



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. BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF NAME) BILL 2012

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. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation for this reason the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power.

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

Presumption of innocence

The Committee will always note where a Bill impacts the liberty of persons on remand. However the Committee does not consider the amendments to be unreasonable in the circumstances.

Excessive punishment

The Committee will always note where a Bill impacts the liberty of convicted persons who have fulfilled the requirements of their sentence. Given the potential security issues for victims of crime, the public interest in preventing former serious offenders from freely changing their name, and given that the requirements are not a blanket prohibition, the Committee does not consider the amendment to be unreasonable in the circumstances.

2. CENTENNIAL PARK AND MOORE PARK TRUST AMENDMENT BILL 2012

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

Retrospectivity

Although this Bill allows for regulations to be made with retrospective effect, the Committee notes that the making of regulations under this Bill cannot prejudicially affect the rights of, or impose personal liabilities on, an individual before the date the regulation is made.

3. CORONERS AMENDMENT BILL 2012

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

Retrospectivity

Although this Bill contains a provision that is to have retrospective effect, the Committee notes that the retrospective provision only applies to prevent a person suspected of an offence in connection with a deceased person's death from requesting that a post mortem examination not be conducted on that person. The Committee does not find this provision unreasonable in the circumstances.

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

Commencement by Proclamation

Although this Bill is to commence by proclamation, the Committee does not find it to be an inappropriate delegation of legislative powers given the Bill's largely machinery nature concerning the operation of the Coroner's Court and the absence of any provision that may trespass on individual rights and liberties.

4. NOXIOUS WEEDS AMENDMENT BILL 2012

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

Self incrimination and the right to silence

The Committee refers to the Parliament whether the Bill infringes on a person's right to silence and the freedom from self-incrimination.

5. ROAD TRANSPORT LEGISLATION AMENDMENT (OFFENDER NOMINATION) BILL 2012

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

Retrospectivity

It is generally the Committee's view that provisions in Bills be drafted to ensure its application from the date the Bill becomes operative, so that all affected individuals are aware of changes made to their rights and responsibilities before they occur. However, the individuals retrospectively affected by section 179(10B) – (10D) would have been required to submit to a nomination regime before the commencement of the amended section. The Committee does not raise any issue with the retrospective effect of this provision as it replaces a similar nomination process and is reasonable in the circumstances.

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the sections that are due to commence by proclamation relate to administrative arrangements. In these circumstances the Committee does not consider there to be an inappropriate delegation of legislative powers.

6. SAVE GOSFORD PUBLIC SCHOOL BILL 2012*

The Committee makes no comment on the Bill in respect of issues set out in s 8A of the *Legislation Review Act 1986*.

PART TWO – REGULATIONS

The Committee makes no comment on Regulations in respect of the issues set out in s 9 of the *Legislation Review Act 1987*.

Part One - Bills

1. Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2012

Date introduced	23 February 2011
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Births, Deaths and Marriages Registration Act 1995*:
 - (a) to provide that certain classes of persons (restricted persons), including inmates of correctional centres, persons on remand and forensic patients, may not make an application to change their name unless the supervising authority has approved of the change of name, and
 - (b) to provide that the Registrar of Births, Deaths and Marriages (the Registrar) may not register the change of name of a restricted person unless that approval has been obtained, and
 - (c) to provide that the Registrar must not, during a specified period, register the name of a person who was a serious offender unless the approval of the Commissioner of Corrective Services and the Commissioner of Police has been obtained, and
 - (d) to set out the criteria for granting approvals, and
 - (e) to provide a right to apply to the Administrative Decisions Tribunal for the review of certain decisions under the new provisions, and
 - (f) to provide a right of appeal in relation to certain decisions of the Mental Health Review Tribunal under the new provisions.

BACKGROUND

2. In late 2011 and early 2012 there was much press coverage regarding the ability of a prisoner to legally change their name. The coverage was in response to incidents where convicted persons had legally changed their name and had been living a new life with persons who were unaware of their criminal past. In one case, a person who served 20 years for murdering a child, and who was listed on the Child Protection Register, had

changed his name and whilst on parole began living with a new partner and her children who were unaware of his criminal past.

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 Births, Deaths and Marriages Registration Act 1995 No 62

5. Schedule 1 [1] defines certain terms used for the purposes of Part 5 of the Act which deals with the registration by the Registrar of name changes of persons.
6. Schedule 1 [2] inserts a new Division 3 into Part 5 of the Act which contains the following provisions:
7. Proposed section 31A provides that the proposed Division contains requirements and restrictions that are additional to the other requirements and restrictions of Part 5 and excludes the application of the proposed Division in certain circumstances, such as where a court orders a change of name.
8. Proposed section 31B defines restricted person to mean inmates of correctional centres, persons on remand in correctional centres, persons that are subject to certain supervision orders made by a court but are not in custody, persons on parole, periodic detainees, forensic patients and correctional patients (within the meaning of Part 5 of the Mental Health (Forensic Provisions) Act 1990). The regulations may include and exclude certain classes of persons from the definition.
9. Proposed section 31C makes it an offence for a restricted person, or a person acting on behalf of a restricted person, to apply to the Registrar, or to the Registrar's counterpart in another State or Territory, for the registration of a change of the restricted person's name unless the approval of the supervising authority has been obtained. The supervising authority is generally the Commissioner of Corrective Services or, in the case of a forensic patient, the Mental Health Review Tribunal.
10. Proposed section 31D provides that a supervising authority may give approval for the registration of a restricted person's change of name only if satisfied that the change of name is in all the circumstances necessary or reasonable. The proposed section also specifies circumstances in which the approval must not be given, for example, if it is reasonably likely that it will threaten the security of premises at which the person is held, that it is for the purpose of evading or hindering supervision of the person or that the proposed name would be regarded as offensive by a victim of crime or an appreciable sector of the community.
11. In the case of a forensic patient who is also an inmate, on remand, subject to a supervision order, on parole or a periodic detainee, the Mental Health Review Tribunal must consult with and obtain the concurrence of the Commissioner of Corrective Services to the change of name before giving approval.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF NAME) BILL 2012

12. Proposed section 31E prevents the Registrar registering a change of name of a restricted person if an approval under the proposed Division has not been given by the supervising authority.
13. Proposed section 31F prevents the Registrar registering a change of name of a person who is a former serious offender unless the Commissioner of Corrective Services and the Commissioner of Police have approved of the change of name. The restriction will not apply if a 10-year period has passed during which the person has not served a term of imprisonment for an offence.
14. Proposed section 31G enables the Registrar to alter the Register maintained under section 43 of the Act if a change of name of a person has been registered contrary to the requirements of the proposed Division.
15. Proposed section 31H enables regulations to be made for the purposes of the proposed Division.
16. Schedule 1 [3] inserts proposed sections 31I–31L into the Act.
17. Proposed section 31I provides for supervising authorities and the Commissioner of Corrective Services to provide information on restricted persons and former serious offenders to the Registrar to enable the Registrar to appropriately deal with applications for a change of name by those persons.
18. Proposed section 31J provides a right of review to the Administrative Decisions Tribunal in relation to certain decisions under the proposed provisions.
19. Schedule 1 [4] makes a consequential amendment.
20. Proposed section 31K provides a right of appeal from certain decisions of the Mental Health Review Tribunal under the proposed provisions.
21. Proposed section 31L enables the Commissioner of Corrective Services or the Commissioner of Police to classify certain information as security sensitive information. Security sensitive information need not be disclosed by those Commissioners when giving reasons for certain decisions under the proposed provisions. Also, the Administrative Decisions Tribunal, when reviewing those decisions, is to ensure that such information is not disclosed without the approval of the Commissioner who made the decision.
22. Schedule 1 [5] and [6] contain provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Consequential amendment of other legislation

23. Schedule 2.1 amends the Births, Deaths and Marriages Registration Regulation 2011 to prescribe certain exclusions from the definition of restricted person.
24. Schedule 2.2 amends the Child Protection (Offenders Registration) Act 2000 to make it clear that the requirements of Part 3A of that Act relating to the change of name of a registrable person within the meaning of that Act are in addition to the requirements

under proposed Division 3 of Part 5 of the Births, Deaths and Marriages Registration Act 1995.

25. Schedule 2.3 amends the Mental Health Regulation 2007 to provide for the way in which the Mental Health Review Tribunal is to be constituted when exercising functions under proposed Division 3 of Part 5 of the Births, Deaths and Marriages Registration Act 1995.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

26. 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.
27. However, the Committee notes that many government departments will be required to implement administrative arrangements in order to comply with the new legislation. For this reason, the Committee makes no adverse comments regarding commencement by proclamation.

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation for this reason the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power.

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

Presumption of innocence

28. The Bill places restrictions on a person being held on remand from changing their name. The Committee will always be concerned by any restrictions placed on the liberties of persons who have not been convicted of a crime, including those being held remand. Persons held on remand have not been convicted of a crime and any infringement of their liberty runs counter to the presumption of their innocence. However, the Committee also notes that it is a restriction, and not a prohibition, on the changing of their name and that the Bill provides various avenues that enable the person on remand to be able to change their name, provided it would not affect the security or health of themselves or another person, and the change will not hinder supervision of the person.

The Committee will always note where a Bill impacts the liberty of persons on remand. However the Committee does not consider the amendments to be unreasonable in the circumstances.

Excessive punishment

29. The Bill places additional requirements on a former serious offender when applying for the registration of a change of name. Placing restrictions on persons who have already served their sentence for the crimes they committed could be viewed as excessive punishment and beyond fair process. However, given the potential security issues for victims of crime, the public interest in preventing former serious offenders from freely

changing their name, and given that the requirements are not a blanket prohibition, the Committee does not consider the amendment to be unreasonable in the circumstances.

The Committee will always note where a Bill impacts the liberty of convicted persons who have fulfilled the requirements of their sentence. Given the potential security issues for victims of crime, the public interest in preventing former serious offenders from freely changing their name, and given that the requirements are not a blanket prohibition, the Committee does not consider the amendment to be unreasonable in the circumstances.

2. Centennial Park and Moore Park Trust Amendment Bill 2012

Date introduced	23 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Robyn Parker MP
Portfolio	Environment and Heritage

PURPOSE AND DESCRIPTION

1. The object of this Bill is to extend the maximum term of a lease over Trust lands into which the Centennial Park and Moore Park trust (the Trust) may enter from 20 years to 50 years, or 99 years with the approval of the Minister.
2. In addition, the Bill will facilitate the management of the Trust by extending the power of the Trust to delegate its functions to authorised persons and by allowing the Trust to conduct its business without the necessity of a formal meeting.
3. The Bill also indemnifies trustees from personal liability for actions done or omitted to be done in good faith when executing functions conferred under the Act.
4. Lastly, the Bill makes a number of miscellaneous amendments by way of statute law revision, including the removal of spent provisions.

BACKGROUND

5. The Trust is largely self-funded, with 93% of its recurrent budget of \$20 million derived from its commercial activities, including the Moore Park Gold House, community events, and more than 40 licenses and leases from entertainment precincts.
6. The Government has identified means by which the Trust could be better and more efficiently managed.
7. The amendments provided by this Bill are designed to improve the environmental, financial and social sustainability of the Centennial Park, Moore Park and Queens Park areas of Sydney.

OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.
9. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
10. Schedule 1 [2] extends the maximum term of a lease over Trust lands into which the Trust may enter from 20 years to 50 years, or 99 years where approval by the Minister has been given.

11. Schedule 1 [1] modernises the power of the Trust to delegate its functions and enables functions to be delegated to State or local government agencies and their staff in addition to trustees and the staff of the Trust.
12. Schedule 1 [3] allows the Trust to conduct its business without the necessity for a formal meeting and protects the Trust, a trustee or a person acting under the direction of the Trust from personal liability for acts done or omitted to be done in good faith.
13. The Schedule contains amendments that repeal spent or redundant provisions and update provisions. In particular, the Schedule repeals a range of separate provisions that have vested lands in the Trust or have divested land from the Trust. The repeal of those provisions do not affect the previous vesting or divesting of the land.
14. Schedule 2 [1] omits spent provisions that relate to the commencement of the Act as originally enacted.
15. Schedule 2 [2] and [3] make consequential amendments to the definitions used in the Act, including the transfer of the standard definitions of *function*, and *exercise a function*, from a separate subsection to the alphabetical list of definitions.
16. Schedule 2 [4] confirms that all land vested in the Trust immediately before the commencement of the proposed Act is original land for the purposes of the Act, and therefore subject to the provisions of the Act that prevent the disposal or resumption of the land or restrict leasing or other dealings in the land.
17. Schedule 2 [5] and [14] update references to repealed Acts.
18. Schedule 2 [7] repeals a Part relating to the Eastern Distributor that is largely redundant following the completion of the construction of the Eastern Distributor.
19. Schedule 2 [6] and [27] make consequential amendments. Schedule 2 [20]–[24] preserve the operation of provisions in the repealed Part relating to the maintenance of the Eastern Distributor, in particular the grant of permanent licences to Roads and Maritime Services over certain land re-vested in the Trust following the completion of road construction.
20. Schedule 2 [8] omits a Part relating to the financial year of the Trust that is no longer necessary because of section 4 of the *Public Finance and Audit Act 1983*.
21. Schedule 2 [9] omits provisions that are redundant because the vesting of the Sydney Showground land to which it relates has occurred. Schedule 2 [28] makes a consequential amendment.
22. Schedule 2 [10] omits provisions that are redundant because the vesting of the original land to which they relate has occurred. Schedule 2 [26] makes a consequential amendment.
23. Schedule 2 [11] omits a provision relating to annual reports that is unnecessary because the *Annual Reports (Statutory Bodies) Act 1984* applies to the Trust.
24. Schedule 2 [12] omits a provision relating to the making of regulations that is unnecessary because of section 42 (2) of the *Interpretation Act 1987*.

25. Schedule 2 [13] omits a provision that is no longer necessary because of section 64A of the *Interpretation Act 1987*.
26. Schedule 2 [15] omits a provision relating to the common seal of the Trust that is unnecessary because section 50 (2) of the *Interpretation Act 1987* applies to the Trust.
27. Schedule 2 [16] enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act. Schedule 2 [25] contains a specific savings provision relating to previous vestings and the divesting of Trust lands.
28. Schedule 2 [17] and [19] insert, in certain transitional provisions, the dates on which Schedule 2 to the Act and Schedule 1 (5) to the *Centennial Park Trust (Amendment) Act 1991* commenced so as to make those transitional provisions a more complete historical record.
29. Schedule 2 [18] omits spent savings and transitional provisions.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

30. Schedule 2 [16] of the Bill provides that regulations made of a savings or transitional nature may take effect from the date this Bill receives assent, even if a regulation is made at a later date. As such, this provision allows certain future regulations to have retrospective effect.
31. Ordinarily, the Committee would raise concern about the retrospectivity of regulations. However, the Committee notes that the impacts of retrospective regulations made under the provisions in this Bill are tempered by safeguards that prohibit the making of regulations that prejudicially affect the rights of, or impose personal liabilities on, an individual before the date the regulation is made.

Although this Bill allows for regulations to be made with retrospective effect, the Committee notes that the making of regulations under this Bill cannot prejudicially affect the rights of, or impose personal liabilities on, an individual before the date the regulation is made.

3. Coroners Amendment Bill 2012

Date introduced	22 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Coroners Act 2009* to:
 - (a) Enable the coroner to treat a person who was a deceased person's legal personal representative as the deceased person's senior next of kin for the purposes of the Act if the coroner is satisfied that the person who is available to act as the senior next of kin is unable to do so; and
 - (b) To provide that the death of a person in or temporarily absent from a declared mental health facility is reportable to a coroner if the person was a patient at the facility for the purposes of receiving care, treatment or assistance;
 - (c) To enable a coroner to prevent the publication of certain submissions in coronial proceedings concerning whether a known person may have committed an indictable offence, as well as prevent the publication of certain submissions and comments concerning the suspension of coronial proceedings without the consent of the coroner;
 - (d) To enable the State Coroner to direct that suspended coronial proceedings not be resumed;
 - (e) To enable the Attorney General to intervene in applications made to the Supreme Court for a coronial inquest or inquiry to be held;
 - (f) To enable a coroner to refuse a request by a senior next of kin of a deceased person for a post mortem examination not to be conducted if he or she has been, or may be, charged with an offence in connection with the deceased person's death; and
 - (g) To make provision for savings and transitional matters consequent on the enactment of the proposed Act.

BACKGROUND

2. The *Coroners Act 2009* was the result of a substantial review of the previous legislation in 2008 and 2009 by the Department of Attorney General and Justice in consultation with the State Coroner, the Chief Magistrate and a range of internal and external stakeholders. The *Coroners Act 2009* sought to modernise and simplify many of the provisions in the previous Acts.

3. The Productivity Commission's recent Report on Government Services 2012 compared the Coroner's Court of New South Wales with equivalent tribunals in other jurisdictions against a range of performance and efficiency indicators, and found that the clearance rates by NSW were generally quite positive.
4. Despite the relatively new practices provided by the Act, together with broadly positive reviews, the Attorney stated in his Agreement in Principle speech that:

'As with any significant reform process... some issues will only become apparent during implementation.'
5. The amendments in this Bill are designed to rectify those issues that have been identified. These amendments have been the subject of consultation with key stakeholders, including members of the judiciary, Government departments and agencies, the Law Society, New South Wales Bar Association and the State Coroner.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
8. Schedule 1 [2] provides that a death that occurs while the deceased person is in or temporarily absent from a declared mental health facility within the meaning of the *Mental Health Act 2007* is reportable to a coroner if the person was a patient at the facility for the purpose of receiving care, treatment or assistance under the *Mental Health Act 2007* or *Mental Health (Forensic Provisions) Act 1990*.
9. Schedule 1 [3] enables a coroner to treat a person who was a deceased person's legal personal representative immediately before the deceased person's death as the deceased person's senior next of kin for the purposes of the Act if the coroner is satisfied that the person who is available to act as senior next of kin is unable to do so.
10. Schedule 1 [1] makes a consequential amendment.
11. Schedule 1 [4] enables a coroner to order that submissions made in coronial proceedings concerning whether a known person may have committed an indictable offence not be published. A failure to comply with such an order will constitute an offence. The maximum penalty for such an offence will be 10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).
12. Schedule 1 [5] makes it an offence to publish submissions made to, or comments made by, the coroner concerning the suspension of coronial proceedings without the consent of a coroner. The maximum penalty for the offence will be 10 penalty units or imprisonment for 6 months (in the case of an individual) or 50 penalty units (in any other case).
13. Schedule 1 [8] enables the State Coroner (after consulting with the coroner who ordered it) to direct that a suspended coronial inquest or inquiry not be resumed. For this

purpose, Schedule 1 [7] will require a coroner to notify the State Coroner before resuming coronial proceedings. Schedule 1 [6] makes a consequential amendment.

14. Schedule 1 [10] enables the Minister to intervene in applications made to the Supreme Court by another person for a coronial inquest or inquiry to be held.
15. Schedule 1 [9] makes a consequential amendment.
16. Schedule 1 [12] enables a coroner to refuse a request by a senior next of kin of a deceased person for a post mortem examination not to be held if the senior next of kin has been, or may be, charged with an offence in connection with the deceased person's death. Schedule 1 [11], [13] and [14] make consequential amendments.
17. Schedule 1 [15] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act and any future amending Act.
18. Schedule 1 [16] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

19. Schedule 1 [16] provides that amendments in the Bill which will allow the coroner to refuse a request made by the senior next of kin of a deceased person that a post mortem examination not be conducted can extend to requests made (but not determined) before the commencement of those amendments. Ordinarily, any provisions in a Bill that have retrospective effect will attract comment by this Committee.
20. However, the Committee notes that the refusal for such requests to be granted is limited to circumstances where the senior next of kin has been charged, or is likely to be charged, with an offence in connection with the deceased person's death. In these circumstances, the Committee does not find it unreasonable that the provisions relating to post mortem examination are made retrospective.

Although this Bill contains a provision that is to have retrospective effect, the Committee notes that the retrospective provision only applies to prevent a person suspected of an offence in connection with a deceased person's death from requesting that a post mortem examination not be conducted on that person. The Committee does not find this provision unreasonable in the circumstances.

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

Commencement by Proclamation

21. The Committee notes that this Bill is to commence on a date to be set by proclamation. It is generally the preference of the Committee that Bills commence on a fixed date or on assent. Despite this, the Committee notes that the provisions in this Bill, which largely make a series of machinery amendments to the operation of the Coroner's Court, are unlikely to trespass on an individual's rights and liberties. Accordingly, the

Committee does not consider there to be an inappropriate delegation of legislative powers.

Although this Bill is to commence by proclamation, the Committee does not find it to be an inappropriate delegation of legislative powers given the Bill's largely machinery nature concerning the operation of the Coroner's Court and the absence of any provision that may trespass on individual rights and liberties.

4. Noxious Weeds Amendment Bill 2012

Date introduced	23 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Noxious Weeds Act 1993 (as a consequence of a recent statutory review of the Act) as follows:
 - (a) to revise certain of the objects of the Act,
 - (b) to clarify the land in relation to which a plant is a noxious weed,
 - (c) to enable the Minister to regulate or prohibit the bringing of noxious weed material into NSW,
 - (d) to enable local control authorities to require owners of land subject to a weed control order to provide details of the occupiers of the land,
 - (e) to extend control measures in relation to agricultural machines to machinery and equipment,
 - (f) to extend provision for border inspections of agricultural machinery from Queensland to machinery or equipment entering NSW from anywhere in Australia,
 - (g) to enable the Minister to grant exemptions from certain provisions of the Act in relation to Class 2 noxious weeds that are notifiable only on Lord Howe Island,
 - (h) to extend certain powers of inspectors to deal with noxious weed material so as to enable them to deal with (including to take samples, photographs or video recordings of) any thing they reasonably suspect to be or to contain noxious weed material,
 - (i) to make it clear that the functions of local control authorities under the Act may only be delegated under the Act,
 - (j) to make other minor or consequential amendments (including standardising terminology and providing for matters of a savings or transitional nature).

BACKGROUND

2. According to the Minister for Primary Industries, the Hon. Katrina Hodgkinson MP,

'Weeds have a major impact on agricultural productivity and the environment in New South Wales. Weeds displace native species, contribute to land degradation and

reduce farm and forest productivity. Weeds are a very costly natural resource management problem for farmers. The Australian Bureau of Statistics Natural Resource Management survey in 2006-2007 found that agricultural businesses in New South Wales spent \$933 million and three million days on weed, pest, land and soil activities. It also found that weed management nationally comes at a cost of \$1.5 billion for Australian farmers.'

3. In 2010, a statutory review of the *Noxious Weeds Act 1993* was conducted. The report on the review recommended a number of amendments to the Act. The report also recommended that the objectives of the Act be strengthened in order to better reflect the current weed management policy and increase the consistency with the NSW Invasive Species Plan which was implemented in 2008 jointly by the Department of Primary Industries and Department of Environment & Climate Change.

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.

Schedule 1 Amendment of Noxious Weeds Act 1993 No 11

6. Schedule 1 [1] revises certain of the objects of the Act to better reflect the Government's current policy objectives.
7. Schedule 1 [2] and [18] enable the Minister, by published order (including by a weed control order), to exempt a person or class of persons, or premises, machinery or equipment, from the operation of certain provisions of the Act in any part of NSW other than Lord Howe Island, in relation to a plant that is a Class 2 noxious weed only on Lord Howe Island (or any part of such a plant). The provisions concerned create offences (in relation to selling or purchasing a plant or any part of it that is notifiable weed material anywhere in NSW, or selling soil, turf or fodder from land with, or transporting, moving or using machinery or equipment containing, a plant that is a notifiable weed anywhere in NSW) and enable inspectors to require the removal from machinery or equipment of a plant, or any part of a plant, that is a notifiable weed anywhere in NSW.
8. Schedule 1 [2] also makes it clear that a noxious weed is a noxious weed in relation to the land that is subject to the weed control order that declares it to be a noxious weed.
9. Schedule 1 [3] enables the Minister, by published order, to regulate or prohibit the bringing into NSW of noxious weed material or any other thing the Minister considers is likely to introduce noxious weed material into NSW. A person who fails to comply with an order is guilty of an offence for which the maximum penalty is 100 penalty units (\$11,000).
10. Schedule 1 [4] enables a local control authority, by written notice, to require the owner of land (other than a public authority or a local control authority) that is subject to a weed control order to provide details of the occupier and the land occupied. A person who, without reasonable excuse, fails to comply with a requirement of a notice is guilty of an offence for which the maximum penalty is 20 penalty units (\$2,200).

11. Schedule 1 [5] requires a public authority that is required to provide to the local control authority the name and contact details of occupiers of land it owns to also provide a description of the land occupied (consistent with the information required by Schedule 1 [4] to be provided by an owner of land other than a public authority or a local control authority).
12. Schedule 1 [6], [7], [19], [20] and [28] make amendments to standardise terminology in the Act and Schedule 1 [14] reconciles a reference with certain other references in a provision.
13. Schedule 1 [8]–[16] extend a current requirement for persons moving agricultural machines from Queensland into NSW to produce the machines for inspection by a border inspector (and associated offences) to persons moving machinery or equipment into NSW from any other State or a Territory. Schedule 1 [13] and [16] also extend a power of inspectors to require the removal of notifiable weed material from agricultural machines so that it applies in relation to all machinery or equipment. Schedule 1 [27] inserts a consequential savings provision.
14. Schedule 1 [17] extends an offence of knowingly transporting, moving or using an agricultural machine containing a notifiable weed to all machinery or equipment containing a notifiable weed.
15. Schedule 1 [21] and [22] extend the power of inspectors or authorised officers to examine, seize, detain, remove or destroy noxious weed material in or about premises, so as to enable them to do the same in relation to any thing in or about the premises that they reasonably suspect of being or containing noxious weed material. Schedule 1 [21] also enables inspectors or authorised officers to take samples, photographs or video recordings of any such thing found in or about the premises.
16. Schedule 1 [23] extends the power of inspectors or authorised officers to obtain information that may enable the tracing of the source or destination of noxious weed material so that it enables them to obtain information that may assist in tracing the source or destination of any matter they suspect to be noxious weed material.
17. Schedule 1 [24] and [25] make it clear that the functions of local control authorities under the Act may only be delegated under the Act (and not, for example, under a council's power of delegation under the Local Government Act 1993).
18. Schedule 1 [26] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Self incrimination and the right to silence

19. The Committee notes that Clause 23 of the Bill permits an authorised officer or inspector to require a person to answer questions regarding information that may assist in tracing or determining the source or destination of any matter suspected to be noxious weed material.

20. The requirement that a person must answer questions could potentially infringe upon that person's right to silence, as answering such questions could incriminate them in some wrongdoing. Whilst the Committee notes that the Act recognises this right, the safeguard contained in the Act (in s47A(2)) only allows for the dismissal of incriminating responses if the person communicates to the authorised officer or inspector prior to responding that they feel their answers may incriminate them. Such a safeguard does not appear to be consistent with the intention of the right and will disproportionately affect those individuals who are unaware of their right to silence.

The Committee refers to the Parliament whether the Bill infringes on a person's right to silence and the freedom from self-incrimination.

5. Road Transport Legislation Amendment (Offender Nomination) Bill 2012

Date introduced	22 February 2012
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads and Ports

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to amend the *Road Transport (General) Act 2005*:
 - (i) to increase the maximum monetary penalty that a corporation will be liable to pay for a certain kind of camera recorded traffic offence under section 179 of that Act when the corporation is liable for the offence because of a failure to nominate the actual offender; and
 - (ii) to enable an authorised officer or prosecutor to obtain additional information concerning the identity of an actual offender nominated under section 179 of that Act; and
 - (iii) to reduce the time when a penalty notice served by post on a responsible person under section 179 of that Act is taken to have been served; and
 - (iv) to enable a single nomination to be made under section 179 of that Act where more than one camera recorded traffic offence was detected by the same camera at approximately the same time, and
 - (b) to make consequential amendments and amendments in the nature of statute law revision to the *Fines Act 1996* and certain road transport legislation.

BACKGROUND

2. This Bill is a joint proposal by the Roads and Maritime Services and the State Debt Recovery Office, following consultation with the Department of Attorney General and Justice and the Ministry for Police and Emergency Services.
3. Where a camera-recorded public transport lane, traffic light or speeding offence is committed, the responsible person for the vehicle is taken to have committed the offence. In circumstances where the responsible person for the vehicle is a company, responsibility for the offence is not assigned to a real person unless the company nominates a real person.
4. This Bill is designed to encourage companies to nominate the offending driver by introducing a number of measures, including the increase of the maximum court fines to \$11,000 and the extension of the period of time in which a person may be prosecuted for falsely nominating a driver from six months to 12 months.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Road Transport (General) Act 2005 No 11

7. Schedule 1 [1]–[5] amend section 179 of the *Road Transport (General) Act 2005*:
 - (a) to provide for a corporation that is deemed to be guilty of a certain kind of camera recorded offence by the section to be liable to a court imposed maximum monetary penalty that is 5 times the maximum monetary penalty to which a natural person would be liable for the offence, and
 - (b) to enable a statutory declaration that nominates a person under the section to deal with more than one offence if each of the offences are camera recorded offences detected by the same camera device at approximately the same time, and
 - (c) to provide that a penalty notice served by post on a responsible person under the section is taken to have been served 7 days after it was posted (instead of the current 21 days) unless the person proves otherwise, and
 - (d) to enable an authorised officer or prosecutor to obtain additional information from a responsible person who makes a nomination under the section (including by means of a personal interview with the person) concerning identity of the nominee.
8. Schedule 1 [6] confirms that a reference in the Act to offences under section 41 (Conduct associated with road and drag racing and other activities) of the *Road Transport (Safety and Traffic Management) Act 1999* is limited to certain aggravated forms of those offences.
9. Schedule 1 [7] amends Schedule 1 to that Act to enable the Governor to make savings or transitional regulations consequent on the enactment of the proposed Act.
10. Schedule 1 [8] inserts a transitional provision in Schedule 1 to that Act consequent on the amendments made to section 179 of that Act.

Schedule 2 Amendment of other legislation

11. Schedule 2.1 [1] makes an amendment to section 38 of the *Fines Act 1996* in relation to the use of statutory declarations in relation to more than one camera recorded offence. This amendment is consequential on a comparable amendment made to section 179 of the *Road Transport (General) Act 2005* by Schedule 1.
12. Schedule 2.1 [2] inserts a transitional provision consequent on the amendment made to section 38 of that Act.
13. Schedule 2.2 amends the *Road Transport (General) Regulation 2005* to provide for the penalty amount for a penalty notice served on a corporation for a certain kind of camera recorded offence for which the corporation is deemed to be liable under section 179 of

the *Road Transport (General) Act 2005* to be, generally, 5 times the penalty amount prescribed for a natural person served with such a penalty notice.

14. Schedule 2.3 amends the *Road Transport (Safety and Traffic Management) Act 1999*:
 - (a) to ensure that certain persons with expired driver licences are treated as being special category drivers for the purposes of Part 2 of that Act, and
 - (b) to update a reference to the holder of a learner or provisional licence so that it refers to a novice driver within the meaning of Part 2 of that Act.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

15. The Bill amends Schedule 1 of the *Road Transport (General) Act 2005* so as to clarify when certain amendments to section 179 will apply. Section 179 relates to the liability of a responsible person for a vehicle in relation to designated offences, and includes the capacity to nominate a driver of a car. Section 179 (10B) – (10D) extends to a designated offence committed before the assent day, but only if a relevant nomination document for the offence has not been supplied before the day of assent.

It is generally the Committee's view that provisions in Bills be drafted to ensure its application from the date the Bill becomes operative, so that all affected individuals are aware of changes made to their rights and responsibilities before they occur. However, the individuals retrospectively affected by section 179(10B) – (10D) would have been required to submit to a nomination regime before the commencement of the amended section. The Committee does not raise any issue with the retrospective effect of this provision as it replaces a similar nomination process and is reasonable in the circumstances.

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

Commencement by proclamation

16. The Bill provides that the Act will commence on the date of assent, with specified exceptions relating to the use of statutory declarations, amendments to the *Fines Act 1996* and the *Road Transport (General) Regulation 2005*.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the sections that are due to commence by proclamation relate to administrative arrangements. In these circumstances the Committee does not consider there to be an inappropriate delegation of legislative powers.

6. Save Gosford Public School Bill 2012*

Date introduced	23 February 2012
House introduced	Legislative Council
Member responsible	Dr John Kaye MLC
	*Private member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prevent the relocation of Gosford Public School to the grounds of Henry Kendall High School and to ensure that parents, staff and the community are consulted before any alternative site is chosen for Gosford Public School.

BACKGROUND

2. As stated in the Second Reading speech, this Bill responds to concerns raised to relocate Gosford Public School to Henry Kendall High School. Dr Kaye commented that since the announcement of the relocation in June 2010 there have been protests, public meetings, a petition with in excess of 10 000 signatures and a letter writing campaign.
3. One of the listed concerns is that the Special Needs Unit at Kendall High School will have to be moved to make room for the primary school.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 defines Minister as the Minister administering the Education Act 1990.
7. Clause 4 prohibits the relocation of Gosford Public School to the grounds of Henry Kendall High School.
8. Clause 5 requires Gosford Public School to continue at its current site unless a decision is made to relocate it in accordance with the proposed Act.
9. Clause 6 provides for parents, teachers and the general community to be notified and consulted before a decision is made on an alternative site for Gosford Public School.
10. Clause 7 requires the Minister to conduct a public meeting before making a decision on an alternative site.
11. Clause 8 provides that the Minister must not make a decision on an alternative site unless the Minister has attended that meeting and had regard to the comments made at it and has had regard to any submissions made in response to the notices to parents, teachers and the general community. The Minister is also required to have regard to the

needs of current and future students of the school and the needs of teachers of the school.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in s 8A of the *Legislation Review Act 1986*.

Part Two – Regulations

The Committee makes no comment on Regulations in respect of the issues set out in s 9 of the *Legislation Review Act 1987*.

Appendix One – Index of Ministerial Correspondence on Bills

The Committee currently has no ministerial correspondence on Bills.

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

The Committee currently has no correspondence in respect of Regulations on which it has reported.