



PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 26/55 - 16 October 2012



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

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2012, viii, 26p 30 cm

Chair: Mr Stephen Bromhead MP

16 October 2012

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 26 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 26 of 55

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

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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. LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (KINGS CROSS AND RAILWAYS DRUG DETECTION) BILL 2012

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

Personal Integrity

The Committee is concerned that authorising the use by police officers of dogs for general drug detection may infringe on the rights of individuals to not have their physical space encroached upon. The Committee refers to Parliament whether these provisions trespass on individual rights and liberties.

2. SNOWY MOUNTAINS CLOUD SEEDING TRIAL AMENDMENT BILL 2012

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

3. STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2012

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

Retrospectivity

The Committee will always seek to comment when a Bill includes a clause that operates retrospectively. However, as this clause seeks to clarify a position in law – that fixed and floating charges are not mortgages – the Committee makes no further comment on this issue.

As noted above, the Committee comments on Bills that have a retrospective effect. However, as the retrospective operation of this Bill will have the effect of enabling a larger number of people to access a benefit the Committee makes no further comment.

In keeping with the Committee's comments above, the Committee comments on Bills that have retrospective effect. However, the retrospective application of amendments to section 12 relates to agreements that may be entered into and is not coercive. As such, the Committee makes no further comment on this issue.

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

Calculation by Minister

The Committee notes that the amendment that provides the Minister with the power to diverge from the current calculation appears reasonable in circumstances where data is not available from the Australian Statistician. However, the Committee is concerned that the Minister will also have the power to use an alternative calculation "for any other reason". Whilst the Committee notes that the amount of the alternative calculation is to be calculated with regard to "such information as was reasonable available", the Committee refers to Parliament whether providing the Minister with the power to use an alternative calculation in circumstances when the data from the Australian Statistician is available is appropriate.

Extension of legislative scheme

The Committee notes that the Bill provides the Chief Commissioner with the power to extend the period of time during which the foundations of a house may commence and still qualify for the scheme, but does not provide criteria or a reasonableness test with respect to this power. However, as this power is not coercive the Committee makes no further comment with respect to this issue.

PART TWO - REGULATIONS

1. HOME BUILDING ACT AMENDMENT (EXEMPTION) REGULATION 2012

That the objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Delegation of Legislative Power

The Committee acknowledges the purpose of the regulation, and does not raise any issues with respect to its content. However, the Committee notes that the effect of the regulation is to limit the operation of the source from which it obtains its authority.

The Committee has been advised that as a general rule, providing the principal legislation permits it, amendments are made by an amending regulation as it is more straightforward and much quicker than amending the Act. In the current instance this was desired as a quick solution was necessary to enable building work to continue.

The Committee acknowledges that the principal legislation permits amendments to be made by regulation but also considers that, where appropriate, amendment of the principal act would be preferred as a more appropriate and effective means of achieving the objects that are set out by the regulation.

The Committee makes no further comment.

Part One - Bills

1. Law Enforcement (Powers and Responsibilities) Amendment (Kings Cross and Railways Drug Detection) Bill 2012

Date introduced	19 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to authorise the use by police officers of dogs for general detection, without first requiring a warrant, in public places in the Kings Cross precinct. The Bill also adds additional train lines on which police officers may use dogs for that purpose so that all suburban train lines on which CityRail operates train services are covered.

BACKGROUND

2. This Bill was prompted by media attention at the increase in violence, and in particular drug related violence, in the Kings Cross precinct.
3. This Bill updates the train lines on which police may now use drug detection dogs to include the entire CityRail network, the first time the network list has been updated in a decade.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Schedule 1 Amendment Law Enforcement (Powers and Responsibilities) Act 2002 No 103 amends section 148 of the Act to authorise the use by police officers of dogs for general drug detection (without warrant) on the streets and other public places in the Kings Cross precinct. Currently, police officers are authorised to use dogs for that purpose throughout the State in or at the entry to hotels and other licensed liquor establishments, sporting and other entertainment venues, public passenger vehicles on routes prescribed by regulation and tattoo parlours. The Kings Cross precinct is defined by reference to the precinct described in Schedule 2 to the *Liquor Act 2007*.

ISSUES CONSIDERED BY COMMITTEE

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

Personal Integrity

7. The Bill proposes to extend police search and detection powers to be applicable on all parts of the CityRail network, and in defined areas of the Kings Cross precinct. The proposed amendment extends an existing power for police to use drug detection dogs.

The Committee is concerned that authorising the use by police officers of dogs for general drug detection may infringe on the rights of individuals to not have their physical space encroached upon. The Committee refers to Parliament whether these provisions trespass on individual rights and liberties.

2. Snowy Mountains Cloud Seeding Trial Amendment Bill 2012

Date introduced	19 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Stoner MP
Portfolio	Minister for Trade and Investment Minister for Regional Infrastructure and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to replace the current trial of cloud seeding operations in the Snowy Mountains area, as provided for in the Snowy Mountains Cloud Seeding Trial Act 2004 (the Principal Act), with a scheme to provide for ongoing cloud seeding operations in a larger part of the Snowy Mountains area. In particular, the Bill:
 - (a) authorises cloud seeding operations (being operations designed to increase precipitation by the discharge of a seeding agent into passing clouds) to be carried out by or on behalf of Snowy Hydro Limited (SHL) subject to specified conditions, and
 - (b) requires the use of approved seeding agents, approved tracing agents and approved methods of discharge in the cloud seeding operations, specifies certain approved agents and methods and sets out the approval process for other agents and methods, and
 - (c) requires the preparation and approval (by the Minister for Planning and Infrastructure and the Minister for the Environment (the relevant Ministers)) of an environmental management plan (an EMP) relating to the cloud seeding operations, and requires SHL to prepare a report on its cloud seeding operations each year, and
 - (d) provides that the Environment Protection Authority (the EPA) is to review each such report, and cloud seeding operations in general from time to time, and report any findings, and make any necessary recommendations, to the Board of the EPA and the relevant Ministers, and
 - (e) extends the operation of Chapter 7 of the Protection of the Environment Operations Act 1997 (Investigation) to the exercise of powers in connection with the Principal Act, and
 - (f) enables the making of regulations relating to fees payable by Snowy Hydro Limited to the National Parks and Wildlife Service in connection with cloud seeding operations, and
 - (g) makes other minor and consequential amendments.

BACKGROUND

2. The Minister for Trade and Investment, the Hon. Andrew Stoner MP, stated in his second reading speech, that the Bill follows:

eight years of the cloud seeding trial, known as the Snowy Precipitation Enhancement Research Project. The aim of the research project was to increase snowfall from clouds passing over the target area in the Snowy Mountains, to assess the effectiveness and reliability of precipitation enhancement technology in the region and to identify any adverse environmental impacts. The trial research project has shown a statistically significant 14 per cent average increase in snow under suitable operating conditions.

3. The Minister continued:

After extensive review, environmental monitoring and analysis over eight years, no evidence of negative environmental impacts caused by the seeding agent silver iodide and the tracer agent indium sesquioxide have been found.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Snowy Mountains Cloud Seeding Trial Act 2004 No 19

6. Schedule 1 [1] and [2] amend the long title and name of the Principal Act to reflect the proposed replacement of trial cloud seeding operations in the Snowy Mountains area with a scheme for ongoing cloud seeding operations. The Principal Act currently provides for the Natural Resources Commission to play a role in the trial cloud seeding operations. Schedule 1 [6], [13] and [15] make amendments as a consequence of the removal of the role of the Natural Resources Commission following the proposed end to the trial operations.
7. Schedule 1 [9] replaces the provision that currently permits trial cloud seeding operations to be carried out by or on behalf of SHL in the “target area” (being an area in the Snowy Mountains shown on a map in Schedule 1 to the Principal Act) with a provision providing for ongoing cloud seeding operations to be carried out by or on behalf of SHL. Such ongoing operations are subject to conditions set out in the provision, including conditions that:
- (a) the operations primarily target land within the Snowy water catchment (therefore expanding the area to be covered by the operations), and
 - (b) the operations be carried out only if there is an approved EMP and only in accordance with that EMP, and
 - (c) the operations use only an approved seeding agent, approved tracing agent and approved method, and
 - (d) the discharge of the seeding agent is carried out at a time when increased precipitation in the Snowy water catchment is likely to fall as snow at an elevation above 1400 metres from the mean sea level, and

- (e) SHL must consult with the National Parks and Wildlife Service before carrying out any new operations involving a land-based method of discharge of seeding or tracing agent within any area of land reserved under the National Parks and Wildlife Act 1974, and
 - (f) SHL must consult with the National Parks and Wildlife Service before installing, or carrying out major modifications to, any facilities required to carry out cloud seeding operations within any area of land reserved under the National Parks and Wildlife Act 1974, and
 - (g) installation of new facilities for cloud seeding operations must not be carried out within any wilderness area (within the meaning of the National Parks and Wildlife Act 1974), and
 - (h) seeding agent is not to be discharged from land-based generators in any wilderness area.
8. Schedule 1 [9] also inserts new provisions concerning approved seeding and tracing agents and approved methods of discharge of those agents. The Principal Act currently provides for the use of silver iodide as a seeding agent, indium sesquioxide as a tracing agent and the discharge of these agents only by land-based aerosol generators. The new provisions enable the approval, by the relevant Ministers, of additional agents as seeding agents and tracing agents and the use of aerial methods of discharge of approved agents.
9. Schedule 1 [10] inserts a new provision dealing with the approval of environmental management plans. Such a plan must be in place before cloud seeding operations can be undertaken. The provision provides that the relevant Ministers may, on application by SHL, approve an EMP in relation to the cloud seeding operations authorised by the Principal Act. The EMP is to comply with any requirements imposed by the Ministers and notified to SHL. The relevant Ministers may also require an application for approval of an EMP to be accompanied by an independent scientific assessment of any changed cloud seeding operations. The provision also deals with the amendment, replacement and revocation of an EMP. Schedule 1 [10] also inserts a new provision outlining a review process in relation to environmental management plans.
10. Schedule 1 [11] and [12] provide for the suspension or termination of the authorisation of cloud seeding operations if SHL has not complied with any conditions of the authorisation conferred by the Principal Act or any other requirement imposed by or under the Principal Act or if SHL has not complied with a requirement made of it under Chapter 7 of the Protection of the Environment Operations Act 1997 in connection with a review carried out by the EPA under the Principal Act.
11. Schedule 1 [14] inserts a new Part (proposed sections 6A, 6B and 6C) dealing with reporting and review requirements. Proposed section 6A requires an annual report to be provided on the cloud seeding operations of SHL to the relevant Ministers and to the EPA. Proposed section 6B provides for the EPA to have an ongoing role in the oversight of cloud seeding operations by requiring the EPA to review each report on cloud seeding operations provided by SHL and report the findings of the review, and make any necessary recommendations following the review, to the Board of the EPA and the relevant Ministers. The EPA may also review and report on the cloud seeding operations

generally from time to time. Proposed section 6C extends the operation of Chapter 7 of the Protection of the Environment Operations Act 1997 (Investigation) to the exercise of powers in connection with the Principal Act.

12. Schedule 1 [16] and [17] amend the provision that currently provides for no compensation to be payable by the State as a result of the enactment of the Principal Act or the carrying out of cloud seeding operations to ensure it extends to anything resulting from the amendment of the Principal Act or the effect of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth on the authorised cloud seeding operations.
13. Schedule 1 [18] inserts a provision enabling the delegation of a Minister's functions under the Principal Act or the regulations to a member of the Government Service.
14. Schedule 1 [5] makes a consequential amendment.
15. Schedule 1 [19] enables regulations to be made in relation to fees payable by Snowy Hydro Limited to the National Parks and Wildlife Service in connection with cloud seeding operations.
16. Schedule 1 [20] omits a map that is made redundant as a consequence of the amendments in Schedule 1 [9] and inserts savings and transitional provisions.
17. Schedule 1 [4] and [8] make amendments consequential on the proposed replacement of trial cloud seeding operations in the Snowy Mountains area with ongoing cloud seeding operations. Schedule 1 [3] and [7] make other consequential amendments, including by inserting new definitions.

Schedule 2 Amendment of other Acts

18. Schedule 2.1 makes amendments to the National Parks and Wildlife Act 1974 as a consequence of the amendment in Schedule 1 [19].
19. Schedule 2.2 makes an amendment to the Protection of the Environment Operations Act 1997 as a consequence of the insertion of proposed section 6C into the Principal Act.

ISSUES CONSIDERED BY COMMITTEE

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

3. State Revenue Legislation Further Amendment Bill 2012

Date introduced	20 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

- (i) to clarify the liability to duty on a transfer of a partnership interest that occurs as a result of the retirement of a partner or the admission of a new partner, and
- (ii) to provide a duty concession in respect of transfers relating to managed investment schemes, and
- (iii) to exempt from duty an application to register a new heavy vehicle trailer, and
- (iv) to make other minor miscellaneous amendments, including amendments of a statute law revision nature,

(b) to amend the *Health Insurance Levies Act 1982* to reflect changes to reports published by the Australian Statistician,

(c) to amend the *Regional Relocation (Home Buyers Grant) Act 2011*:

- (i) to extend the scheme to a purchase of vacant land in a regional area that is planned to be the site of a new home, and
- (ii) to extend the scheme to the purchase of a long term lease of land in a regional area, and
- (iii) to make other minor changes to the scheme,

(d) to amend the *Taxation Administration Act 1996*:

- (i) to clarify the power of the Chief Commissioner of State Revenue (the *Chief Commissioner*) to make compromise assessments, and
- (ii) for statute law revision purposes,

(e) to make minor miscellaneous amendments to other Acts.

BACKGROUND

2. Periodically, the Treasurer introduces Bills in relation to the legislation governing taxes and grants administered by the Office of State Revenue.
3. This Bill responds to legislative uncertainty arising from recent court decisions, addresses the registration of heavy vehicles in New South Wales, reviews the administration of health insurance levies, and clarifies and extends eligibility for the Regional Relocation Grant.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Duties Act 1997 No 123

Partnership interests

6. Schedule 1 [1] and [2] clarify the arrangements for the charging of duty on a transfer of a partnership interest that occurs as a result of the retirement of a partner in an existing partnership or the admission of a new partner to an existing partnership. The changes are made following the decision of the High Court in *Commissioner of State Taxation v Cyril Henschke Pty Ltd* [2010] HCA 43. In that case, the Court made it clear that when a partner retires from an existing partnership, or a new partner is admitted to an existing partnership, the existing partnership is dissolved. Any partnership formed as a consequence of the retirement or admission is a new partnership.
7. The amendments provide that a transfer of a partnership interest is taken to occur if a new partnership is formed because of the retirement of a partner in an existing partnership or the admission of a new partner to an existing partnership. Generally, duty is chargeable as follows:
 - (a) in the case of a new partnership formed on the retirement of a partner in an existing partnership, as if the retiring partner's partnership interest were transferred to the partners in the new partnership,
 - (b) in the case of a new partnership formed on the admission to an existing partnership of a new partner, as if the new partner's partnership interest were transferred to the partners in the new partnership. Accordingly, the partners in the new partnership are liable as transferees for the duty chargeable. No duty is chargeable under the new provisions on the retirement of a partner from an existing partnership if the partnership is wound up on that retirement (sometimes referred to as a general dissolution of the partnership).
8. Schedule 1 [4] changes the method by which partners are given a credit on duty paid in respect of a transfer of a land-related asset that is made as result of a transfer of a partnership interest. Under the new method, the dutiable value of the partnership interest transferred is reduced by the dutiable value of the land-related asset transferred, but only if ad valorem duty has been paid on the transfer of the land-related asset. A minimum duty of \$50 is payable in respect of the transfer of the partnership interest.
9. Schedule 1 [10] is a consequential amendment.

Managed investment schemes

10. Schedule 1 [5] provides for the charging of duty of \$50 in respect of:
- (a) a transfer of dutiable property from a trustee of a wholly owned sub-trust of a managed investment scheme to a custodian of the trustee of that wholly owned sub-trust, or
 - (b) a transfer of dutiable property from a custodian of the trustee of a wholly owned sub-trust of a managed investment scheme to that trustee.

New heavy vehicle trailers

11. Schedule 1 [9] exempts new heavy vehicle trailers from vehicle registration duty. A heavy vehicle trailer is new if it has not been previously registered in the State or another Australian jurisdiction.

Other amendments

12. Schedule 1 [6] omits an unnecessary cross-reference, to ensure that a declaration of trust over marketable securities that are not dutiable property under any provision of the *Duties Act 1997* is not liable for duty under section 58 of the *Duties Act 1997*.
13. Schedule 1 [7] updates a provision as a consequence of the proposed abolition of duty on all transfers of marketable securities.
14. Schedule 1 [8] ensures that an interpretative provision of the *Personal Property Securities (Commonwealth Powers) Act 2009* does not affect the operation of the provisions of the *Duties Act 1997* relating to mortgage duty.
15. Schedule 1 [14] and [16] allow the New Zealand Exchange to be treated the same as an exchange of the World Federation of Exchanges for duties purposes. Schedule 1 [15] inserts a definition of *New Zealand Exchange*.
16. Schedule 1 [3], [12] and [14] update references to the Australian Securities
17. Exchange (formerly the Australian Stock Exchange).
18. Schedule 1 [13] updates certain definitions to correct cross-references.
19. Schedule 1 [17] omits a redundant definition.
20. Schedule 1 [18] puts it beyond doubt that plant affixed to land under the authority of a mining lease or mineral claim is treated as a fixture for duties purposes (and, accordingly, included in the dutiable value of the land).
21. Schedule 1 [11] provides for transitional matters.

Schedule 2 Amendment of Health Insurance Levies Act 1982 No 159

22. Schedule 2 [1]–[10] make amendments that are consequential on changes to the publications of the Australian Statistician. The current provisions provide for the annual adjustment of the health insurance levy based in part on statistics published by the Australian Statistician. Some of those statistics are now published on a biannual basis, rather than on a quarterly basis. The amendments update the adjustment provisions accordingly.

23. The amendments change the annual adjustment date from 1 February to 1 April (as the relevant biannual report is published in February). Consequential changes are made to CPI adjustment provisions.
24. The amendments also permit the annual percentage change for a particular year to be prescribed by order of the Governor if the Minister certifies that it is necessary to prescribe the rate because the statistical information required to calculate the rate referred to in the *Health Insurance Levies Act 1982* is not available, or for any other reason.
25. Schedule 2 [11] provides for transitional matters, including a one-off adjustment to the method of calculating the annual adjustment, to reflect the changes in reporting periods.

Schedule 3 Amendment of Regional Relocation (Home Buyers Grant) Act 2011 No 26

Extension of grant scheme to purchases of vacant land

26. Schedule 3 [3], [6] and [11] allow an application for the regional relocation grant to be made in respect of a purchase of vacant land in a regional area, that is intended to be the site of a home. The laying of the foundations of the regional home must commence within 26 weeks (or such longer period as the Chief Commissioner may approve) after the purchase is completed. Schedule 3 [7] provides that the value of the land must not exceed \$450,000. Schedule 3 [1], [4], [5], [8], [9] and [13] are consequential amendments.

Extension of grant scheme to long term leases

27. Schedule 3 [12] allows the transfer of, or a grant of, a long term lease in respect of a regional home to be treated as a purchase of a regional home. Accordingly, the purchase of the lease can qualify as a regional relocation. A lease of land is a long term regional home to be treated as a purchase of a regional home. Accordingly, the purchase of the lease can qualify as a regional relocation. A lease of land is a long term lease if and only if the Chief Commissioner is satisfied that the lease gives the lease holder a degree of permanency and security of tenure that is equivalent to an estate in fee simple in the land.

Other amendments

28. Schedule 3 [10] provides that, if an application for a regional relocation grant is made by 2 or more persons as joint owners of a regional home, only one of them has to relocate from a metropolitan area. Schedule 3 [2] is a consequential amendment.
29. Schedule 3 [16] provides for transitional matters.
30. Schedule 3 [15] permits the making of savings and transitional regulations as a consequence of any amendments to the *Regional Relocation (Home Buyers Grant) Act 2011*.
31. Schedule 3 [14] is a consequential amendment.

Schedule 4 Amendment of Taxation Administration Act 1996 No 97

32. Schedule 4 [1] makes it clear that the Chief Commissioner can make a compromise assessment, with the agreement of a taxpayer, in relation to taxpayer's liability for tax for the purpose of settling a dispute about taxation.
33. Schedule 4 [8] makes it clear that a decision not to make a compromise assessment cannot be the subject of an objection by the taxpayer. Schedule 4 [10] is a transitional provision.
34. Schedule 4 [2]–[7] update references to various government authorities and position holders, and remove redundant provisions.
35. Schedule 4 [9] permits the making of savings and transitional regulations as a consequence of any amendments to the *Taxation Administration Act 1996*.

Schedule 5 Amendments of other Acts

Land Tax Management Act 1956 No 26

36. Schedule 5.1 updates references to certain duty exemption and concession schemes.

State Owned Corporations Act 1989 No 134

37. Schedule 5.2 replaces a reference to the Treasury with a reference to the Department of Finance and Services, as a consequence of that Department being given responsibility for the administration of taxation legislation.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

38. Clause 8 of Schedule 1 of the Bill amends the *Duties Act 1997* by inserting a subclause at the end of section 205 which outlines that a clause of the *Personal Property Securities (Commonwealth Powers) Act 2009* does not apply, and is taken to have never applied, in respect of Chapter 7 of the *Duties Act 1997*, being the chapter on mortgages.

The Committee will always seek to comment when a Bill includes a clause that operates retrospectively. However, as this clause seeks to clarify a position in law – that fixed and floating charges are not mortgages – the Committee makes no further comment on this issue.

39. Clause 16 of Schedule 3 of the Bill amends the *Regional Relocation (Home Buyers Grant) Act 2011* to allow for the amendments made by the Bill to apply in respect of purchases commenced on or after 1 July 2011, thus having a retrospective effect.

As noted above, the Committee comments on Bills that have a retrospective effect. However, as the retrospective operation of this Bill will have the effect of enabling a larger number of people to access a benefit the Committee makes no further comment.

40. Clause 10 of Schedule 4 of the Bill amends the *Taxation Administration Act 1996* to allow for the amendment to 'compromise assessments', as outlined in section 12 of the Bill, to have effect before commencement of the amendment.

In keeping with the Committee's comments above, the Committee comments on Bills that have retrospective effect. However, the retrospective application of amendments to section 12 relates to agreements that may be entered into and is not coercive. As such, the Committee makes no further comment on this issue.

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

Calculation by Minister

41. Clause 10 of Schedule 2 of the Bill seeks to amend the *Health Insurance Levies Act 1982* by providing the Governor with the power to order an annual percentage change to the prescribed amount to be paid. The order may only be made if the Minister certifies to the Governor that the Minister considers the order to be necessary because the information that would normally dictate the percentage change is not available or for any other reason.

The Committee notes that the amendment that provides the Minister with the power to diverge from the current calculation appears reasonable in circumstances where data is not available from the Australian Statistician. However, the Committee is concerned that the Minister will also have the power to use an alternative calculation "for any other reason". Whilst the Committee notes that the amount of the alternative calculation is to be calculated with regard to "such information as was reasonable available", the Committee refers to Parliament whether providing the Minister with the power to use an alternative calculation in circumstances when the data from the Australian Statistician is available is appropriate.

Extension of legislative scheme

42. Clause 11 of Schedule 3 of the Bill amends the *Regional Relocation (Home Buyers Grant) Act 2011* so that the laying of foundations of a house regulated by the scheme must commence within 26 weeks or such longer period as the Chief Commissioner may approve.

The Committee notes that the Bill provides the Chief Commissioner with the power to extend the period of time during which the foundations of a house may commence and still qualify for the scheme, but does not provide criteria or a reasonableness test with respect to this power. However, as this power is not coercive the Committee makes no further comment with respect to this issue.

Part Two - Regulations

1. Home Building Act Amendment (Exemption) Regulation 2012

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to make it clear that the Crown is exempt from certain requirements of the *Home Building Act 1989* and the *Home Building Regulation 2004* in respect of community housing or public housing projects that were undertaken by companies that have since been placed into administration.
2. This Regulation is made under the *Home Building Act 1989*, including section 140 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

That the objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Delegation of Legislative Power

3. The *Home Building Act 1989* regulates residential building work in NSW. Under the Act, a person must have a contractor licence to contract, subcontract or advertise to do:
 - residential building work where the total cost of labour and materials is more than \$1,000;
 - electrical wiring work, plumbing, drainage and gas fitting work; and
 - air conditioning and refrigeration work.
4. The *Home Building Amendment (Exemption) Regulation 2012* clarifies that the Crown is exempt from certain requirements of the *Home Building Act 1989* and the *Home Building Regulation 2004* in respect of community housing or public housing projects that were undertaken by companies that have since been placed into administration.
5. The Committee has been advised that this amendment is required as some building companies that were engaged to complete public housing projects have recently collapsed. In order for the Crown to complete these projects, an amendment to exempt the Crown from certain requirements of the Act, such as the licensing requirements, is considered appropriate.
6. The Committee notes that the exemption is only in respect of a certain class of building project and does not exempt the Crown in respect of contraventions of the Act concerning electrical wiring.
7. The Committee also notes that sub-section 140(2)(k) of the *Home Building Act 1989* provides that regulations may be made in respect of exemptions from requirements of this Act or the regulations.

The Committee acknowledges the purpose of the regulation, and does not raise any issues with respect to its content. However, the Committee notes that the effect of the regulation is to limit the operation of the source from which it obtains its authority.

The Committee has been advised that as a general rule, providing the principal legislation permits it, amendments are made by an amending regulation as it is more straightforward and much quicker than amending the Act. In the current instance this was desired as a quick solution was necessary to enable building work to continue.

The Committee acknowledges that the principal legislation permits amendments to be made by regulation but also considers that, where appropriate, amendment of the principal act would be preferred as a more appropriate and effective means of achieving the objects that are set out by the regulation.

The Committee makes no further comment.

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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