preliminary data for 2010, two drivers were identified as being over the legal limit when involved in a crash that killed a child passenger under 16 years of age in their vehicle. Over the past five years, the RTA has recorded 133 passengers under the age of 16 injured or killed in crashes where the driver had an illegal blood alcohol level.
87. In his Second Reading Speech, the Minister responsible advised the House:
- 'Inserting a specific circumstance of aggravation ... with respect to certain traffic offences will ensure that this factor is considered and will focus the court's attention on it when determining the seriousness of the traffic offence and the sentence to be imposed. The new circumstance of aggravation is intended to reflect the gravity of committing a serious traffic offence with a child passenger in the vehicle...'

### OUTLINE OF PROVISIONS

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

90. Schedule 1 [1] provides that it is an aggravating factor if the offence was a *prescribed traffic offence* and was committed while a child under 16 years of age was a passenger in the offender's vehicle. Schedule 1 [3] specifies the prescribed traffic offences, which are as follows:
- (a) driving with the prescribed concentration of alcohol in the person's breath or blood,
  - (b) driving with drugs in the person's oral fluid, blood or urine,
  - (c) driving under the influence of alcohol or drugs,
  - (d) refusing a breath test or analysis for alcohol or an oral fluid test or sample for drugs,
  - (e) refusing, or preventing a medical practitioner or nurse from taking, a urine test or blood sample, or wilfully altering a blood or urine sample,
  - (f) dangerous driving occasioning death or grievous bodily harm while under the influence of alcohol or drugs or in a police pursuit,
  - (g) driving dangerously and not stopping when being pursued by police officers.
91. Schedule 1 [2] provides that certain prescribed traffic offences which may occur away from the vehicle, such as at a police station or hospital, are taken to have been committed while a child under 16 years of age was a passenger in the offender's vehicle if the offence was part of a series of events that involved the driving of the vehicle while the child was a passenger in the vehicle.
92. Schedule 1 [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s8A(1) of the *Legislation Review Act 1987*.**

## 5. Heritage Amendment Bill 2011

Date introduced	18 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Robyn Parker MP
Portfolio	Minister for Environment and Heritage

### PURPOSE AND DESCRIPTION

93. The objects of this Bill are as follows:

- (a) to reduce the number of members of the Heritage Council from 11 to 9;
- (b) to abolish Ministerial Review Panels;
- (c) to require the Heritage Council, once it makes a decision to recommend the listing of an item on the State Heritage Register under section 33 of the *Heritage Act 1977*, to make the recommendation to the Minister within 14 days of giving of notice of the decision;
- (d) to require the Minister to publish all decisions relating to whether or not to direct the listing of items on the State Heritage Register and the reasons for the decisions;
- (e) to require the publication of certain written submissions made by the Heritage Council to a consent authority in relation to certain State significant development that affects State heritage matters;
- (f) to enable the Heritage Council, rather than the Minister, to approve forms for the purposes of the Act; and
- (g) to make other minor and consequential amendments.

### BACKGROUND

94. In introducing this Bill, the Hon. Greg Pearce stated that "The Government's election policy was focused on removing delays and increasing transparency associated with the Heritage Act" and so "the bill before the House outlines the required legislative changes to implement the Government's election commitments"<sup>4</sup>

### OUTLINE OF PROVISIONS

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

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<sup>4</sup> Mr Greg Pearce, Minister for Finance and Services and Minister for the Illawarra, Second Reading, NSW Legislative Council, 18 October 2011.

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

### **Schedule 1 Amendment of Heritage Act 1977 No 136**

97. Schedule 1 [1] amends the definition of *approved form* in the Act so that the Heritage Council (rather than the Minister) is responsible for approving forms for the purposes of the Act. Schedule 1 [12] inserts a transitional provision which provides that all current approved forms are taken to have been approved by the Heritage Council on the commencement of the amendment.
98. Schedule 1 [2], [9] and [10] make amendments consequential on the transfer of the allocation of the Act from the Minister for Planning to the Minister for Heritage.
99. Schedule 1 [3] reduces the number of members of the Heritage Council from 11 to 9.
100. Schedule 1 [4] removes 2 of the 3 members who are not appointed members (with the number of appointed members remaining unchanged).
101. Schedule 1 [5] requires any written submission of the Heritage Council to a consent authority in relation to certain types of State significant development that affect State heritage matters to be published on the internet.
102. Schedule 1 [6] makes an amendment to section 33 of the Act so that the Heritage Council is required to make a recommendation to the Minister, following a decision to recommend the listing of an item on the State Heritage Register, within 14 days of giving notice of the decision (rather than as soon as possible)
103. Schedule 1 [7] makes it necessary for the Minister to publish all decisions relating to whether or not to direct the listing of items on the State Heritage Register and the reasons for the decisions (the current requirement relates to decisions not to list an item only).
104. Schedule 1 [8] abolishes Ministerial Review Panels (being panels of 3 persons appointed to advise the Minister on a recommendation by the Heritage Council for a listing on the State Heritage Register). Schedule 1 [7] makes consequential amendments and Schedule 1 [12] inserts a transitional provision which provides that the amendments in Schedule 1 [7] and [8] apply only in relation to a recommendation for listing that is made by the Heritage Council after the commencement of those amendments.
105. Schedule 1 [11] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

### **ISSUES CONSIDERED BY COMMITTEE**

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

##### *Commencement by Proclamation*

106. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature.



**The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.**

## 6. Liquor Amendment (3 Strikes) Bill 2011 (No 2)

Date introduced	18 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. George Souris MP
Portfolio	Tourism, Major Events, Hospitality and Racing

### PURPOSE AND DESCRIPTION

107. 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* have occurred.

### BACKGROUND

108. The introduction of a "three strikes and you're out" scheme was a key election commitment of the New South Wales Liberal and Nationals Government.

109. On 22 June 2011, the *Liquor Amendment (3 Strikes) Bill 2011* ("original bill") was introduced into Parliament with the commitment that the liquor industry and key stakeholders would be consulted and have the opportunity to make submissions.

110. The Hon. George Souris in the Agreement in Principle stated that "a range of submissions were received and the Government has carefully considered them to ensure this policy targets rogue operators and does not present an adverse impact on responsible licensees"<sup>5</sup>.

111. Further, this Committee commented on the original Bill in Legislation Review Digest 1/55 of 8 August 2011, noting that decision-making based on alleged offences and charges rather than convictions trespasses against the right to the presumption of innocence. The Committee also noted that the original bill gave very wide and largely undefined decision-making powers to the Director-General.

112. Subsequently, the original bill was discharged from the LA Business Paper and withdrawn on 18 October 2011 and the *Liquor Amendment (3 Strikes) Bill 2011 (No 2)* was introduced and contains a revised three strikes scheme which "addresses industry concerns while maintaining a robust system which targets repeat offenders".<sup>6</sup>

113. In a media release dated 18 October 2011, Mr Souris described the key elements of the Three Strikes and You're Out policy as:

1. Strikes are incurred when a licensed venue is convicted of one of a range of serious offences under the Liquor Act;

<sup>5</sup> Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 18 October 2011.

<sup>6</sup> Hon G Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, Legislative Assembly *Hansard*, 18 October 2011.

2. Offences include permitting intoxication, allowing violent behaviour on the premises, supplying alcohol to a minor or an intoxicated patron, selling alcohol outside authorised trading hours, allowing a substance on premises the licensee suspects is an illicit drug, failing to comply with an official direction, non compliance with a closure order and breaching key licence conditions;
3. The first strike is automatically incurred upon conviction for an offence and is in force for three years. A second and third strike can be incurred upon further offence convictions within three years;
4. A decision that a venue incurs a second strike is made by the Director General of NSW Trade and Investment;
5. The Casino, Liquor and Gaming Control Authority – the State's independent statutory body responsible for liquor licensing – will determine if a venue incurs a third strike and is subject to a review by the Administrative Decision Tribunal;
6. Venue size and capacity, change of licensee and business practices, compliance and incident history, and crime statistics will need to be taken into account;
7. A third strike can result in licence suspension for up to 12 months, licence cancellation and a moratorium on a new liquor licence being granted at the venue for the same business operators for up to 12 months or disqualification of a licensee for any period of time;
8. In the case of a registered club a third strike can result in disqualification of a club secretary, dismissal of any or all of the club directors or the appointment of an external administrator to manage the club;
9. Conditions can be imposed on licensed venues in response to the behaviour that led to strikes being incurred. These include bans on glass and responsible service of alcohol marshals for venues with one strike, and reduced trading hours, lockouts, drink restrictions and extra security measures for those subject to two strikes;
10. Licensees will also be required to comply with any notice issued by the Director General restricting or prohibiting any activity that encourages misuse or abuse of alcohol such as drinking games;
11. Reviews of decisions will be available by the Authority or the Administrative Decisions Tribunal;
12. The Office of Liquor, Gaming and Racing will maintain a public registry of strikes; and
13. The Three Strikes and You're Out legislation will be reviewed after four years to ensure it is operating effectively.

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of Liquor Act 2007 No 90

116. Schedule 1 [1] creates a new offence if a licensee fails to comply with a notice given to the licensee by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (*the Director-General*) being a notice that restricts or prohibits any activity specified or described in the notice that the Director-General believes is likely to encourage the misuse or abuse of liquor.
117. Schedule 1 [2] inserts a new Part 9A into the *Liquor Act 2007* (the *Principal Act*) that sets out a 3 strikes disciplinary system.
118. 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.
119. Proposed section 144B defines the terms *business owner* (a person who owns the business carried on under a 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), *relevant person* (the licensee or manager of the licensed premises), *remedial action* (any action that the Director-General or the Authority is authorised or required to take under proposed section 144E or 144F) and *reviewable decision* (a decision under Division 2 of proposed Part 9A).
120. Proposed section 144C sets out the circumstances in which a person commits a prescribed offence, sets out what is to occur if a conviction is overturned on appeal and also sets out when offences occurring close together in time are taken to be a single offence.
121. Proposed section 144D sets out the circumstances in which strikes are incurred in respect of a liquor licence (a *licence*). A first strike is incurred if a relevant person commits a prescribed offence. A second strike is incurred if a relevant person commits a prescribed offence and the Director-General decides that a second strike should be incurred because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence. A third strike is incurred if a relevant person commits a prescribed offence and the Casino, Liquor and Gaming Control Authority (*the Authority*) decides that a third strike should be incurred because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence. A strike comes into force on the day on which the offence that caused the strike was committed and expires 3 years after that day.
122. Proposed section 144E sets out the remedial action that can be taken if 1 or 2 strikes are in force in respect of a licence. The Director-General may impose certain conditions on a licence that has incurred 1 or 2 strikes including conditions relating to the use of plans of management and incident registers, prohibitions on the use of glass, engagement of persons to promote the responsible service of alcohol, the notification of persons that a strike has been incurred, and in the case of a club licence, requiring training to be

undertaken by members of the governing body of the club. If the licence has incurred 2 strikes, conditions may also relate to the persons who may be appointed as a manager, the implementation of security measures, prohibiting the sale or supply of liquor at certain times, prohibiting patrons from entering at certain times, prohibiting the sale or supply of certain types of liquor and prohibiting certain types of entertainment. The regulations may prescribe other matters in respect of which conditions may be imposed. A condition imposed under the proposed section remains in force until revoked by the Director-General. However, the Director-General is not to impose or vary any such condition unless satisfied that it is reasonable response to the behaviour that led to any of the strikes being incurred.

123. Proposed section 144F sets out the remedial action that can be taken if 3 strikes are in force in respect of a licence. The Authority must take action under the proposed section for the purpose of preventing the commission of any further prescribed offences by a relevant person in relation to the licence. The actions that the Authority may take include the following if the licence is not a club licence:

- (a) suspending the licence for up to 12 months,
- (b) cancelling the licence and disqualifying (for up to 12 months) the business owner and any close associate of the business owner from being granted a licence in respect of the premises to which the cancelled licence related (the *subject premises*),
- (c) disqualifying the licensee or manager of the subject premises from being the licensee or manager of the subject premises or any other licensed premises and prohibiting any such person being employed in respect of the subject premises,
- (d) imposing, varying or revoking any condition on the licence that is not inconsistent with the Principal Act.

The actions that the Authority may take include the following if the licence is a club licence:

- (a) disqualifying the secretary of the club, the manager of any of the club's premises and any member of the club's governing body from holding any of those positions or from being the secretary of any other registered club, holding any licence or managing any other licensed premises and prohibiting any such person being employed in relation to the club,
  - (b) appointing a person to administer the affairs of the club,
  - (c) imposing, varying or revoking any condition on the club licence that is not inconsistent with the Principal Act.
124. Proposed section 144G sets out the matters that must be taken into account when a decision-maker (the Director-General or the Authority) makes a reviewable decision in relation to a licence. It also requires a decision-maker 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.

125. Proposed section 144H provides for reviews of reviewable decisions of the Director-General by the Authority and for reviews of reviewable decisions of the Authority by the Administrative Decisions Tribunal. An application for such a review operates to stay the reviewable decision unless the body conducting the review otherwise directs.
126. Proposed section 144I provides for the powers of the Authority when reviewing a reviewable decision of the Director-General and requires the Director-General to give effect to any decision of the Authority. The proposed section also requires a member of the Authority who is a party to the decision to be, or have been, a Judge or have been an Australian lawyer for 7 years.
127. Proposed section 144J provides that an appeal against a conviction for a prescribed offence does not operate to prevent a strike being incurred as a result of the commission of the offence or to prevent the taking of remedial action in respect of such a strike but an appeal does operate to suspend the operation of any such remedial action until the appeal is determined or withdrawn. The proposed section also permits the Director-General or the Authority to replace remedial action if satisfied that circumstances have changed during the period that the operation of remedial action is suspended.
128. Proposed section 144K provides for a review of the proposed Part after 4 years.
129. Schedule 1 [5] provides that the proposed Part does not apply to offences occurring before the commencement of that Part.
130. Schedule 1 [3] makes a consequential amendment.
131. Schedule 1 [4] permits the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

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

132. The Bill sets out in detail the matters which the decision-maker, meaning either the Director General or the Casino, Liquor and Gaming Control Authority ("the Authority"), must take into account when making a reviewable decisions [proposed s 144G(2)(c)]. However, nothing prevents the decision-maker from taking into account any other matter that they think is relevant to the proper making of a decision [proposed s 144G(3)].
133. An application for review of a reviewable decision may be made by a person who is required to be notified of the decision under section 144G. The application is to be made to the Authority in the case of a decision by the Director-General and to the Administrative Decisions Tribunal in the case of a decision of the Authority [proposed s 144H(1) and s144H(2)].
134. 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 decision maker will not be bound by any of the notification requirements under that Part.

135. Further, proposed s144D(3) sets out when a third strike is incurred and includes the situation where the Authority decides that a third strike should be incurred. The Authority may take into account "any other matter that may be prescribed by the regulations" (s144D(3)(c)(ii)). The Committee notes the potential impact which the third strike has on a business owner or licensee in relation to a power that has not been clearly defined.

**Committee notes that the Bill provides decision-making powers to the Director General and the Authority, with the full scope of these powers not outlined in the Bill and not subject to the notification and review requirements outlined in Part 2 of Chapter 5 of the Administrative Decisions Tribunal Act 1997.**

**The Committee notes that the Bill does not define all of the circumstances in which a licensee or business owner can be subject to a 'strike', with the Bill enabling the regulations to prescribe such circumstances.**

**The Committee refers to Parliament whether the Bill makes rights and liberties of licensees and business owners unduly dependent upon regulations.**

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

#### *Commencement by proclamation*

136. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature.

**The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature.**

## 7. National Parks and Wildlife Legislation Amendment (Reservations) Bill 2011

Date introduced	18 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Robyn Parker MP
Portfolio	Environment

### PURPOSE AND DESCRIPTION

137. The *National Parks and Wildlife Legislation Amendment (Reservations) Bill 2011* passed both houses on 20 October 2011 and received Royal Assent on 25 October 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.

138. The object of this Bill is to amend the *National Parks and Wildlife Act 1974*:

- (d) to change the reservation of part of Wianamatta Regional Park to a nature reserve to be known as Wianamatta Nature Reserve; and
- (e) to add certain land to Hunter Wetlands National Park; and
- (f) to revoke the reservation of certain other land that is currently reserved as part of Hunter Wetlands National Park.

139. The Bill also amends the *National Park Estate (South-Western Cypress Reservations) Act 2010* to delay the commencement of the reservation of certain State forests as part of Lachlan Valley National Park and Yathong Nature Reserve.

### BACKGROUND

140. The key provisions of this Bill make four amendments concerning national parks and wildlife legislation. The first amendment concerns the upgrading of approximately 181 hectares of land in the Wianamatta Regional Park to a nature reserve to be known as Wianamatta Nature Reserve. In the Agreement in Principle speech the Minister commented:

The bill delivers on the Government's pre-election environment commitment to establish Wianamatta Nature Reserve at Cranebrook, some 45 kilometres west of the Sydney central business district. The bill will give the highest level of protection to a site of rare natural and cultural values.<sup>7</sup>

141. Secondly, the Bill amends the *National Parks and Wildlife Act 1974* to add 22 hectares of wetlands to the Hunter Wetlands National Park. The land is a freshwater estuarine and

<sup>7</sup> The Hon. Robyn Parker MP, New South Wales, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 October 2011.



is situated between the national park boundary and a 111 hectare industrial development.<sup>8</sup>

142. Thirdly, the Bill revokes approximately 18.5 hectares of land previously reserved as part of Hunter Wetlands National Park. The Minister commented that the revocation was required due to a planning error. The land in question is a 50 metre wide strip of land zoned for port related activities under the Three Ports State Significant Site Proposal.<sup>9</sup>
143. Fourthly, the Bill extends the time frame for the commencement of the reservation of certain State forests as part of Lachlan Valley National Park and Yathong Nature Reserve. The extension of time is to allow for the logging in Yathong and Wilbertroy State Forests to be completed. The Minister stated that 'delays to the planned logging operations have been caused by the wet season and problems accessing remote areas.'<sup>10</sup>

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of National Parks and Wildlife Act 1974

146. Schedule 1 [4] revokes the reservation of part of Wianamatta Regional Park and reserves that land as a nature reserve to be known as Wianamatta Nature Reserve. The change of reservation does not affect native title rights and interests.
147. Schedule 1 [5] reserves an area of about 22 hectares as part of Hunter Wetlands National Park and contains ancillary provisions that ensure that the reservation is taken to have been effected in the usual way (which is by the Governor by a notice published under Division 1 of Part 4 of the Act).
148. Schedule 1 [6] revokes the reservation of part of Hunter Wetlands National Park, being an area of about 18.5 hectares. On the revocation of the reservation, the land is vested in the Minister under Part 11 of the Act which enables the Minister to sell, grant leases of, dispose of or otherwise deal with the land. The revocation of the reservation does not affect native title rights and interests.
149. Schedule [1]–[3] update certain references for the purposes of statute law revision.
150. Schedule 1 [7] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
151. Schedule 2 Amendment of *National Park Estate (South-Western Cypress Reservations) Act 2010*

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<sup>8</sup> The Hon. Robyn Parker MP, New South Wales, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 October 2011.

<sup>9</sup> The Hon. Robyn Parker MP, New South Wales, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 October 2011.

<sup>10</sup> The Hon. Robyn Parker MP, New South Wales, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 October 2011.

152. Schedule 2 [1] and [3] amend the *National Park Estate (South-Western Cypress Reservations) Act 2010* to delay the commencement of the reservation of part of Wilbertroy State Forest No 35 as part of Lachlan Valley National Park until 1 January 2014 and to delay the commencement of the reservation of part of Yathong State Forest No 890 as part of Yathong Nature Reserve until 1 January 2015. Currently, those reservations are to take effect on 1 January 2012.
153. Schedule 2 [2] and [5]–[9] contain consequential amendments.
154. Schedule 2 [4] removes an unnecessary cross reference for the purposes of statute law revision.

### ISSUES CONSIDERED BY 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. Payroll Tax Rebate Scheme (Disability Employment) Bill 2011

Date introduced	18 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Disability Services

### PURPOSE AND DESCRIPTION

155. The object of this Act is to establish a payroll tax rebate scheme to encourage the employment of people with disabilities.
156. The scheme provides for a rebate up to a maximum of \$4,000 in respect of the employment of a person with disabilities on or after 1 January 2012 and before 1 July 2016.

### BACKGROUND

157. The NSW Government NSW 2021 Plan has identified targets aimed at increasing the participation of people with disabilities in employment or further education. The first is that 60% of transition to work participants will move into employment or further education by 1 July 2014 and 65% of transition to work participants will move into employment or further education by 1 July 2019.
158. The Government has also identified as a priority closing the gap in the unemployment rate between people with a disability and the overall community by 50% by 2016.
159. It is intended that this Act will assist in reaching these targets by providing an incentive for employers to employ more people with disabilities by allowing employers to claim a rebate of up to \$4,000 per employee. In committing to this scheme, the Government has earmarked \$2 million per annum over the next five years.
160. The Bill passed Parliament on 20 October 2011, was assented to on 25 October 2011 and the scheme itself will commence operation on 1 January 2012.

### OUTLINE OF PROVISIONS

161. Clause 1 sets out the name (also called the short title) of the proposed Act.
162. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
163. Clause 3 defines certain words and expressions used in the proposed Act.
164. Clause 4 establishes a rebate scheme for payroll tax paid or payable by employers who employ eligible employees on or after 1 January 2012 and before 1 July 2016.

165. Clause 5 provides that an employer is entitled to a rebate under the scheme in respect of the employment of a person if:
- (a) the person is an eligible employee, and
  - (b) the person's employment commences on or after 1 January 2012 and before 1 July 2016, and
  - (c) during the whole of the eligible employment period, the employment of the person is eligible employment.
166. Clause 6 provides that a person is an *eligible employee* if:
- (a) the person is in the target group under the *Disability Services Act 1993* (because the person has a disability), and
  - (b) the person has completed an approved disability employment program
167. Clause 7 provides that the employment of a person is eligible employment if:
- (a) the services of the employee are performed wholly or mainly in New South Wales, and
  - (b) the employee works an average of at least 12 hours a week.
168. Clause 8 requires the employer to be registered and to be liable for payroll tax in the year in which the eligible employment period ends.
169. Clause 9 provides for the circumstances in which an employer is not entitled to a rebate under the rebate scheme.
170. Clause 10 provides that a rebate may be claimed under the scheme in respect of an eligible employment period. The following periods are eligible employment periods:
- (a) the period commencing when the employment of the eligible employee commences and ending 3 months after the date employment commenced (*the first eligible employment period*),
  - (b) the period commencing immediately after the first eligible employment period ends and ending 6 months after the date employment commenced.
171. Clause 11 provides the rebate payable in respect of an eligible employment period is \$2,000.
172. Clause 12 sets out the procedure for making a claim for a rebate.
173. Clause 13 provides that the Chief Commissioner of State Revenue (the *Chief Commissioner*) is to decide whether a rebate is payable in respect of a claim and the amount of the rebate payable.
174. Clause 14 gives the Chief Commissioner power to grant a claim in special circumstances even if the eligible employee did not work the required number of hours in the employment period for which the claim is made.

175. Clause 15 sets out how the rebate is to be paid.
176. Clause 16 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.
177. Clause 17 enables the Chief Commissioner to correct a decision relating to a claim.
178. Clause 18 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.
179. Clause 19 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.
180. Clause 20 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.
181. Clause 21 authorises the Chief Commissioner to recover from a relevant third party any amount that is payable by a rebate recipient but remains unpaid.
182. Clause 22 authorises the Chief Commissioner to enter into an arrangement for the payment of a liability under the proposed Act by instalments.
183. Clause 23 authorises the Chief Commissioner to write off liabilities under the proposed Act.
184. Clause 24 authorises the Chief Commissioner to remit, in whole or in part, an amount a person is required to pay under the proposed Act.
185. Clause 25 enables an objection to be made to decisions made by the Chief Commissioner under the proposed Act.
186. Clause 26 sets a time limit for the lodging of an objection.
187. Clause 27 requires the grounds for an objection to be stated in the objection.
188. Clause 28 provides that an objector has the onus of proving an objector's case.
189. Clause 29 provides that the Chief Commissioner may allow or disallow an objection and reverse, vary or confirm the original decision.
190. Clause 30 requires the Chief Commissioner to give an objector notice of the determination of an objection.
191. Clause 31 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.
192. Clause 32 provides that the Administrative Decisions Tribunal may confirm, vary or reverse the original decision and make further orders as to costs or otherwise.

193. Clause 33 provides that the Chief Commissioner is responsible to the Minister for the administration of the rebate scheme.
194. Clause 34 authorises the Chief Commissioner to delegate functions related to the administration of the rebate scheme.
195. Clause 35 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.
196. Clause 36 authorises the Chief Commissioner to carry out an *authorised investigation* for the purpose of the proposed Act, including in relation to whether 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.
197. Clause 37 authorises the Chief Commissioner to exercise certain powers in connection with authorised investigations.
198. Clause 38 gives the Chief Commissioner access to public records without the payment of fees.
199. Clause 39 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.
200. Clause 40 provides that an officer who has entered premises under the proposed Part may require documents to be produced, ask questions and require reasonable assistance and facilities to be provided.
201. Clause 41 authorises the Chief Commissioner or an authorised officer to take possession of a document and to take copies, extracts or notes of it.
202. Clause 42 deals with applications for search warrants.
203. Clause 43 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).
204. Clause 44 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.
205. Clause 45 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 other taxation legislation (that is, the *Taxation Administration Act 1996* or the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*).

206. Clause 46 makes it an offence to knowingly give false or misleading information to an authorised officer or in relation to a claim under the proposed Act. The maximum penalty is 100 penalty units (currently, \$11,000).
207. Clause 47 protects the confidentiality of certain information obtained in the course of work related to the administration of the proposed Act.
208. Clause 48 enables evidence relating to rebates or the imposition of penalties to be given by a certificate signed by the Chief Commissioner.
209. Clause 49 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
210. Clause 50 provides for the appropriation of funds from the Consolidated Fund for the payment of rebates under the proposed Act.
211. Clause 51 protects persons involved in the administration of the proposed Act from personal liability.
212. Clause 52 confers power to make regulations under the proposed Act.
213. Clause 53 provides for the repeal of the proposed Act on 1 January 2019.
214. Schedule 2 makes the following 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,
  - (c) amendments to the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*:
    - (i) to enable investigative powers conferred under that Act to be exercised in conjunction with powers conferred by the proposed Act, and
    - (ii) to enable information obtained under that Act to be disclosed for the purposes of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Search and Seizure Powers; Privacy*

215. Sections 39 – 42 of the Act provide for rights of entry, as well as search and seizure powers, to be conferred onto the Chief Commissioner in relation to authorised investigations under the Act. These investigations relate to:
  - (a) whether a claim for a rebate has been properly made;
  - (b) whether an objection to a decision made should be upheld;

- (c) whether a claimant to whom, or for whose benefit, a rebate has been paid was eligible for the rebate; and
- (d) any other matter reasonably related to the administration of the Act.
216. Section 39(1) provides that the Chief Commissioner 'may enter and remain on 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 this Act'.
217. Further, section 40(1) provides that the Chief Commissioner may, once having entered the premises, 'require any person at those premises to produce any documents ... and require persons at those premises to answer questions or otherwise furnish information'. Similarly, section 37(1)(b) authorises the Chief Commissioner to compel a person to attend a hearing to answer questions relevant to the investigation.
218. Lastly, proposed section 41(1) provides that the Chief Commissioner 'may take and retain possession of any document provided or produced to the Chief Commissioner', although certain caveats apply.
219. The Committee notes that these powers of investigation are without the legislated requirement of a search warrant. In totality, these powers relate to the ability for the Chief Commissioner, or an authorised officer, to enter into private premises, require that information be provided or documents be furnished, and seize and retain possession of those documents for a legislated period of time.
220. The Committee is concerned that these powers appear disproportionate to the matters under investigation. For example, the maximum allowable rebate that can be made once this scheme is operative is \$4,000 per claimant. Although the Committee is mindful of the need to combat fraud and the waste of public finances, the Committee queries whether the powers outlined in the Bill are necessary in the circumstances.
221. These powers may also raise certain privacy issues. For example, as the powers may relate to an investigation about whether a claimant is eligible for a payroll tax rebate on account of the fact the claimant's employee has a disability, it follows that documents may be required to be furnished that detail the employee's disability and medical history. Without appropriate controls with respect to the employee's privacy, this may be a further trespass on the individual rights and liberties.

**The Committee notes that provisions of this Act provide for rights of entry, as well as search and seizure powers, to be conferred onto the Chief Commissioner in relation to authorised investigations under the Act which appear to relate to possible instances of fraud.**

**The Committee also notes the potential effect of these powers with respect to privacy rights. The Committee refers this Act to Parliament for its further consideration.**



## 9. Redfern – Waterloo Authority Repeal Bill 2011

Date introduced	18 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Planning and Infrastructure

### PURPOSE AND DESCRIPTION

222. The objects of this Bill are to repeal the *Redfern – Waterloo Authority Act 2004* and to dissolve the Redfern – Waterloo Authority constituted by that Act. The Bill transfers assts, rights, liabilities and certain functions of that Authority to the Sydney Metropolitan Development Authority, which is constituted under the *Growth Centres (Development Corporations) Act 1974* in respect of certain land in Redfern and Waterloo where the Redfern – Waterloo Authority currently operates.

### BACKGROUND

223. The Redfern – Waterloo Authority was established in 2004 to implement development and urban renewal strategies to address the long-term problems associated with social disadvantage in the Redfern and Waterloo communities.

224. In the years since its commencement, the Redfern – Waterloo Authority has been responsible for the National Centre for Indigenous Excellence, a community health facility, and the key commercial developments at Australian Technology Park, amongst other initiatives.

225. In December 2010, the Sydney Metropolitan Development Authority was established to lead the social and economic development of urban precincts in the Sydney region. This new authority has broad powers to plan and coordinate urban renewal effort on behalf of Government, in consultation with local government and the private sector, and also to deal in land, leverage assets, undertake compulsory acquisition, and to enter into partnerships with the private sector and local and national governments.

226. It is intended that this new authority will identify strategic locations in the Sydney metropolitan area with the aim to deliver on housing and employment targets, aligning land use with transport infrastructure, and ensuring investments on infrastructure are maximised.

### OUTLINE OF PROVISIONS

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

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

229. Clause 3 repeals the *Redfern–Waterloo Authority Act 2004*.

230. Schedule 1 Amendment of Growth Centres (Development Corporations) Act 1974 No 49
231. Schedule 1 [2] inserts a new Part 4 into Schedule 6 (Savings, transitional and other provisions) to the *Growth Centres (Development Corporations) Act 1974*.
232. Proposed clause 12 defines terms for the purposes of the proposed new Part.
233. Proposed clause 13 dissolves the Redfern–Waterloo Authority (the *former Authority*) on the repeal of the *Redfern–Waterloo Authority Act 2004*.
234. Proposed clause 14 abolishes the Redfern–Waterloo Fund.
235. Proposed clauses 15 and 16 provide for the transfer of assets, rights and liabilities of the former Authority. Proposed clause 15 transfers those assets, rights and liabilities to the Sydney Metropolitan Development Authority (*SMDA*) on the repeal of the *Redfern–Waterloo Authority Act 2004*. Proposed clause 16 enables the subsequent transfer of those assets, rights and liabilities, by Ministerial order, to another public sector agency, except for *SMDA*'s interest in Australian Technology Park Sydney Limited (*ATPSL*).
236. Proposed clause 17 ensures that *SMDA* has such functions as are necessary or convenient for the purposes of managing the affairs of *ATPSL*. However, those functions do not include selling or disposing of an interest in that company, or approving of another person becoming a member of *ATPSL*. The proposed clause also enables *ATPSL* to continue to exercise any function that it could exercise immediately before the repeal of the *Redfern–Waterloo Authority Act 2004*.
237. Proposed clause 18 ensures that sections 30–32 of the *Redfern–Waterloo Authority Act 2004*, which relate to the levying of development contributions for development at the relevant sites in Redfern and Waterloo and at the former Carlton United Brewery site at Broadway, Sydney, continue to have effect. The clause also makes savings in relation to planning agreements that the former Authority has entered into, or proposed to enter into, under the *Environmental Planning and Assessment Act 1979*.
238. Proposed clause 19 provides for the saving of the Redfern–Waterloo Plan in force under the *Redfern–Waterloo Authority Act 2004*.
239. Proposed clause 20 ensures that section 33 of the *Redfern–Waterloo Authority Act 2004*, which requires the Aboriginal Housing Company and other relevant representatives of the Aboriginal communities to be consulted in relation to the area of land bounded by Eveleigh, Caroline, Louis and Vine Streets, Redfern, continues to have effect.
240. Schedule 1 [1] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
241. Schedule 2 amends the Acts specified in the Schedule as a consequence of the repeal of the *Redfern–Waterloo Authority Act 2004* and the dissolution of the Redfern–Waterloo Authority.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by Proclamation*

242. The Committee notes that the Act is to commence operation on a day or days to be appointed by proclamation. This provides the Government with the power to commence this provision on whatever day it chooses or not at all. The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature.
243. However, the Committee notes that this Bill proposes a restructuring of Government agencies, including the repeal of an existing body, and appreciates that transitional and administrative arrangements need to take place before the Act can become operative.

**The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that this Bill proposes a restructuring of Government agencies, including the repeal of an existing body, and appreciates that transitional and administrative arrangements need to take place before the Act can become operative.**

## 10. Statute Law (Miscellaneous Provisions) Bill (No 2) 2011

Date introduced	19 October 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

244. The objects of this Bill are:

- (g) to make minor amendments to various Acts and a Regulation (Schedule 1); and
- (h) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedules 2 and 3); and
- (i) to amend various Acts to enable the repeal of legislation by Schedule 5 (including by transferring into them provisions of the legislation to be repealed that are of possible ongoing effect) (Schedule 4); and
- (j) to repeal certain Acts and instruments and provisions of Acts and instruments (Schedule 5); and
- (k) to make other provisions of a consequential or ancillary nature (Schedule 6).

### BACKGROUND

245. As stated in the Agreement in Principle speech this Bill continues the statute law provision program and is in a similar form to previous bills. The statute law provision program is recognised as a 'cost-effective and efficient method for dealing with amendments of the kind included in the bill.'<sup>11</sup>

246. The Attorney General further explained:

Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. That schedule contains amendments to 24 acts and one regulation.<sup>12</sup>

247. Schedule 2 to the Bill deals with matters of statute law revision consisting of technical changes to legislation that the Parliamentary Counsel considers are appropriate to include in the Bill.

<sup>11</sup> The Hon. Greg Smith SC MP, New South Wales, Legislative Assembly, *Parliamentary Debates (Hansard)*, 19 October 2011

<sup>12</sup> The Hon. Greg Smith SC MP, New South Wales, Legislative Assembly, *Parliamentary Debates (Hansard)*, 19 October 2011

248. Schedule 3 makes a number of amendments consequent on the renaming of the Police Service Act 1990 to the Police Act 1990 and on the change of name of the NSW Police to the NSW Police Force.
249. Schedule 4 contains amendments that enable or are consequential on the repeal of Acts and instrument by schedule 5. Schedule 5 repeals 61 principal Acts and regulations and various provisions of Acts and instruments.

## OUTLINE OF PROVISIONS

250. Clause 1 sets out the name (also called the short title) of the proposed Act.
251. Clause 2 provides for the commencement of the proposed Act.
252. Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

### Schedule 1 Minor amendments

253. Schedule 1 makes amendments to the following Acts and Regulation:

*Building Professionals Act 2005 No 115*

*Commercial Agents and Private Inquiry Agents Act 2004 No 70*

*Community Land Management Act 1989 No 202*

*Companion Animals Act 1998 No 87*

*Consumer, Trader and Tenancy Tribunal Act 2001 No 82*

*Environmental Planning and Assessment Act 1979 No 203*

*Explosives Act 2003 No 39*

*Health Care Complaints Act 1993 No 105*

*Health Records and Information Privacy Act 2002 No 71*

*Innovation Council Act 1996 No 77*

*National Parks and Wildlife Act 1974 No 80*

*Property, Stock and Business Agents Act 2002 No 66*

*Residential Parks Act 1998 No 142*

*Residential Tenancies Act 2010 No 42*

*Retirement Villages Act 1999 No 81*

*Road Transport (Vehicle Registration) Act 1997 No 119*

*Roads Act 1993 No 33*

*Security Industry Act 1997 No 157*

*State Emergency and Rescue Management Act 1989 No 165*

*Strata Schemes Management Act 1996 No 138*

*Superannuation Act 1916 No 28*

*Sydney Olympic Park Authority Act 2001 No 57*

*Water Management Act 2000 No 92*

*Water Management Amendment Act 2010 No 133*

*Water Management (General) Regulation 2011*

254. 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.

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

255. Schedule 2 amends certain Acts and instruments for the purpose of effecting statute law revision.

256. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

### **Schedule 3 Amendments by way of statute law revision relating to references to the NSW Police Force and the *Police Act 1990***

257. Schedule 3 amends certain Acts and instruments for the purpose of effecting statute law revision. The amendments are consequential on the renaming of the *Police Service Act 1990* to the *Police Act 1990* and on the change of name of the policing organisation of NSW to the NSW Police Force.

### **Schedule 4 Amendments transferring provisions, and other amendments consequential on repeals**

258. Schedule 4 contains amendments that enable, or are consequential on, the repeal of Acts and instruments by Schedule 5. The amendments include the transfer, into various Acts, of provisions of Acts and instruments repealed by clause 3 of Schedule 5.

259. 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.

### **Schedule 5 Repeals**

260. Schedule 5 repeals a number of Acts and instruments and provisions of Acts and instruments.

261. Clause 1 repeals redundant Acts and instruments and redundant provisions of Acts and instruments.

262. Clause 2 repeals provisions of Acts and instruments that contain only commenced amendments to other Acts and instruments.

263. Clause 3 repeals Acts and instruments whose repeal is enabled by the transfer of provisions of those Acts and instruments by Schedule 4.
264. 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.
265. 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).

### **Schedule 6 General savings, transitional and other provisions**

266. Schedule 6 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.
267. 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 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* NSW.**

# 11. Water Industry Competition Amendment Bill

Date introduced	20 October 2011
House introduced	Legislative Council
Minister responsible	The Hon. Greg Pearce
Portfolio	Minister for Finance and Services

## PURPOSE AND DESCRIPTION

268. The objects of this Bill are as follows:

- (a) to amend the *Water Industry Competition Act 2006*:
- (i) to provide that a licensed network operator is not required to hold a retail supplier's licence in addition to its network operator's licence in order to supply water or provide sewerage services to a public water utility; and
  - (ii) to enable retail suppliers' licences to be granted that authorise both the supply of water and the provision of sewerage services; and
  - (iii) to specify additional licensing principles to be taken into account when determining whether to grant licences or impose conditions on licences under the Act; and
  - (iv) to enable conditions to be imposed on retail suppliers' licences that authorise the supply of drinking water so as to promote the equitable sharing of the costs of water industry infrastructure that significantly contributes to water security; and
  - (v) to clarify the circumstances in which a licence may not be granted under the Act to a corporation because it is connected to a disqualified corporation; and
  - (vi) to confer certain powers of entry to land on certain licensed network operators and to provide for disputes and complaints about the exercise of such powers to be subject to the ombudsman scheme approved under the Act; and
  - (vii) to provide that generally water industry infrastructure is owned by the person that constructs or installs it or any person that subsequently acquires it; and
  - (viii) to make provision for savings and transitional matters consequent on the enactment of the proposed Act and a matter in the nature of statute law revision;
- (b) to amend the *Water Industry Competition (General) Regulation 2008*:
- (i) to require the Independent Pricing and Regulatory Tribunal to notify public water utilities about the making of certain kinds of applications for a licence under the *Water Industry Competition Act 2006* involving their water industry infrastructure, and
  - (ii) to extend transitional arrangements in relation to certain infrastructure that is currently exempt from licensing requirements under the *Water Industry Competition Act 2006*, and



- (iii) to enable transfer codes of conduct to be made that relate to public water utilities as well as to licensed retail suppliers, and
  - (iv) to rationalise and simplify certain prescribed conditions for licences granted under the *Water Industry Competition Act 2006*, and
  - (v) to make other amendments that are consequential on the amendments made to the *Water Industry Competition Act 2006* by the proposed Act,
- (c) to amend the *Local Government (General) Regulation 2005* to exempt certain licensees under the *Water Industry Competition Act 2006* from the requirement to obtain additional local council approval for certain activities that are already authorised by their licences.

## BACKGROUND

269. This Bill adds new licensing principles to the *Water Industry Competition Act 2006* with the stated aim of imposing conditions to ensure fair competition in the drinking water market and more consistent and streamlined requirements on licenses. The Bill also addresses a number of anomalies in the Act and removes duplication between that Act and the *Local Government Act 1993*.
270. Sydney Desalination Plant Pty Ltd has been granted both a network operator's licence and a retail supplier's licence under the Act, which has had the effect of introducing a new provider of bulk drinking water in the Sydney metropolitan market. The Bill has been introduced in anticipation of the Government fulfilling its election commitment to refinance the desalination plant.
271. The licensing principles include the promotion of policies set out in any prescribed water policy document, seeking to limit the potential for adverse financial implications for small retail customers and inserting a new head of power to enable conditions to be imposed on drinking water retail supply licences so as to promote the equitable sharing of the costs of water industry infrastructure that significantly contribute to water security. The Bill also imposes a licence condition requiring licensed network operators that are prescribed authorities to join the Energy and Water Ombudsman Scheme.

## OUTLINE OF PROVISIONS

272. Clause 1 sets out the name (also called the short title) of the proposed Act.
273. Clause 2 provides for the commencement of the proposed Act.

### **Schedule 1 Amendment of Water Industry Competition Act 2006 No 104**

274. Schedule 1 [1] provides that a licensed network operator is not required to hold a retailer supplier's licence in addition to its network operator's licence in order to supply water or provide sewerage services to a public water utility.
275. Schedule 1 [2] enables a single retail supplier's licence to be granted that authorises both the supply of water and the provision of sewerage services by the same licensee.
276. Schedule 1 [3] confirms that a reference to consumers in the licensing principles of the Act is a reference to consumers generally and not limited to the consumers of services to be provided by a proposed licensee.

277. Schedule 1 [4] and [5] provide for the following additional licensing principles to be taken into account when determining whether to grant a licence or impose conditions on a licence under the Act:
- (a) the promotion of policies set out in any prescribed water policy document (being a plan or other policy document concerning the use of water resources issued by or on behalf of the Government that is prescribed by the regulations),
  - (b) the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence,
  - (c) the promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.
278. Schedule 1 [6] provides that a licence may not be granted under the Act to a corporation that is a related entity (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a disqualified corporation only if the disqualified corporation would have a direct or indirect interest in, or influence on, the carrying out of the activities that the licence would authorise if granted. Currently, a corporation is prevented from being granted a licence simply because it is a related entity of a disqualified corporation.
279. Schedule 1 [28] makes a consequential amendment.
280. Schedule 1 [7] enables the Minister to impose certain conditions on a retail supplier's licence that authorises the licensee to supply drinking water. In the case of such a licence, the Minister may impose conditions that the Minister is satisfied promote the equitable sharing among public water utilities and licensed retail suppliers of drinking water of the costs of water industry infrastructure that significantly contributes to water security, including (but not limited to) the following:
- (a) a condition requiring the licensee to obtain a specified proportion of the water that it supplies under the authority of its licence by means of specified water industry infrastructure,
  - (b) a condition requiring the licensee to contribute to the costs of specified water industry infrastructure (whether or not it is used to provide the licensee with the water that it is authorised to supply under the licence) calculated in a specified manner and payable to a specified person or persons.
281. Schedule 1 [8] confers regulation-making powers on the Governor concerning the calculation of contributions for the purpose of imposing any such conditions.
282. Schedule 1 [9] makes it clear that nothing in Part 3 (Access to infrastructure services) limits the power of the Minister to impose conditions on a licence granted under the Act.
283. Schedule 1 [19] provides for the ombudsman scheme approved under the Act to extend to licensed retail suppliers who provide sewerage services (whether or not in combination with the supply of water) under their licences.
284. Schedule 1 [21] provides that generally water industry infrastructure is owned by the person that constructs or installs it or any person that subsequently acquires title to it, whether or not the land in, on, under or over which it is situated is owned by that person. It also provides that water industry infrastructure that a network operator's

licence authorises the licensee to construct, maintain or operate is not to be taken in execution of any judgment against a person (other than the owner of the infrastructure or the licensee) under any process of a court.

285. Schedule 1 [23] confers standard powers of entry to land on authorised licensed network operators in connection with the inspection, maintenance and repair of water industry infrastructure that the licensees are authorised to construct, maintain or operate under their licences.
286. Schedule 1 [27] defines an *authorised licensed network operator* to mean a licensed network operator that is a prescribed authority within the meaning of section 88A of the *Conveyancing Act 1919* and
287. Schedule 1 [29] inserts a definition of *land* for the purposes of the exercise of entry powers under the Act.
288. Schedule 1 [10]–[18] and [20] ensure that the ombudsman scheme approved under the Act will extend to disputes and complaints about the exercise of these powers by authorised licensed network operators.
289. Schedule 1 [22] makes a consequential amendment.
290. Schedule 1 [24] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
291. Schedule 1 [25] makes an amendment in the nature of statute law revision.
292. Schedule 1 [26] makes provision in relation to certain savings and transitional matters consequent on the enactment of the proposed Act.

## **Schedule 2 Amendment of other legislation**

### *2.1 Local Government (General) Regulation 2005*

293. Schedule 2.1 amends the Local Government (General) Regulation 2005 to exempt licensees under the *Water Industry Competition Act 2006* from being required to obtain additional local council approval under section 68 of the *Local Government Act 1993* for certain activities if those activities are already authorised to be carried out under the licensee's licence.

### *2.2 Water Industry Competition (General) Regulation 2008*

294. Schedule 2.2 [4] requires IPART to notify a public water utility about the making of an application for a licence under the *Water Industry Competition Act 2006* if the applicant proposes to connect to or use the water industry infrastructure of the utility.
295. Schedule 2.2 [3] makes a consequential amendment.
296. Schedule 2.2 [5]–[7]:
  - (a) provide for a current exemption from the licensing requirements of the *Water Industry Competition Act 2006* in connection with certain infrastructure set out

- in clause 19A of the Regulation to continue for an additional year (that is, until the end of 17 June 2013); and
- (b) provide that the continued exemption applies in relation to infrastructure regardless of when it was constructed or installed; and
  - (c) modify the time frame for compliance with a prescribed condition of a retail supplier's licence in its application to such infrastructure.
297. Schedule 2.2 [8] enables transfer codes of conduct to be made that relate to public water utilities as well as to licensed retail suppliers. A transfer code of conduct will be a code established by the Minister, by order published in the Gazette, for the transfer of water supplies or sewerage services to, from or between licensed retail suppliers or public water utilities (or both).
298. Schedule 2.2 [9] prescribes the *Metropolitan Water Plan* published by the New South Wales Government, as in force from time to time, for the purposes of one of the licensing principles to be inserted in the *Water Industry Competition Act 2006* by Schedule 1 [4] and [5].
299. Schedule 2.2 [10] removes a requirement under a current prescribed licence condition of a network operator's licence to publish the licensee's infrastructure operating plan and water quality plan on its website.
300. Schedule 2.2 [11] consolidates certain requirements under current prescribed licence conditions of retail suppliers' licences relating to the preparation and auditing of retail supply management plans and the publication of certain information by licensees on their websites. The consolidated requirements will enable a licensee to prepare a single retail supply management plan if the licensee both supplies water and provides sewerage services under its licence.
301. Schedule 2.2 [1], [2], [12] and [13] make consequential amendments.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Common law property rights*

302. In the second reading speech, the Minister noted that the Bill revises section 64 of the Act to clarify that water industry infrastructure is owned by the person who constructs or installs it, or any person who subsequently acquires it, even if the land over or under which the infrastructure passes is owned by another party.<sup>13</sup> This is to ensure that, at common law, infrastructure does not merge with the land in the event that, for example, a water industry competition licence is cancelled. The Minister noted that this is similar to provisions in other Acts governing public water utilities.<sup>14</sup>

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<sup>13</sup> The Hon. Greg Pearce, New South Wales, Legislative Council, *Parliamentary Debates (Hansard)*, 20 October 2011.

<sup>14</sup> The Bill notes that examples include:

- (a) Section 19 of the *Hunter Water Act 1991*
- (b) Section 21 of the *State Water Corporation Act 2004*
- (c) Section 37 of the *Sydney Water Act 1994*
- (d) Section 54 of the *Sydney Water Catchment Management Act 1998*

303. The Committee notes that the proposed amendments to section 64 seek to confirm that water industry infrastructure is owned by the person who constructs, installs or acquires it even if the land over or under which the infrastructure passes is owned by another party. This has the effect of confirming that the infrastructure is not a fixture at common law. The Committee considers that this is appropriate in the circumstances.

**The Committee notes that the proposed amendments to section 64 clarify that water industry infrastructure is owned by the person who constructs or installs it, or any person who subsequently acquires it, even if the land over or under which the infrastructure passes is owned by another party. The Committee considers that this is appropriate in the circumstances.**

### Trespass on personal rights and liberties: s8A(1)(b)(i) of the LRA

#### *Entry and Inspection of Property*

304. The Committee notes that the Bill provides for an authorised licensed network operator to enter any premises 'during daylight hours, except in emergencies' to carry out an inspection or maintenance work and to carry out necessary repair work [cl 23].

305. Reasonable force may be used for the purpose of gaining entry to any land.

306. While the Bill provides these broad powers to authorised licensed network operators in relation to private property rights, it also contains a number of safeguards, including:

- Providing written notice of the intention to enter the land, with the notice specifying the day on which the authorised agent intends to enter the land and provided at least two days before that day;
- That notice does not need to be provided in circumstances where entry to the land is made with consent of the occupier, or if entry is required urgently and there is written authority to enter without notice, or in circumstances where giving notice would defeat the purpose for which the power is to be exercised. Residential properties can only be entered with consent or under the authority conferred by a warrant of entry;
- The person entering the land must be in a possession of a certificate of authority that meets the prescribed requirements; and
- Providing that an authorised licensed network operator is to do as little damage as practicable and is to compensate all persons who suffer damage by the exercise of the functions set out in the Bill, with compensation to be made by reinstatement, repair, construction of works or payment.

**Given the public interest in ensuring that water industry infrastructure is appropriately inspected, maintained, repaired and that emergency work is undertaken when necessary - and the significant safeguards provided in the Bill - the Committee does not consider that the powers of entry and inspection unduly trespass on personal rights and liberties.**

## 12. Work Health and Safety Legislation Amendment Bill 2011

Date introduced	20 October 2011
House introduced	Legislative Council
Minister responsible	The Hon. Gregory Pearce MLC
Portfolio	Finance and Services

### PURPOSE AND DESCRIPTION

307. The purpose of this Bill is to amend the *Work Health and Safety Act 2011* ('the Act') to alter the commencement provision of the Act to provide for an alternative arrangement of commencement by proclamation.
308. In addition, the Act is to be amended in relation to incident notifications, the division of functions for different regulatory bodies, and the administrative arrangement for the appointment of inspectors.
309. The Act also amends the *Mine, Health and Safety Act 2004* in relation to the competence standards set by the Mining Competence Board for individuals working at mines and coal operations.
310. Lastly, the Act amends the *Coal Mine Health and Safety Act 2002* to abolish the Coal Competence Board and transfer its functions to the Mining Competence Board.

### BACKGROUND

311. In July 2008, all State and Territory governments entered into the Intergovernmental Agreement for Regulatory Reform on Occupational Health and Safety. The development of the model laws followed a comprehensive review of Australian's occupational health and safety laws by a review panel of independent experts.
312. Following extensive consultation with business, employer and union groups, as well as receiving submissions from the public, the national review made a number of detailed recommendations. Subsequently, Safe Work Australia commenced the development of the model *Work Health and Safety Act*.
313. The *Work Health and Safety Act* implements a nationally harmonised scheme for work health and safety legislation to be implemented across all Australian jurisdictions. NSW passed its *Work Health and Safety Act* in June 2011.
314. This Bill, meanwhile, provides for largely minor and machinery amendments to the principal Act, including allowing for a delay of the commencement date. There are also some machinery amendments to ancillary legislation.

315. The Government is also currently reviewing the model Work Health and Safety Regulations and stage one priority codes of practice with a view to implementing them by the intended 1 January 2012 commencement date.

## OUTLINE OF PROVISIONS

316. Clause 1 sets out the name (also called the short title) of the proposed Act.
317. Clause 2 provides for the commencement of the proposed Act on 1 January 2012 or on a later date to be appointed by proclamation (except for the amendment to the commencement proclamation of the WHS Act and the insertion of savings and transitional provisions in the Mine Health and Safety Act 2004, which will commence on the date of assent to the proposed Act).
318. The WHS Act is due to commence on 1 January 2012. Schedule 1 [1] provides that it may commence on that date or on such later day as appointed by proclamation before that date. Regulator The regulator under the WHS Act is the WorkCover Authority.
319. Schedule 1 [4] amends the definition of regulator to make it clear that the head of the Department of Trade and Investment, Regional Infrastructure and Services is the regulator in relation to matters or the exercise of a power or function concerning a mining workplace or a coal workplace. Mining and coal workplaces are regulated under the Mine Health and Safety Act 2004 and the Coal Mine Health and Safety Act 2002, respectively.
320. Schedule 1 [3] provides that the term member of staff of a regulator includes, in the case of the head of the Department of Trade and Investment, Regional Infrastructure and Services, a member of staff of that Department.
321. Schedule 1 [8], [10] and [14] are consequential amendments.
322. Schedule 1 [13] authorises the sharing of information between the two regulators and members of staff of the regulators in certain circumstances.
323. Schedule 1 [6] authorises the regulator to delegate powers and functions under the WHS Act to an authorised person (that is, a member of staff of the regulator or person of a class prescribed by the regulations or a class approved by the regulator).
324. Schedule 1 [2] updates the definition of inspector to include a person deemed to be an inspector under Part 9 of the WHS Act.
325. Schedule 1 [7] and [16] are consequential amendments.
326. Schedule 1 [12] provides that a Minister of a State or the Commonwealth who makes decisions that affect the business or undertaking of a public authority is not taken to be an officer of that public authority for the purposes of the WHS Act.
327. Schedule 1 [5] requires a person who conducts a business or undertaking to notify the regulator of a notifiable incident arising out of the conduct of the business or undertaking even if the person has complied with the notification requirements under the Workplace Injury Management and Workers Compensation Act 1998 as an employer of an injured worker.

328. Schedule 1 [11] is consequential on an amendment to be made by Schedule 4 to the Criminal Procedure Act 1986 that confers summary jurisdiction on the District Court in connection with proceedings for certain offences under the WHS Act.
329. Schedule 1 [9] and [18] are law revision amendments.
330. Schedule 1 [15] makes further provision in relation to the power to make regulations of a savings or transitional nature consequent on the enactment of the WHS Act. The regulation-making power is expanded to authorise the making of regulations that can override provisions of the WHS Act.
331. Schedule 1 [17] enables regulations to be made in relation to the continued operation of regulations made under the Occupational Health and Safety Act 2000 that will be repealed on the commencement of the WHS Act.
332. Schedule 1 [19] contains savings and transitional provisions consequent on the enactment of the WHS Act and amendments to be made to the WHS Act by the Bill.
333. Schedule 2 [5] abolishes the Metalliferous Mines and Extractive Industries Competence Board and constitutes the Mining Competence Board as a body corporate with similar functions. The Mining Competence Board will also have functions under the Coal Mine Health and Safety Act 2002 in relation to competence standards for persons working at coal operations.
334. Schedule 2 [6] provides for the membership of the Mining Competence Board. Schedule 2 [1]–[4], [7] and [8] are consequential amendments.
335. Schedule 2 [9]–[13] give the Mining Competence Board the power to make various orders in relation to certificates of competence for people working in mines subject to any orders of the Minister or provisions of the regulations.
336. Schedule 2 [14] enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act. Schedule 2 [15] contains savings and transitional provisions in relation to the abolition of the Metalliferous Mines and Extractive Industries Competence Board and the creation of the Mining Competence Board.
337. Schedule 3 [2] abolishes the Coal Competence Board. The Mining Competence Board established under the Mine Health and Safety Act 2004 (as amended by Schedule 2 to the proposed Act) will have functions similar to the abolished Board in relation to competence standards for persons working at coal operations.
338. Schedule 3 [1] and [3] are consequential amendments.
339. Schedule 3 [4] enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act. Schedule 3 [5] contains savings and transitional provisions relating to the abolition of the Coal Competence Board.
340. Schedule 4 makes amendments to various Acts as a consequence of the enactment of the proposed Act and the WHS Act.



## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by Proclamation*

341. The Bill proposes to amend the commencement date of most of the *Work Health and Safety Act* from 1 January 2011 to '1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012'. This removes the certainty previously provided for the Act to commence complete application from 1 January 2012 to any date from 1 January 2012. The Committee will always be concerned where Bills are to commence operation on a date unspecified at the time of passage.
342. However, the Committee understands that it is still the intention of the Government to commence complete application of the Act on 1 January 2012, as is the intention of all other State and Territory jurisdictions, but has provided for this amendment as a contingency should any delay be required.
343. The Committee appreciates that this legislation forms part of a nationwide scheme to introduce uniform work health and safety laws, and the nature of cooperative federalism will at times affect the commencement date of legislation introduced in NSW.

**The Bill proposes to amend the commencement date of most of the *Work Health and Safety Act* from 1 January 2011 to '1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012'.**

**However, the Committee understands that it is still the intention of the Government to commence complete application of the Act on 1 January 2012, as is the intention of all other State and Territory jurisdictions, but has provided for this amendment as a contingency should any delay be required.**

## Part Two - Regulations

# 1. Proposed Postponement of the Repeal of the Aboriginal Land Rights Regulation 2002

### BACKGROUND

- a. By correspondence received 31 October 2011, the Minister for Aboriginal Affairs advised the Committee of the intention to postpone the repeal of the above regulation.

### COMMENT

- b. The postponement of the repeal of the above regulation is proposed for the fifth and final time.
- c. The regulation is made under the Aboriginal Land Rights Act 1983.
- d. The Minister advised the Committee that the Aboriginal Land Rights Act and the Aboriginal Land Rights Regulation would be reviewed after December 2011. The postponement of the repeal of the Regulation would allow an adequate timeframe for a comprehensive review.

### CONCLUSION

**That the Committee writes to the Minister for Aboriginal Affairs to advise that it does not have any concerns with the postponement of the repeal of the regulation.**

# Appendix One – Index of Ministerial Correspondence on Bills

The Committee currently has no Ministerial correspondence in respect of Regulations.

## 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.