



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 41/55 – 20 August 2013



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

New South Wales. Parliament. Legislative Assembly.

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

Chair: Mr Stephen Bromhead MP

20 August 2013

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 41 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 41 of 55

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

Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
PART ONE - BILLS	8
1. ENTERTAINMENT INDUSTRY BILL 2013	8
2. HUNTERS HILL CONGREGATIONAL CHURCH PROPERTY TRUST BILL 2013	15
3. TOTALIZATOR AMENDMENT (EXCLUSIVITY) BILL 2013	20
PART TWO – REGULATIONS	22
APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	23
APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	24

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 3050 / 02 9230 2096
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. ENTERTAINMENT INDUSTRY BILL 2013

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

Spent convictions

The Committee is concerned that including orders under section 10 of the *Crimes (Sentencing Procedure) Act 1999* as part of the public register of offences against the proposed Act and Regulations is contrary to the intent of the spent convictions scheme, which is to limit the circumstances in which these kinds of offences will be disclosed in the future. The Committee refers this issue to Parliament for further consideration.

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

Commencement by proclamation

The Committee notes that the Bill commences by proclamation, which results in the community being uncertain as to when the new arrangements for regulating the entertainment industry and the new offences will commence.

2. HUNTERS HILL CONGREGATIONAL CHURCH PROPERTY TRUST BILL 2013

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

3. TOTALIZATOR AMENDMENT (EXCLUSIVITY) BILL 2013

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

PART TWO – REGULATIONS

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

Part One - Bills

1. Entertainment Industry Bill 2013

Date introduced	14 August 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer and Minister for Industrial Relations

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to regulate the entertainment industry, and
 - (b) to provide protections for performers.

BACKGROUND

2. The Bill repeals and replaces the *Entertainment Industry Act 1989*. The Bill implements the recommendations from the report of the Better Regulation Office NSW and NSW Industrial Relations, *Review of the Entertainment Industry Act 1989*, October 2010.
3. The review canvassed the views of a broad range of individuals and organisations in the entertainment industry. A key conclusion of the review was that the licensing of entertainment industry representatives is not cost effective or necessary to ensure appropriate regulation of the entertainment industry. The report recommended that licensing should be removed but only if there were strong protections for performers.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 sets out the objects of the proposed Act.
7. Clause 4 defines certain words and expressions used in the proposed Act including the terms *performer representative*, *venue representative*, *performer* and *entertainment industry agreement*.

Part 2 Entertainment industry obligations

Division 1 Performer representatives

8. Clause 5 defines *performer representative* for the purposes of the proposed Act. A performer representative is defined as a person who, for financial benefit, provides or agrees to provide one or more of the following services to a performer:

- (a) seeking or finding work opportunities for the performer,
 - (b) negotiating terms of an agreement for, and the conditions of, a performance,
 - (c) finalising arrangements relating to the payment of the performer,
 - (d) negotiating arrangements relating to the attendance of the performer at a performance,
 - (e) administering the agreement between the performer and an entertainment industry hirer,
 - (f) making arrangements for publicity attendances and related publicity responsibilities of the performer.
9. Clause 6 requires a performer representative who receives money on behalf of a performer to hold that money in trust for the performer and to disburse the money in accordance with the performer's directions.
10. Clause 7 requires an entertainment industry representative to keep certain financial statements in relation to money received on behalf of a performer and to provide copies of those statements to specified persons.
11. Clause 8 imposes a duty on a person who acts as both a performer representative and a venue representative for a performance to inform both the performer and entertainment industry hirer concerned of that fact.
12. Clause 9 defines the *capped amount* payable to a performer representative by a performer as being the percentage, prescribed by the regulations, of the remuneration payable to the performer.
13. Clause 10 defines *entertainment industry managerial agreement* as an entertainment industry agreement:
- (a) that is in writing, and
 - (b) under which the performer representative agrees to provide services in relation to the management of the reputation, career or career development of the performer that are in addition to the services referred to in section 5, and
 - (c) that fixes the fees payable by the performer in respect of the services specified in the agreement, and
 - (d) that contains an acknowledgment by the performer of the following:
 - i that the performer understands the effect of the acknowledgment,
 - ii that the performer understands the cooling-off period provided by the proposed Act,
 - iii that the performer has received the information required to be provided by the performer representative under the proposed Act.

14. Clause 11 prohibits a performer representative from demanding fees or remuneration that exceeds the capped amount, demanding joining or audition fees or a retention or retainer fee or, if the performer representative is also a venue representative in respect of a performance, demanding remuneration from the performer in certain circumstances. The fees or remuneration payable may exceed the capped amount if the parties have entered into an entertainment industry managerial agreement.
15. Clause 12 provides for a cooling-off period for entertainment industry managerial agreements during which the performer may terminate the agreement. The agreement may provide for certain services to continue to be provided to the performer, subject to the fee cap, if the performer gives notice of termination during the cooling-off period. The proposed provision also provides for the remuneration of the performer representative in respect of services provided before notice of termination during the cooling-off period and for the waiver of the cooling-off period by a performer.
16. Clause 13 requires a performer representative to provide certain information to a performer or prospective performer before entering into an entertainment industry agreement.
17. Clause 14 requires a performer representative to keep certain records with respect to the performer representative's business as such for a period of 5 years from the making of any such record.

Division 2 Venue representatives

18. Clause 15 defines *venue representative* for the purposes of the proposed Act. A venue representative is a person who, for financial benefit, arranges a performance by a performer on behalf of an entertainment industry hirer.
19. Clause 16 requires a venue representative to disburse any money received for a performer within 14 days after receiving the money.
20. Clause 17 requires a venue representative to keep certain records with respect to the venue representative's business as such for a period of 5 years from the making of any such record.

Division 3 Entertainment industry hirers

21. Clause 18 requires an entertainment industry hirer to make a payment to a performer within 1 calendar month of the performance, or such other period as may be agreed between the performer and entertainment industry hirer.
22. Clause 19 requires an entertainment industry hirer to keep certain records with respect to payments made to entertainment industry representatives for the services of performers for a period of 5 years from the making of the record.

Part 3 Enforcement

Division 1 Undertakings

23. Clause 20 provides that the Secretary of the Treasury (the *Secretary*) may accept an undertaking from an entertainment industry representative or entertainment industry hirer if the Secretary reasonably believes that the representative or hirer has failed to

disburse funds as required by the proposed Act or, in the case of a performer representative, has breached the code of conduct.

24. Clause 21 allows the Local Court to make certain orders with respect to the breach of a term of an undertaking. The orders may include orders requiring the person to comply with the undertaking, to pay an amount to the State not exceeding the financial benefit obtained from the breach and to pay compensation to any person who suffered loss or damage as a result of the breach.

Division 2 Entertainment industry prohibition orders

25. Clause 22 provides that, for the purposes of the proposed Division, a *director of a corporation* includes a person who is concerned in the management of the corporation.
26. Clause 23 authorises the Secretary to require a performer representative or the director of a corporation that carries on the business of a performer representative, to show cause why the performer representative or director should not be prohibited from carrying on the business of a performer representative or from being a director of such a corporation. The Secretary may impose such a requirement only if of the opinion that the performer representative or director has engaged in unlawful conduct.
27. Clause 24 authorises the Secretary, after asking a performer representative or director of a corporation that carries on the business of a performer representative to show cause why the performer representative or director should not be prohibited from carrying on the business of a performer representative or being a director of such a corporation, to seek an order from the Supreme Court prohibiting the representative or director from carrying on the business of a performer representative or from being a director of such a corporation.

Division 3 Authorised officers

28. Clause 25 defines *authorised officer*, for the purposes of the proposed Act, as:
 - (a) a person appointed as an inspector for the purposes of the *Industrial Relations Act 1996*, or
 - (b) any other person, eligible to be appointed as an inspector under that Act, who is authorised by the Secretary or the Minister to exercise the functions of an authorised officer under the proposed Act.
29. Clause 26 enables an authorised officer to enter and inspect premises which the officer believes to be premises at which a person carries on the business of an entertainment industry hirer or entertainment industry representative and, while on the premises, to exercise certain functions for the purpose of determining whether an entertainment industry representative or entertainment industry hirer has engaged in unlawful conduct.
30. Clause 27 enables an authorised officer to apply for a search warrant for premises if the authorised officer has reasonable grounds for believing that a provision of the proposed Act or the regulations has been or is being contravened.
31. Clause 28 makes it an offence for a person, without reasonable excuse to:

- (a) obstruct or hinder an authorised officer in the exercise of a function under the proposed Division, or
- (b) fail to comply with a requirement of an authorised officer under the proposed Division.

Part 4 Disclosure of information about contraventions

- 32. Clause 29 authorises the Secretary to keep a register of information about offences against the proposed Act or the regulations, undertakings or entertainment industry prohibition orders and orders of the Local Court for a breach of a civil penalty provision of the proposed Act.
- 33. Clause 30 provides that the register is to be made available for public inspection on the website of the Treasury.
- 34. Clause 31 provides for the correction of any error or omission in the information in the register.
- 35. Clause 32 provides for the removal of certain information from the register, including information relating to a conviction that has been quashed or annulled or information relating to a conviction if 2 years have elapsed since the conviction.

Part 5 General

- 36. Clause 33 provides that a person must not disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances.
- 37. Clause 34 provides for the issuing of penalty notices for offences under the proposed Act or the regulations.
- 38. Clause 35 allows the Secretary to delegate his or her functions under the proposed Act.
- 39. Clause 36 provides that persons exercising functions under the proposed Act do not incur personal liability for acts done or omitted to be done in good faith under the proposed Act.
- 40. Clause 37 provides that the directors and other persons engaged in the management of a corporation that contravenes a provision of the proposed Act or the regulations are taken to have engaged in the same contravention and may be prosecuted or convicted in respect of that conduct.
- 41. Clause 38 provides that the provisions of the proposed Act have effect despite any contract or agreement to the contrary.
- 42. Clause 39 provides for the service of documents under the proposed Act.
- 43. Clause 40 provides for the service of documents on the Secretary under the proposed Act.
- 44. Clause 41 provides that proceedings for an offence under the proposed Act may be taken and prosecuted by any person acting with the authority of the Secretary and are to be dealt with in the Local Court.

45. Clause 42 identifies the contravention of certain provisions of the proposed Act or of the code of conduct as being contraventions that will incur a civil penalty. The contravention of such a provision is not an offence and the rules of court applying to civil proceedings are to apply to proceedings for a contravention.
46. Clause 43 makes it clear that a person cannot be both convicted of an offence and the subject of a civil penalty in respect of essentially the same act or omission.
47. Clause 44 enables the Governor to make regulations for the purposes of the proposed Act.
48. Clause 45 provides for a review of the proposed Act in 8 years and an interim review to be conducted in 3 years.
49. Clause 46 provides for the repeal of the *Entertainment Industry Act 1989* and the *Entertainment Industry Regulation 2004*.

Schedule 1 Code of conduct

50. Schedule 1 sets out the code of conduct for performer representatives.

Schedule 2 Savings, transitional and other provisions

51. Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of other Acts

52. Schedule 3 makes consequential amendments to the Acts specified in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Spent convictions

53. Clause 29 of the Bill will allow the Secretary of the Treasury to keep a register of offences committed against the Act or Regulations which will include information such as the name of the offender, their address and a description of the nature and circumstances of their offence. Orders under section 10 of the *Crimes (Sentencing Procedure) Act 1999* will also be included in the register. Clause 30 of the Bill provides that this register will be made available for public inspection on Treasury's website.
54. The Committee notes that section 10 of the *Crimes (Sentencing Procedure) Act 1999* deals with circumstances where a person is found guilty of an offence but the court has decided not to proceed with the conviction. Section 8(2) of the *Criminal Records Act 1991* provides that a finding that a person is guilty of an offence without proceeding to a conviction becomes a spent conviction immediately after that finding is made. This has the effect of limiting the circumstances in which the conviction can be disclosed in the future.

The Committee is concerned that including orders under section 10 of the *Crimes (Sentencing Procedure) Act 1999* as part of the public register of offences against the proposed Act and Regulations is contrary to the intent of the spent convictions scheme, which is to limit the circumstances in which

these kinds of offences will be disclosed in the future. The Committee refers this issue to Parliament for further consideration.

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

Commencement by proclamation

55. Clause 2 of the Bill provides that the Act will commence on a day or days to be appointed by proclamation. The Committee prefers legislation to commence on a fixed date or assent, particularly in circumstances such as these where the Bill sets up a new regime for regulating the entertainment industry and also creates new offences.

The Committee notes that the Bill commences by proclamation, which results in the community being uncertain as to when the new arrangements for regulating the entertainment industry and the new offences will commence.

2. Hunters Hill Congregational Church Property Trust Bill 2013

Date introduced	14 August 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to constitute a statutory corporation, the Hunters Hill Congregational Church Property Trust (referred to in the proposed Act as the Trust), and
 - (b) to specify the functions of that statutory corporation, which include holding property on behalf of the Hunters Hill Congregational Church or particular congregations of that Church, and
 - (c) to vest in the statutory corporation property held in trust for the Church, or a particular congregation of the Church, without the need to pay duty, and
 - (d) to provide for the accountability of the Trust to members of congregations of the Church, and
 - (e) to provide for the making by the Trust of Trust rules for the control, management and administration of, and dealings with trust property, the operation of the Trust and the conduct of proceedings of the Trust's Board, and
 - (f) to provide for the making by congregations of the Church of congregational rules relating to how the congregations may give directions to the Trust.

BACKGROUND

2. The *Hunters Hill Congregational Church Act 1977* no longer meets the needs of the church. First, the nature of the church's activities has expanded considerably since 1977. At that time the church consisted of a single worshipping congregation, but since then the church has established another congregation. It also operates retirement villages at both Hunters Hill and Narellan. Secondly, the trustees under the existing Act are all individuals. This causes administrative difficulties for the church whenever a trustee needs to be replaced.
3. To avoid these difficulties and to provide a more suitable vehicle for managing the church's financial affairs, the church has requested that a corporation be established to hold its property. The church initially requested that amendments be made to the existing Act. However, the Government has acted on advice from the Parliamentary

Counsel that a new Act is the best way of establishing a corporation to hold the church's property. The Hunters Hill Congregational Church Property Trust Bill 2013 therefore creates a new Act and repeals the existing Act.

OUTLINE OF PROVISIONS

Part 1 Preliminary

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Clause 3 defines words and expressions used in the proposed Act and provides that notes do not form part of the proposed Act.

Part 2 Hunters Hill Congregational Church Property Trust

Division 1 Constitution of Trust

7. Clause 4 provides for the Hunters Hill Congregational Church Property Trust to be established as a corporation.
8. Clause 5 provides for the constitution of the Board of the Trust.
9. Clause 6 provides for the Board to conduct the affairs of the Trust.

Division 2 Procedure of Board

10. Clause 7 specifies some aspects of the procedure of the Board and provides for the other aspects of the procedure of the Board to be governed by the Trust rules.
11. Clause 8 provides for the election of a Chairperson of the Board.

Division 3 Election and appointment of members of Board

12. Clause 9 provides for the election of representatives of congregations as members of the Board.
13. Clause 10 provides for the election of representatives of committees of management as members of the Board.
14. Clause 11 provides for the appointment of Board-appointed members as members of the Board.
15. Clause 12 provides for the initial membership of the Board.

Division 4 Members of Board

16. Clause 13 specifies the circumstances in which members of the Board are taken to have vacated office.
17. Clause 14 provides for the filling of casual vacancies on the Board.
18. Clause 15 requires the disclosure of pecuniary interests by members of the Board.

Division 5 Functions of Trust

19. Clause 16 specifies the purpose of the statutory trust under which the Trust holds property.
20. Clause 17 specifies the functions of the Trust in relation to property vested in the Trust on behalf of the Church (but not on behalf of a particular congregation) and the other, general functions of the Trust.
21. Clause 18 specifies the functions of the Trust in relation to property vested in the Trust on behalf of a particular congregation.
22. Clause 19 empowers the Trust to delegate its functions (with specified limitations) to any member of the Board or to any other person or body prescribed by the Trust rules.
23. Clause 20 makes it clear that the *Trustee Act 1925* applies to and in respect of the Trust.
24. Clause 21 enables the Trust to hold property alone or jointly.
25. Clause 22 provides for the investment of funds by the Trust and enables the Trust to invest, as one fund, money held for different purposes.
26. Clause 23 enables the Trust to make arrangements with a church of another denomination concerning the use of trust property.
27. Clause 24 provides that, if the Church resolves to enter into a union with any other branch of the Christian Church, the Trust is authorised to convey property in connection with that union. Such a resolution can only be made if it is approved by a meeting of each congregation of the Church, by an affirmative vote of at least 75% of members of each congregation. If the resolution relates to property held on behalf of a particular congregation, it can only be made if approved by at least 75% of the members of that congregation.
28. Clause 25 makes it clear that the Church or a congregation may affiliate with the Fellowship of Congregational Churches (New South Wales) and that such affiliation does not result in any property vesting in that Fellowship.
29. Clause 26 provides for the reimbursement of the Trust in certain circumstances.

Division 6 Trust rules

30. Clause 27 requires the Trust to make rules for the control, management and administration of, and dealings with, trust property and for the conduct of proceedings of the Board or any committee of management. The proposed section specifies the matters that the Trust rules must address, as a minimum.
31. Clause 28 provides for the amendment of Trust rules.
32. Clause 29 requires public notice to be given of Trust rules.

Division 7 Accountability of Trust

33. Clause 30 requires the Trust to publish, on the website of the Church, information concerning its composition and management.

- 34. Clause 31 requires the Board to keep minutes of its proceedings.
- 35. Clause 32 requires the minutes of proceedings of the Board to be made available for public inspection at no cost.
- 36. Clause 33 requires the Trust to keep accounts.
- 37. Clause 34 requires the Trust to prepare financial statements.
- 38. Clause 35 requires the Trust to have its financial statements audited.
- 39. Clause 36 requires the Trust to prepare, and submit to the annual general meeting of each congregation, a report of the Trust's dealings with, and management of, congregational trust property held on behalf of that congregation during the previous financial year.

Division 8 Execution of instruments by Trust

- 40. Clause 37 provides for the custody and use of the seal of the Trust.
- 41. Clause 38 provides for the execution on behalf of the Trust of instruments required by law to be in writing and for the entering into of oral contracts on its behalf.
- 42. Clause 39 enables the Trust to appoint an agent or attorney to execute documents on its behalf.

Division 9 Miscellaneous

- 43. Clause 40 provides that, if a person obtains a receipt for money paid to the Trust, the person will not be liable if the money is subsequently lost or misapplied or is not applied.
- 44. Clause 41 entitles members of the Board and others to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

Part 3 Vesting of property in Trust

- 45. Clause 42 provides for the vesting in the Trust of property currently held in trust for the Church or a congregation. The clause also specifies the effect of the vesting of property in the Trust and makes savings and transitional provisions relating to the vesting of property in the Trust by the proposed section. In particular, it provides that when property vests in the Trust in accordance with the proposed section, the rights, obligations and liabilities of the former trustees in relation to the property will become rights, obligations and liabilities of the Trust.
- 46. Clause 43 provides for the vesting in the Trust of property given to, or receivable or recoverable by, the Church in the future.
- 47. Clause 44 provides for the vesting in the Trust of property given to, or receivable or recoverable by, any particular congregation in the future.

Part 4 Miscellaneous

Division 1 Congregational rules

- 48. Clause 45 requires each congregation to make congregational rules and specifies the matters that the congregational rules must address, as a minimum.
- 49. Clause 46 provides for the amendment of congregational rules.
- 50. Clause 47 requires public notice to be given of congregational rules.

Division 2 General

- 51. Clause 48 provides for the making of regulations under the proposed Act.
- 52. Clause 49 provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act or any amendment to the proposed Act.
- 53. Clause 50 repeals the *Hunters Hill Congregational Church Act 1977*, which vested some property in certain trustees (who are natural persons) and provided for the vesting of other property in the same trustees. (That same property is vested in the proposed statutory trustee (the Trust) by proposed section 42.)

ISSUES CONSIDERED BY COMMITTEE

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

3. Totalizator Amendment (Exclusivity) Bill 2013

Date introduced	15 August 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. George Souris MP
Portfolio	Minister for Tourism, Major Events, Hospitality and Racing

PURPOSE AND DESCRIPTION

1. This Bill enables the Minister administering the *Totalizator Act 1997* to accept the offer made by TAB Limited to enter into the deed entitled 'NSW Exclusivity Deed'.
2. The Bill also extends the exclusivity period that applies in relation to the granting of totalizator licences to TAB Limited and racing clubs under the Act for an additional 20-year period if the NSW Exclusivity Deed comes into force.
3. The NSW Exclusivity Deed will, on coming into force, entitle the Crown to be paid specified instalments as consideration for the extension of the exclusivity period.

BACKGROUND

4. This Bill gives effect to an in-principle agreement that the Government reached with Tabcorp to extend the TAB's totalizator licence exclusivity for a further 20 years. At present, TAB Limited holds a 99-year licence issued in March 1998 to conduct off-course and on-course totalizator betting in New South Wales.
5. New South Wales racing clubs also hold 99-year licences for the conduct of on-course totalisator betting, with the TAB undertaking this by agreement on behalf of the racing clubs. These licences included a 15-year exclusivity period, which expired on 22 June 2013.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Schedule 1 [2]: (a) authorises the Minister, on behalf of the Crown in right of the State, to accept the offer made by TAB Limited to enter into the deed entitled 'NSW Exclusivity Deed' set out in Attachment 1 to the deed poll tabled by or on behalf of the Minister in the Legislative Assembly on the day on which this Bill is introduced, and (b) provides for the exclusivity period under Division 1 of Part 3 of the Act to be extended for an additional 20-year period (commencing on 23 June 2013) if the NSW Exclusivity Deed comes into force.

9. However, the extension of the exclusivity period will end if the NSW Exclusivity Deed is terminated under clause 5.1 of the Deed before the end of the additional 20-year period.
10. Schedule 1 [1] makes a consequential amendment to the definition of *exclusivity period*.
11. Schedule 1 [4] provides for certain competition authorisations with respect to the NSW Exclusivity Deed and the deed poll that contained the offer for the NSW Exclusivity Deed.
12. Schedule 1 [3] replaces outdated references to the *Trade Practices Act 1974* of the Commonwealth with references to the *Competition and Consumer Act 2010* of the Commonwealth.
13. Schedule 1 [5] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of an Act that amends the *Totalizator Act 1997* (including the proposed Act).

ISSUES CONSIDERED BY COMMITTEE

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

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.