



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

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Garry Edwards MP, Member for Swansea Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon. Shaoquett Moselmane MLC The Hon. Dr Peter Phelps MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2096 / 02 9230 2031
FACSIMILE	02 9230 3052
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

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. CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT (STATUTORY REVIEW) BILL 2014

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

Inconsistent Sentencing

The Committee notes that these provisions may require individuals from a foreign jurisdiction to be registrable persons and be subject to reporting requirements not required of individuals who have committed similar offences in NSW. This raises the prospect of inconsistent sentencing. The Committee makes no further comment.

Privacy

The Committee notes that the reporting of the personal information of a child by a registrable person may be an impact on the privacy rights of the child concerned. However, given the limited amount of information to be disclosed, together with the welfare and safety objectives of the relevant provision, the Committee does not consider it to be unreasonable in the circumstances.

Excessive Punishment

The Committee notes that the substantial increase to the maximum penalty applicable for an unauthorised name change, including the introduction of a custodial sentence, may be deemed an excessive punishment that is disproportionate to the offence committed. The Committee refers this matter to Parliament for its further consideration as a possible trespass on personal rights and liberties.

Oppressive Official Powers

The Committee notes that standardising the number of days after which a registrable person must report changes of personal circumstances to seven days, may be burdensome on affected individuals. This is particularly the case given it is a reduction in some circumstances from the current 28 days. The Committee makes no further comment.

2. MINING AMENDMENT (SMALL-SCALE TITLE COMPENSATION) BILL 2014

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

Retrospectivity

The Committee notes that the Bill retrospectively validates a former Government scheme for the collection of money from certain holders of small scale titles. The Committee is generally concerned when legislative provisions are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law which allows people to order their affairs according to what the law is. However, as the amendment appears to correct a legislative oversight, and not to retrospectively impose new obligations or remove rights or liberties, the Committee makes no further comment.

Access to Justice

The Committee notes the Bill introduces mandatory conciliation and arbitration for proceedings relating to small scale titles, and that there is no automatic right for parties' to litigate these matters. This could be seen to limit parties' access to justice. Nonetheless, the Second Reading Speech indicates the changes aim to provide a more informal, cost-effective way to deal with disputes given a current general unwillingness to elevate local disputes to court. In addition, parties can still apply to have matters heard in Court. In the circumstances, the Committee makes no further comment.

Exclusion of Review Rights

The Committee notes that no appeal lies against a determination of compensation made under the Bill by the Minister or the Land and Environment Court. Hence, the compensation rights of landholders who have small-scale titles granted over their land are dependent on non-reviewable decisions. The Committee refers this matter to Parliament for further consideration.

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

Commencement by Proclamation

The Committee prefers legislation of this kind, which impacts on rights to commence on a fixed date or on assent, not by proclamation.

Compensation and Levy set by Ministerial Order Published in Gazette

The Bill provides that the Minister may impose certain levies and set the amount of certain compensation payable by order published in the Gazette. The Committee considers that, to ensure Parliamentary oversight, levies and compensation amounts should be set by primary legislation, or at least by regulation, not by orders published in the Gazette. It appears that, unlike regulations, there is no requirement for orders published in the Gazette to be tabled in Parliament and they are not subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. The Committee refers this matter to Parliament for further consideration.

PART TWO – REGULATIONS

The Committee does not report on any Regulations in this Digest.

Part One - Bills

1. Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014

Date introduced	6 August 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Stuart Ayres MP
Portfolio	Minister for Police and Emergency Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make various amendments to the *Child Protection (Offenders Registration) Act 2000* as a result of a statutory review under section 26 of that Act. The proposed changes include the following:
 - (a) Including objects in the Act,
 - (b) Expanding the classes of registrable offences to include manslaughter of a child, wounding or grievous bodily harm of a child under 10 years of age, and abduction of a child,
 - (c) Increasing the time in which child protection registration orders can be made,
 - (d) Specifying matters that a court must take into account before making such an order,
 - (e) Requiring the Commissioner of Police to be notified when a registrable person who is a forensic patient is given regular unsupervised leave from detention,
 - (f) Updating the relevant personal information that must be reported by a registrable person,
 - (g) Clarifying the types of contact with children that a registrable person must report,
 - (h) Standardising the period in which reports must be made,
 - (i) Extending reporting obligations if a registrable person fails to comply with the obligations,
 - (j) Increasing the penalty and providing a defence in respect of offences relating to attempting to change a registrable person's name without the approval of the Commissioner of Police,
 - (k) Updating the list of scheduled agencies to account for changes to the government sector,

- (l) Collating provisions that deal exclusively with corresponding registrable persons,
- (m) Making other minor statute law revision amendments, and
- (n) Including savings and transitional provisions consequential on the proposed amendments.

BACKGROUND

2. This Bill introduces a series of amendments as part of a periodic review of the *Child Protection (Offenders Registration) Act 2000*. This review, headed by the Minister, received numerous submissions and engaged in a lengthy consultation process. This Bill gives effect to the various recommendations that emerged from that review.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Schedule 1 [3]–[5], [7] and [8] include a number of offences in the definition of Class 2 offence.
6. Most of these are merely transferred for convenience from the regulations (which currently prescribe a number of Class 2 offences). However, several new offences have been added including the offence of manslaughter (except as a result of a motor vehicle accident) where the victim is a child, an offence of wounding or causing grievous bodily harm with intent where the victim is a child under 10 years of age and the person committing the offence is not a child and an offence of child abduction where the person committing the offence has never had parental responsibility for the abducted child. Schedule 1 [18] permits child protection registration orders to be made in respect of the 3 new Class 2 offences even if a person was found guilty of the offence before the offence became a Class 2 offence (unless the person was a child at that time).
7. Schedule 1 [2] renumbers provisions within the definition as a consequence of the amendments made to it.
8. Schedule 1 [6] omits a reference to a repealed provision.
9. Schedule 1 [10] and [11] update a number of provisions to add a reference to orders under section 24 (1) (b) of the Mental Health (Forensic Provisions) Act 1990 where there are references to similar orders under that Act. Orders under that paragraph are made with respect to the custody of a person by a court when nominating a limiting term under section 23 of that Act.
10. Schedule 1 [11] also updates a definition of relevant personal information and includes definitions (interstate Registrar, NSW Registrar and supervised sentence) that have been moved for convenience to section 3 of the Principal Act from other provisions of that Act.
11. Schedule 1 [20] and [21] make consequential amendments.

12. Schedule 1 [12]–[15] remove references to repealed provisions, insert references to replacement provisions and include a note to explain that, because of savings and transitional provisions, offences under those repealed provisions still have to be taken into account.
13. Schedule 1 [17] increases, from 21 days to 60 days, the time in which child protection registration orders can be made after the conclusion of criminal proceedings. Before a court can make child protection registration orders in respect of a person it is required to determine whether a person poses a risk to the lives or sexual safety of one or more children, or children generally.
14. Schedule 1 [19] sets out matters that a court is to take into account when making that determination.
15. Schedule 1 [22] and [23] require a supervising authority (in this case the Secretary of the Ministry of Health) to give written notice to the Commissioner of Police as soon as practicable before or after a registrable person is permitted to be absent, on a regular and unsupervised basis from the place at which the person is detained, because of an order under section 49 of the Mental Health (Forensic Provisions) Act 1990. Such an order does not mean that the person ceases to be in government custody, therefore no notice is required to be given to the registrable person under section 6 (2) of the Principal Act. The Principal Act requires a registrable person to make periodic and other reports to the Commissioner of Police. The regulations under the Principal Act may make provisions as to what constitutes absence on a regular and unsupervised basis.
16. Schedule 1 [25] requires a registrable person to report as relevant personal information details of any motor vehicle hired by the person.
17. Schedule 1 [26] clarifies that a requirement to report details of any telecommunications service includes a requirement to report the phone numbers that relate to that service.
18. Schedule 1 [27] clarifies the types of contact with children that must be reported by a registrable person as relevant personal information. These are contact in the course of supervising or caring for a child, visiting or staying at a household where a child is present, exchanging contact details with a child or attempting to befriend a child. A court that is sentencing a person for a registrable offence (or a court that is imposing a child protection registration order on the person) may modify the person's reporting obligations in respect of contacts occurring before the person is 18 years of age if the person is under 18 years of age and the court is of the view that the modification is appropriate taking into account the person's educational and other needs. The court that made the modification, the Local Court or the Children's Court, may at a later date and on the application of the Commissioner of Police, make further modifications to the person's reporting obligations to require the information to be reported. Schedule 1 [24], [28] and [32] make consequential amendments.
19. Schedule 1 [31] and [33] reduce to 7 days the period in which a registrable person must report a change in the person's relevant personal information.
20. Schedule 1 [34] requires a registrable person who has left the State to report the person's return to the State within 7 days after entering and remaining in the State for

14 days. A registrable person who has reported that the person intends to leave the State must report any change to that intention within 7 days.

21. Schedule 1 [36] provides for a registrable person's reporting obligations to be extended to account for periods during which the person fails to make an initial or annual report. The period to be added commences one month after the relevant report was due to be made and continues until a report is made.
22. Schedule 1 [38] collects all provisions that deal only with corresponding registrable persons into one Division for convenience. Schedule 1 [9], [16], [29], [30], [35] and [37] make consequential amendments.
23. Schedule 1 [40] provides that a person is not guilty of the offence of applying to change the name of a registrable person without first obtaining the written approval of the Commissioner of Police if the person has a reasonable excuse. Schedule 1 [41] increases from \$550 to 5 years imprisonment or \$55,000 (or both) the penalty for that offence. Schedule 1 [46] provides that the offence is not to be automatically tried summarily (Schedule 2 provides for when the offence is to be tried summarily).
24. Schedule 1 [42] and [43] remove an unnecessary definition (change of name application).
25. Schedule 1 [39] is consequential on the amendments made by Schedule 1 [11], [42] and [43].
26. Schedule 1 [44] and [45] remove an unnecessary definition (child protection prohibition order).
27. Schedule 1 [47] updates the list of scheduled agencies to take account of changes made to the government sector. Scheduled agencies are permitted to collect, use and disclose personal information about registrable persons despite other privacy legislation. Schedule 1 [48] includes a number of savings and transitional provisions that are consequent on the other amendments made by the proposed Act.
28. Schedule 2 amends the Criminal Procedure Act 1986 to provide that an offence under section 19E of the Child Protection (Offenders Registration) Act 2000 may be dealt with summarily unless the prosecutor elects to have the offence dealt with on indictment.

ISSUES CONSIDERED BY COMMITTEE

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

Inconsistent Sentencing

29. Clause 38 proposes to make changes to section 19BB(1) to provide that a corresponding registrable person is a person who has at any time been in a foreign jurisdiction, and at that time, was required to report to the corresponding registrar and would still be required to report to that registrar if they were still in the jurisdiction.
30. Further, proposed Section 19BB(2) is to be amended to provide that a person is a corresponding registrable person even if the offence for which he or she is required to

report in the foreign jurisdiction is not a registrable offence in NSW under equivalent legislation.

31. The Committee notes the effect of these provisions would be to subject an individual from a foreign jurisdiction to registration requirements not expected of an individual who has committed an identical or substantially similar offence in NSW. In this respect, the Committee notes the potential for inconsistent sentencing of two individuals who have engaged in identical or substantially similar behaviour.
32. This also raises the issue that the laws of another jurisdiction are required to be applied and administered in NSW without the NSW Government having introduced the laws, nor the NSW Parliament having the benefit of reviewing and voting on the laws.

The Committee notes that these provisions may require individuals from a foreign jurisdiction to be registrable persons and be subject to reporting requirements not required of individuals who have committed similar offences in NSW. This raises the prospect of inconsistent sentencing. The Committee makes no further comment.

Privacy

33. Clause 27 provides that a registrable person who has contact with a child must report relevant personal information of that child (including name, date of birth and address), to the Commissioner of Police.
34. This action will involve the disclosure of the personal information of the child concerned, without either the consent of the child first nor their parents or guardians.
35. However, the Committee notes that the amount of personal information to be disclosed is limited, and the objectives of the relevant provision concern ensuring the welfare and safety of the child concerned.

The Committee notes that the reporting of the personal information of a child by a registrable person may be an impact on the privacy rights of the child concerned. However, given the limited amount of information to be disclosed, together with the welfare and safety objectives of the relevant provision, the Committee does not consider it to be unreasonable in the circumstances.

Excessive Punishment

36. Clause 41 proposes to increase the maximum penalty for a registrable person applying for a change of name without reasonable excuse from the current 5 penalty units, to 500 penalty units or imprisonment for five years, or both.
37. The Committee appreciates that an unauthorised change of name may undermine the ability of police to monitor a high-risk offender. However, the Committee notes that the substantial increase in the maximum penalty applicable for unauthorised name changes, together with the introduction of a custodial sentence, may be deemed an excessive punishment that is disproportionate to the offence committed. In these circumstances, the penalties may be a trespass on personal rights and liberties.

The Committee notes that the substantial increase to the maximum penalty applicable for an unauthorised name change, including the introduction of a

custodial sentence, may be deemed an excessive punishment that is disproportionate to the offence committed. The Committee refers this matter to Parliament for its further consideration as a possible trespass on personal rights and liberties.

Oppressive Official Powers

38. Clause 31 seeks to standardise the number of days after which a registrable person must report changes of their relevant personal information to the Commissioner of Police. At present, there are different deadlines for reporting different changes in defined personal circumstances. For example, there is currently a deadline of 14 days to report changes in employment, and for 28 days to report when leaving government custody. The Bill proposes to standardise all reporting requirements to seven days after the change in circumstance.

The Committee notes that standardising the number of days after which a registrable person must report changes of personal circumstances to seven days, may be burdensome on affected individuals. This is particularly the case given it is a reduction in some circumstances from the current 28 days. The Committee makes no further comment.

2. Mining Amendment (Small-Scale Title Compensation) Bill 2014

Date introduced	6 August 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to regulate the compensation paid by the holders of small-scale titles over land to landholders, and
 - (b) to provide mechanisms for dealing with disputes between landholders and holders of small-scale titles or applicants for small-scale titles, and
 - (c) to provide for levies on small-scale titles for purposes associated with those titles and the establishment of the Small-Scale Titles Levy Fund in the Special Deposits Account.

BACKGROUND

2. In his Second Reading Speech to Parliament the Hon. Anthony Roberts MP, Minister for Resources and Energy stated that the Bill implements the key legislative measures set out in the NSW Government's final response to the Wilcox report into Lightning Ridge opal mining. Mr Roberts further stated that the amendments are intended to establish a framework to streamline and clarify interactions between landholders and opal miners, particularly in Lightning Ridge, an opal mining centre in NSW.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Mining Act 1992 No 29

5. Schedule 1 [5] provides for the compensation payable to landholders in respect of the granting (including the granting of a renewal) of small-scale titles (being mineral claims or opal prospecting licences). On the grant of a small-scale title the landholder of the land concerned becomes entitled to compensation in lieu of compensation for any compensable loss suffered, or likely to be suffered, by the landholder. The Minister for Resources and Energy (the Minister) can determine by order an amount of compensation (standard compensation) that is payable. Any such order may prescribe different amounts for different mineral claims districts or opal prospecting areas and may provide for the standard compensation to be indexed on an annual or other basis.

6. The Secretary of the Department of Trade and Investment, Regional Infrastructure and Services (the Secretary) is not permitted to grant a small-scale title unless satisfied that the applicant has paid to the collection agency on behalf of any landholder entitled to compensation the standard compensation for the term of the small-scale title (unless the applicant and landholder have entered into an agreement as an alternative to standard compensation (a compensation agreement)).
7. Regulations under the Mining Act 1992 may nominate a government sector agency or the head of a government agency as the collection agency.
8. The Secretary must also be satisfied that the applicant has given the landholder a notice that states the applicant's intention to exercise rights under the small-scale title and identifies the land to which the small-scale title applies. The small-scale title cannot be granted if it is for the renewal of a mineral claim and there is an outstanding amount of compensation (other than compensation under a compensation agreement) payable by the applicant to a landholder under the mineral claim. However, the Secretary may grant a small-scale title in circumstances where there is compensation owing or where no notice has been given if the Secretary is satisfied that this is because the applicant could not sufficiently identify the landholder and has taken all reasonable steps to do so.
9. If there is no standard compensation applicable to a small-scale title the applicant for the title or the landholder may apply to the Land and Environment Court to determine the amount of compensation payable. The Court, in making such a determination, is to take into account any determinations of standard compensation made by the Minister. The amount of compensation determined by the Court is taken to be standard compensation in respect of the granting of the particular small-scale title and (if there is no subsequent determination of standard compensation by the Minister) the renewal of the title.
10. A landholder may apply to the Land and Environment Court for compensation from the holder of a small-scale title for all compensable loss suffered, or likely to be suffered, by the landholder.
11. The Court may award such additional compensation only if satisfied that there are exceptional circumstances that justify such an award.
12. No appeal lies against a determination of compensation by the Minister or the Land and Environment Court.
13. The Minister, in determining an amount of standard compensation payable cannot vary or substitute an amount previously determined unless 5 years have passed since that determination and the Minister has caused an independent review to be conducted into the appropriate levels of standard compensation and has considered the findings of that review.
14. Schedule 1 [6] makes an amendment consequential on the amendments made by Schedule 1 [5].
15. Schedule 1 [8] permits the Minister to impose a levy on small-scale titles for particular purposes.

16. These purposes include the provision and maintenance of roads servicing small-scale titles and rehabilitation or environmental maintenance work on stockpiles of mullock or other land affected by work related to small-scale titles. The order is to specify the amount of the levy and the purposes for which the levy will be used. The holder of a small-scale title is required to pay to the Secretary the amount of any levy imposed on the small-scale title at such times as may be required.
17. Money collected by way of a levy is to be used for the purposes for which the levy was imposed and the Secretary may award a grant to a person out of that money if satisfied that the grant is consistent with the purposes for which the levy was imposed and is appropriate and reasonable for achieving those purposes. Schedule 1 [9] establishes the Small-Scale Titles Levy Fund in the Special Deposits Account for the purposes of such levies. Schedule 1 [11] allows the regulations under the Mining Act 1992 to regulate the imposition of such levies. Schedule 1 [2] and [4] provide that an application for the grant of a small-scale title may be refused if the applicant has failed to pay any such levy.
18. Schedule 1 [1] and [3] remove provisions that allow the Minister, by order published in the Gazette, to include conditions as to the compensation payable in respect of the carrying out of prospecting and mining operations under small-scale titles.
19. Schedule 1 [10] gives the Land and Environment Court jurisdiction to hear questions or disputes in connection with compensation agreements.
20. Schedule 1 [12] includes savings and transitional provisions and a provision that validates a former scheme for the collection of money from the holders of small-scale titles for the purpose of providing appropriate land tenure for persons living on land covered by (or formerly covered by) small-scale titles within Western Lands leases. The validation makes sure that money collected by or on behalf of the Department of Trade and Investment, Regional Infrastructure and Services and any predecessor of the Department was lawfully collected if it was collected for that purpose. The validation also applies to money expended for that purpose or for any ancillary purpose.
21. Schedule 1 [7] omits a redundant provision.

Schedule 2 Amendment of other Acts

22. Schedule 2.1 amends the Land and Environment Court Act 1979 to require that any proceedings that relate to small-scale titles (other than proceeding in the nature of a judicial review) are to have a mandatory conciliation conference, which may be conducted on-site or at any other place determined by the Commissioner who presides over the conference. If an agreement cannot be reached, the Commissioner is to terminate the conciliation conference and dispose of the proceedings following an immediate hearing or, if the parties agree, on the basis of what occurred at the conciliation conference. However, in certain circumstances the Land and Environment Court or the Commissioner may determine that the proceedings are better determined by the Court in which case they are to be dealt with as a hearing in court.
23. Schedule 2.2 amends the Mining Amendment Act 2008 to omit items that have been rendered redundant by the amendments in Schedule 1.

Schedule 3 Amendment of Mining Act 1992 No 29—statute law revision amendments

24. Schedule 3 updates references as a consequence of the change of name of a Government Department and the enactment of the Government Sector Employment Act 2013.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

25. The Committee notes that schedule 1, item 12 of the Bill retrospectively validates a former scheme under which money was collected from the holders of small-scale titles to provide appropriate land tenure for persons living on land covered by or formerly covered by small-scale titles within Western Lands leases. The retrospective validation ensures that money collected by or on behalf of the Department of Trade and Investment, Regional Infrastructure and Services and any predecessor of the Department was lawfully collected if it was collected for the specified purpose.

The Committee notes that the Bill retrospectively validates a former Government scheme for the collection of money from certain holders of small scale titles. The Committee is generally concerned when legislative provisions are drafted to have retrospective effect. This is because retrospectivity is contrary to the rule of law which allows people to order their affairs according to what the law is. However, as the amendment appears to correct a legislative oversight, and not to retrospectively impose new obligations or remove rights or liberties, the Committee makes no further comment.

Access to Justice

26. Schedule 2.1 of the Bill amends the *Land and Environment Court Act 1979* to introduce a mandatory conciliation and arbitration process for proceedings relating to small scale titles. If the Court or the Commissioner who presides over the conciliation determines that it is appropriate, the matter can instead be dealt with as a hearing in a Court. However, there is no automatic right to have the matter dealt with in this way.

The Committee notes the Bill introduces mandatory conciliation and arbitration for proceedings relating to small scale titles, and that there is no automatic right for parties' to litigate these matters. This could be seen to limit parties' access to justice. Nonetheless, the Second Reading Speech indicates the changes aim to provide a more informal, cost-effective way to deal with disputes given a current general unwillingness to elevate local disputes to court. In addition, parties can still apply to have matters heard in Court. In the circumstances, the Committee makes no further comment.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s8A(1)(b)(iii)

Exclusion of Review Rights

27. Schedule 1, item 5 of the Bill provides that no appeal lies against a determination of compensation made by the Minister or the Land and Environment Court.

The Committee notes that no appeal lies against a determination of compensation made under the Bill by the Minister or the Land and Environment Court. Hence, the compensation rights of landholders who have small-scale titles granted over their land are dependent on non-reviewable decisions. The Committee refers this matter to Parliament for further consideration.

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

Commencement by Proclamation

28. Clause 2 of the Bill provides the proposed Act is to commence on a day or days to be appointed by proclamation.

The Committee prefers legislation of this kind, which impacts on rights to commence on a fixed date or on assent, not by proclamation.

Compensation and Levy set by Ministerial Order Published in Gazette

29. Schedule 1, item 5 of the Bill provides that the Minister may, by order published in the Gazette, set the amount of standard compensation payable to a landholder who has a small-scale title granted over his or her land. Similarly, schedule 1, item 8 of the Bill provides that the Minister may, by order published in the Gazette, impose a levy on small-scale titles for specified purposes, for example, to pay for environmental maintenance work on land affected by work on small-scale titles.

The Bill provides that the Minister may impose certain levies and set the amount of certain compensation payable by order published in the Gazette. The Committee considers that, to ensure Parliamentary oversight, levies and compensation amounts should be set by primary legislation, or at least by regulation, not by orders published in the Gazette. It appears that, unlike regulations, there is no requirement for orders published in the Gazette to be tabled in Parliament and they are not subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. The Committee refers this matter to Parliament for further consideration.

Part Two – Regulations

The Committee does not report on any Regulations in this Digest.

Appendix One – Index of Ministerial Correspondence on Bills

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

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.