



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

NO. 19/55 – 12 June 2012



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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:

to consider any Bill introduced into Parliament, and

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,

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

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:

- (b) 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
- (c) 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. CRIMES AMENDMENT (RECKLESS INFLICTION OF HARM) BILL 2012

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

### 2. FISCAL RESPONSIBILITY BILL 2012

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

#### *Excludes judicial review*

The Committee is concerned when a Bill seeks to exclude judicial review. However, this Bill outlines at clause 9 that nothing in this Act places on any person any obligation enforceable in a court or law or administrative review body. In circumstances where a Bill expressly excludes any potential enforceable obligations arising from that Bill, the Committee does not consider it unreasonable for judicial review to be excluded. The Committee does not make any further comment with respect to this issue.

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

#### *Matters which should be regarded by Parliament*

The Committee is concerned when definitions are not contained within the primary legislation. The Committee pays particular attention when the source of the definition is external to the New South Wales Government. However, in circumstances where legislation relates to fiscal responsibility, the Committee does not consider that ensuring that meaning of expressions are consistent with the Australian Bureau of Statistics is inappropriate. The Committee does not make any further comment with respect to this issue.

### 3. MOTOR ACCIDENTS AND LIFETIME CARE AND SUPPORT SCHEMES LEGISLATION AMENDMENT BILL 2012

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

#### *Retrospectivity & Rule of Law*

The Committee refers to Parliament whether allowing this Bill to amend the Act from the date the Bill was tabled constitutes a violation of the rule of law.

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

#### *Matters which should be regarded by parliament*

The Committee is concerned that the regulations may prescribe what treatment and care needs which can be permitted, and excluded, for participants in the scheme. The Committee refers to Parliament whether it may be more appropriate for all treatment and care needs to be prescribed in the legislation rather than the regulation.

4. TOBACCO LEGISLATION AMENDMENT BILL 2012

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

*Personal Liberty*

Developing public policy around smoking in public places requires striking a balance between competing liberties, that of the rights of one class of individuals to legitimately partake in a legal activity such as smoking, and the rights of another class to enjoy a smoke-free environment. The Committee recognises these tensions, but given the broader public interest in lowering overall smoking rates and minimising passive smoke, makes no further comment.

5. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012

The Committee has not identified any issues arising under section 8A(1) of the *Legislation Review Act 1987*.

## Part One - Bills

### 1. Crimes Amendment (Reckless Infliction of Harm) Bill 2012

Date introduced	Wednesday 30 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon Greg Smith SC MP
Portfolio	Attorney General

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Crimes Act 1900* in relation to offences involving the reckless infliction of grievous bodily harm and reckless wounding.
2. The *Crimes Amendment Act 2007* replaced malice with recklessness as the fault element in various offences in the *Crimes Act 1900*. The Court of Criminal Appeal held in *Blackwell v Regina* [2011] NSWCCA 93 that the effect of the amendments was that the offence of recklessly inflicting grievous bodily harm now required recklessness as to causing grievous bodily harm, not just some physical harm, as was the case before the amendments.
3. The Bill provides that a person will be guilty of the offence of recklessly causing grievous bodily harm and related offences if the person causes grievous bodily harm to a person and is reckless as to causing actual bodily harm (and not necessarily grievous bodily harm) to that or any other person.

#### BACKGROUND

4. As stated in the Second Reading Speech, the offence of recklessly inflicting grievous bodily harm was regularly used to prosecute cases that are more serious than assault occasioning bodily harm. A common example being the case of a single punch causing a victim to fall and strike his or her head on the footpath resulting in serious brain injury. The offence of recklessly inflicting grievous bodily harm carries a higher penalty than assault occasioning bodily harm reflecting the more serious nature of the victim's injuries.
5. Amendments in 2007 to the Crimes Act 1900 had the unintended consequence of reducing the utility of prosecuting offences of recklessly inflicting grievous bodily harm. This Bill restructures offences of recklessly wounding and inflicting grievous bodily harm to make it clear that to be guilty of the offence a person must have caused grievous bodily harm and been reckless as to causing actual bodily harm.
6. The Act commences on the date of assent and the amendments will only apply to offences committed on or after commencement.

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of Crimes Act 1900 No 40

9. Schedule 1 [1]–[6] amend the following provisions to give effect to the object of the Bill as described in the Overview above:
  - (a) section 35 (Reckless grievous bodily harm or wounding),
  - (b) section 60 (Assault and other actions against police officers),
  - (c) section 60A (Assault and other actions against law enforcement officers (other than police officers)),
  - (d) section 60E (Assaults etc at schools),
  - (e) section 105A (Definitions) for the purposes of specially aggravated break and enter offences in sections 109–113.
10. In the case of the offence of recklessly wounding or causing grievous bodily harm to a police officer, the Bill makes it clear that recklessness relates to causing actual bodily harm to a police officer or any other person. The Bill makes similar amendments in relation to the same offence against other law enforcement officers and school teachers and students.
11. Schedule 1 [7] is a transitional provision which provides that the amendments made by the proposed Act only apply to offences committed, or alleged to have been committed, on or after the commencement of the amendments.

## ISSUES CONSIDERED BY COMMITTEE

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

## 2. Fiscal Responsibility Bill 2012

Date introduced	31 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to maintain the AAA credit rating of the State of New South Wales. The Bill provides that the fiscal targets for achieving that object are as follows:
  - (a) The annual growth in general government expenses of the State is less than the long-term average general government revenue growth of the State.
  - (b) The elimination of the State's unfunded superannuation liability by 2030.
2. The Bill also sets out principles of sound financial management to support that object and provides for budget reporting in relation to performance against that object and the fiscal targets and principles.

### BACKGROUND

3. In the second reading speech, the Treasurer noted that all States and the Commonwealth have legislation that enshrines principles of sound financial management in legislation. New South Wales has previously enacted the *General Government Debt Elimination Act 1995* and the *Fiscal Responsibility Act 2005*. This Bill follows a requirement to review the second of these acts and seeks to repeal the 2005 Act, in so doing replacing the range of measures identified in that Act with a clear objective, being the retention of the triple-A credit rating.
4. The Bill has two targets – annual growth in general government expenses of the State being less than the long term average general government revenue growth of the State and the elimination of the State's unfunded superannuation liability by 2030.
5. The Bill also introduces three principles of sound financial management, being:
  - (a) responsible and sustainable spending, tax and investment;
  - (b) effective financial and asset management; and
  - (c) inter-generational equity.

### OUTLINE OF PROVISIONS

#### Part 1 Preliminary

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. Clause 3 sets out the object of the proposed Act, which is to maintain the State's AAA credit rating. The purpose of that object is:
  - (a) to limit the cost of government borrowing, and
  - (b) to enable access to the broadest possible investor base for government borrowing, and
  - (c) to maintain business and consumer confidence, thereby sustaining economic activity and employment in the State.
9. Clause 4 applies the proposed Act to and in respect of the State budget.
10. Clause 5 defines certain words and expressions used in the proposed Act. In particular, the *long-term average general government revenue growth* is defined as the average annual growth rate of general government revenue over a sufficiently long previous period to smooth out the influence of transient factors such as the business cycle (the regulations may prescribe the relevant rate). The *long-term fiscal gap* is defined as the change in the primary balance (the budget result unaffected by initial debt levels and interest rate assumptions) of the general government sector as a share of gross state product, calculated on the basis of no policy changes, over a 40-year or similar period to assess fiscal pressures associated with the ageing population and other long-term trends.

## Part 2 Fiscal targets and principles

11. Clause 6 provides that the fiscal targets for achieving the object of the proposed Act are as follows:
  - (a) The annual growth in general government expenses of the State is less than the long-term average general government revenue growth of the State.
  - (b) The elimination of the State's unfunded superannuation liability by 2030.
12. Clause 7 provides that the policy objectives of the Government should be pursued in accordance with 3 principles of sound financial management in order to support the object of the proposed Act, namely, the principle of responsible and sustainable spending, taxation and infrastructure investment; the principle of effective financial and asset management; and the principle of achieving intergenerational equity.
13. Clause 8 requires the Treasurer to include the following in the budget papers:
  - (a) a statement of the Government's fiscal strategy having regard to the object of the proposed Act and the fiscal targets and principles,
  - (b) a report on performance against that object and those targets and principles,
  - (c) the reasons for any departure from that object and those targets and principles and action planned to achieve that object and those targets and principles in forward years,

- (d) an assessment of the impact of the measures in the budget on the State's long-term fiscal gap.

In the case of the budget papers for 2016–17 and every 5 years thereafter, the budget papers are to include an updated report on long-term fiscal pressures and a re-assessment of the State's long-term fiscal gap.

### Part 3 Miscellaneous

- 14. Clause 9 provides that the proposed Act does not place on any person any obligation enforceable in a court of law or administrative review body.
- 15. Clause 10 enables the Governor to make regulations for the purposes of the proposed Act.
- 16. Clause 11 ensures that the proposed Act does not affect any of the provisions of the *Public Finance and Audit Act 1983* and other State financial legislation.
- 17. Clause 12 repeals the *Fiscal Responsibility Act 2005*.
- 18. Clause 13 provides for the review of the proposed Act in 5 years. The review is required to include an assessment of the State's long-term average general government revenue growth.

### Schedule 1 Amendment of Public Finance and Audit Act 1983 No 152

- 19. Schedule 1 makes amendments to the Act consequent on the enactment of the proposed Act, including in relation to the matters that the proposed Act requires to be dealt with in the budget policy statement that is part of the annual budget papers.

### ISSUES CONSIDERED BY COMMITTEE

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

#### *Excludes judicial review*

- 20. Clause 9(3) of the Bill outlines that no court or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance with the Bill.

**The Committee is concerned when a Bill seeks to exclude judicial review. However, this Bill outlines at clause 9 that nothing in this Act places on any person any obligation enforceable in a court or law or administrative review body. In circumstances where a Bill expressly excludes any potential enforceable obligations arising from that Bill, the Committee does not consider it unreasonable for judicial review to be excluded. The Committee does not make any further comment with respect to this issue.**

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

#### *Matters which should be regarded by Parliament*

- 21. Clause 5 of the Bill outlines that expressions used in the Act have the same meaning as similar expressions used by the Australian Bureau of Statistics in the preparation of government finance statistics.

**The Committee is concerned when definitions are not contained within the primary legislation. The Committee pays particular attention when the source of the definition is external to the New South Wales Government. However, in circumstances where legislation relates to fiscal responsibility, the Committee does not consider that ensuring that meaning of expressions are consistent with the Australian Bureau of Statistics is inappropriate. The Committee does not make any further comment with respect to this issue.**



### 3. Motor Accidents and Lifetime Care and Support Schemes Legislation Amendment Bill 2012

Date introduced	30 May 2012
House introduced	Legislative Council
Minister responsible	The Hon. Greg Pearce MLC
Portfolio	Minister for Finance and Services

#### PURPOSE AND DESCRIPTION

1. The primary object of this Bill is to clarify the operation of the Lifetime Care and Support Scheme (the Scheme) under the Motor Accidents (Lifetime Care and Support) Act 2006 in relation to the treatment and care needs of participants in the Scheme.
2. In particular, the Bill:
3. makes it clear that while a person who is a participant in the Scheme is entitled to have certain expenses relating to treatment and care needs paid for by the Lifetime Care and Support Authority (the Authority), the Authority is only obliged to pay for assessed treatment and care needs and is not obliged to pay for:
4. certain treatment, care, support or services provided on a gratuitous basis or by a person who is not an approved provider, or
5. any treatment, care, support or services of a kind declared by the regulations to be excluded treatment and care needs, and
6. makes it clear that participation in the Scheme abolishes a participant's right to claim damages for economic loss, or receive payment under Chapter 3 of the Motor Accidents Compensation Act 1999 (the MAC Act), in respect of treatment and care needs (including those treatment and care needs that are not assessed treatment and care needs or in respect of which the Authority is not required to make a payment).
7. The Bill provides that the amendments are to operate from the date of introduction into Parliament of the Bill (in relation to claims made on or after that date).

#### BACKGROUND

8. The Lifetime Care and Support Authority was established in 2006 by the *Motor Accidents (Lifetime Care and Support) Act 2006*. The purpose of the authority is to operate a scheme to provide the treatment and care needs of those who are catastrophically injured in a motor vehicle accident in New South Wales, irrespective of fault.

9. During the Second Speech for this Bill, the Minister for Finance and Services stated that in the court case of *Thiering v Daly* [2011] NSWSC 1345, Justice Garling had found it impossible to reconcile the statements of then Minister for Transport with the actual words in the Act.
10. The Minister for Finance and Services also stated in the speech:

"There are also concerns that the decision in the *Thiering* case has left open the possibility that in some cases the compulsory third party insurer may be liable in damages for the cost of some of the lifetime care scheme participant's future treatment and care needs. Compulsory third party insurers have calculated their premiums on the assumption that they were no longer liable for any of the treatment and care expenses of participants in the lifetime care scheme. This was a reasonable thing to do, considering the clear intent of the original legislation as clearly expressed by Minister Watkins in his speech introducing the original legislation. The compulsory third party insurer representatives have told me that the decision in *Thiering* has the potential to place a significant burden on the current level of both premiums and levies collected. It has been suggested to me that premium costs may need to rise substantially in order to accommodate the likely increase in damages payouts if the *Thiering* decision is allowed to stand."

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16

13. Schedule 1 [3] updates (and moves to the preliminary provisions of the Motor Accidents (Lifetime Care and Support) Act 2006) the definition of treatment and care needs and allows for the making of regulations to declare any treatment, care, support or services to be excluded treatment and care needs (being treatment and care needs in respect of which the Authority is not obliged to make a payment).
14. Schedule 1 [4] substitutes the heading to Part 2.
15. Schedule 1 [6] inserts new Part 2A (Payments under Scheme) and proposed section 11A (to replace current section 6 which is repealed by Schedule 1 [5]).
16. Proposed section 11A makes it clear that the Authority is to pay for all of the reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment and care needs of the person (being those that are assessed by the Authority to be reasonable and necessary and that relate to the relevant motor accident) while the person is a participant in the Scheme. The proposed section also makes it clear that no expenses are payable by the Authority in relation to excluded treatment and care needs and treatment and care needs that are not assessed treatment and care needs.
17. Schedule 1 [6] also inserts proposed sections 11B and 11C. Proposed section 11B provides that the Authority is not required to (but may elect to) make a payment in

relation to gratuitous treatment, care, support or services and treatment, care, support or services that are provided by a person who is not an approved provider (where required by the regulations or the LTCS Guidelines to be provided by an approved provider). Proposed section 11C (which replaces current section 10 which is repealed by Schedule 1 [5]) requires attendant care services to be provided by an approved provider along with any other services identified in the LTCS Guidelines as services that are to be provided by an approved provider. The proposed section also defines an approved provider as a person approved by the Authority (or by any other person specified in the LTCS Guidelines) to provide the service under the Scheme.

18. Schedule 1 [1], [2], [7] and [8] make consequential amendments.
19. Schedule 1 [9] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
20. Schedule 1 [10] provides for savings and transitional matters. In particular, the amendments made by Schedule 1 apply to any claim made on or after the date of introduction into Parliament of the Bill for the proposed Act, regardless of whether the claim relates to past or future treatment and care needs.

### Schedule 2 Amendment of Motor Accidents Compensation Act 1999 No 41

21. Schedule 2 [2] substitutes section 43A of the MAC Act to make it clear that Chapter 3 (which requires insurers to pay for certain treatment expenses) does not apply in respect of any treatment and care needs of a participant in the Scheme (whether or not the Authority is obliged to make a payment in respect of the treatment and care needs concerned and whether or not the treatment and care needs are provided for on a gratuitous basis).
22. Schedule 2 [7] inserts proposed section 141A into the MAC Act (to replace current section 130A which is repealed by Schedule 2 [5]) to make it clear that a person who is a participant in the Scheme cannot claim damages in respect of any treatment and care needs (whether or not the Authority is obliged to make a payment in respect of the treatment and care needs concerned and whether or not the treatment and care needs are provided for on a gratuitous basis). Schedule 2 [1] makes a consequential amendment.
23. Schedule 2 [3] and [4] transfer existing provisions to another Part of the MAC Act that more accurately reflects the nature of the provisions. Schedule 2 [6] makes a consequential amendment.
24. Schedule 2 [8] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
25. Schedule 2 [9] provides for savings and transitional matters. In particular, the amendments made by Schedule 2 apply in relation to any claim made on or after the date of introduction into Parliament of the Bill for the proposed Act, regardless of whether the claim relates to past or future treatment and care needs.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Retrospectivity & Rule of Law*

26. Clause 9 of the Bill outlines the general operation of the amendments outlined in the Bill. The Clause states that the amendments applies in relation to any claim made on or after the relevant date, regardless of whether the claim was made in relation to past or future treatment, even if the motor accident occurred prior to the relevant date.
27. The Bill defines 'the relevant date' as the date that the Bill was introduced into Parliament.
28. Having an amendment take effect from the date the Bill was introduced into Parliament may contradict the rule of law.
29. Such an amendment could have the potential to effect personal injury cases on foot. As the Bill is yet to be enacted the parties to such a case would not be aware of the potential change in legislation which would have costs ramifications.

**The Committee refers to Parliament whether allowing this Bill to amend the Act from the date the Bill was tabled constitutes a violation of the rule of law.**

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

#### *Matters which should be regarded by parliament*

30. Schedule 1, Clause 3 of the Bill defines the treatment and care needs of a participant in the Scheme to include such other kinds of treatment, care, support or services as prescribed by the regulations. Clause 3 also allows for the regulations to prescribe treatment and care needs which are to be excluded from the Scheme.
31. This amendment will also affect the definition of treatment and care needs in the Motor Accidents Compensation Act 1999 as the Bill in Schedule 2, Clause 2, amends that Act to allow for the same definition to be used.

**The Committee is concerned that the regulations may prescribe what treatment and care needs which can be permitted, and excluded, for participants in the scheme. The Committee refers to Parliament whether it may be more appropriate for all treatment and care needs to be prescribed in the legislation rather than the regulation.**

## 4. Tobacco Legislation Amendment Bill 2012

Date introduced	31 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Health

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Smoke-free Environment Act 2000 to extend the prohibition on smoking in enclosed public places so that from 7 January 2013 smoking will be prohibited in additional outdoor places.
2. These new places include in close proximity to children's playgrounds, swimming pools, spectator stands at sports grounds, public transport stops and stations, at pedestrian access points buildings, commercial dining areas, and in hospital grounds.

### BACKGROUND

3. The latest Adult Health Survey indicated that the percentage of adults who currently smoke has dropped to 14.8%, down from 15.8% in 2010. This represents an all-time low for adult smokers in NSW.
4. This Bill is the latest in a long history of legislation to curtail smoking and reign in the rate of diseases associated with smoking.
5. Legislation was first brought in over twenty years ago with a prohibition of smoking in public offices. Since then, subsequent legislation has placed further prohibitions on smoking extending to clubs, bars, dining venues and others concealed areas. This Bill represents the latest round of tobacco control.

### 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 7 January 2013.
8. Schedule 1 [8] inserts new section 6A which prohibits smoking in the outdoor public places referred to in paragraph (a) of the Overview. The new section also contains exceptions for smoking while passing through some of the outdoor public places where smoking will be prohibited. The regulations will be able to prescribe other exceptions. Schedule 1 [7] defines commercial outdoor dining area.
9. Schedule 1 [1]–[6], [12], [14] and [15] make consequential amendments. The Act already prohibits smoking in enclosed public places.

10. Schedule 1 [9] extends the existing offence that is committed by the occupier of an enclosed smoke-free area if a person smokes in the smoke-free area so that the offence will apply if a person smokes in a commercial outdoor dining area.
11. Schedule 1 [10] creates exceptions from the requirement for the display of signs in smoke-free areas so that signs will not be required in most of the outdoor public places in which smoking will be prohibited. The amendment also provides for the Director-General to enter into arrangements with government and local government agencies and bodies for the display of signs relating to smoking in the areas that are exempt from the compulsory signage requirements.
12. Schedule 1 [11] prevents the taking of criminal proceedings under the Act except by the Director-General or persons prescribed by the regulations.
13. Schedule 1 [13] extends the provision that protects the State from compensation claims in connection with the operation of the Act and previous amendments to the Act so that the protection will extend to amendments made by the Bill and any future amending Act. Schedule 1 [16] and [17] make savings and transitional amendments. Transitional provisions defer the smoking ban in commercial outdoor dining areas, and within 4 metres of a pedestrian access point to licensed premises or a restaurant, until 6 July 2015.
14. Schedule 2 [1] and [2] extend the existing by-law making powers of local health districts and statutory health corporations to include by-laws regulating or prohibiting smoking at public hospitals, health institutions or health services under their control and designating areas as smoke-free areas under the Smoke-free Environment Act 2000.
15. Schedule 2 [3] authorises the making of regulations to regulate or prohibit smoking at public hospitals controlled by the Crown and designate areas as smoke-free areas under the Smoke-free Environment Act 2000.
16. Schedule 2 [4] provides for the making of savings and transitional regulations.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Personal Liberty*

17. This Bill proposes to further expand the list of public places that are to be designated as smoking-free zones. In some respects, this could be regarded as a further encroachment on the rights of individuals to pursue and participate in an otherwise legal activity by making it illegal in certain circumstances. However, public policy of this nature always needs to consider the effects of this activity on bystanders – in this respect – the effect of passive smoke on other individuals, their comfort and health.

**Developing public policy around smoking in public places requires striking a balance between competing liberties, that of the rights of one class of individuals to legitimately partake in a legal activity such as smoking, and the rights of another class to enjoy a smoke-free environment. The Committee recognises these tensions, but given the broader public interest in lowering overall smoking rates and minimising passive smoke, makes no further comment.**

## 5. Statute Law (Miscellaneous Provisions) Bill 2012

Date introduced	30 May 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Justice

### PURPOSE AND DESCRIPTION

1. A Bill to repeal certain Acts and instruments and to amend certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.
2. The objects of this Bill are:
  - (a) to make minor amendments to various Acts (Schedule 1), and
  - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedules 2 and 3), and
  - (c) to amend various Acts to enable the repeal of legislation by Schedule 5 (including by transferring into them provisions of the legislation to be repealed that are of possible ongoing effect) (Schedule 4), and
  - (d) to repeal certain Acts and instruments and provisions of Acts and instruments, (Schedule 5), and
  - (e) to make other provisions of a consequential or ancillary nature (Schedule 6).

### BACKGROUND

3. Schedule 1 contains policy changes of a minor nature. It contains amendments to 28 Acts. Schedule 1 includes amendments to the *Barangaroo Delivery Authority Act 2009* to remove the requirement for the Secretary of the Treasury to be a member of the board of the authority and to increase the number of persons that the Premier may appoint to the board from four to five persons. The schedule also makes amendments to the *Environmental Planning and Assessment Act 1979* including: to extend a right of appeal to persons who have deposited security with a council in accordance with a complying development certificate and are dissatisfied with the council's failure to release the security; as well as to enable joint regional planning panels to advise the Director General of the Department of Planning and Infrastructure (not just the Minister).
4. Section 30 (2) of the *Interpretation Act 1987* ensures that the repeal of an Act or statutory rule does not affect the operation of any savings, transitional or validation provision contained in the Act or statutory rule, and that the repeal of

an amending Act does not affect any amendment made by the Act. Section 5 (6) of the *Interpretation Act 1987* extends this provision to the repeal of an environmental planning instrument.

5. The *Firearms Act 1996* is amended to authorise police officers to seize licences and permits that are not in force, which is consistent with the obligation to surrender licences and permits when they cease to be in force. Another amendment to that Act aims to reduce red tape by enabling licensed dealers to sell or otherwise deal with imitation firearms under the authority of their licence rather than having to obtain a permit.
6. Schedule 1 contains amendments to the *Fisheries Management Act 1994*. These include an amendment to make it clear that the Minister may cancel an aquaculture lease if the leased area is not used for aquaculture.
7. The *Health Care Complaints Act 1993* and the *Health Records and Information Privacy Act 2002* will be amended to update terminology to be consistent with the national scheme for the regulation of health practitioners. For example, the term "nursing services" is replaced with the term "nursing and midwifery services".
8. The *Interpretation Act 1987* is amended to confirm existing law to the effect that a delegation by an officeholder generally continues to have effect even though the person who made the delegation has ceased to hold the relevant office. The new officeholder may vary or revoke the existing delegation.
9. Schedule 1 also amends the *Liquor Act 2007* in relation to the operation of the three-strikes disciplinary scheme that applies in respect of convictions for certain offences, or the payment of penalty notices for alleged offences, at licensed premises. The amendments aim to ensure that a strike is incurred if a penalty notice enforcement order is made because a licensee or manager fails to pay under a penalty notice and does not elect to have the penalty notice offence be dealt with by a court. The amendments will enable a strike to be revoked if a court election is made after payment under a penalty notice or if a penalty notice or enforcement order is withdrawn or annulled.
10. Schedule 1 makes miscellaneous amendments to the *Residential Tenancies Act 2010*. One of these amendments will ensure that it is not an offence for a landlord or agent to receive a rental bond from a tenant before the tenant signs a residential tenancy agreement. However, it will remain an offence for the landlord or agent to require the bond to be paid before the agreement is signed.
11. Schedule 2 deals with matters of statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion. Examples are those amendments arising out of the enactment of other legislation; correcting numbering and typographical errors and updating terminology.
12. Schedule 3 makes amendments, by statute law revision, to forms of statutory declarations and affidavits. These amendments are consequent upon recent changes to the *Oaths Act 1900* under which witnesses of statutory declarations or



affidavits must certify that they have complied with requirements regarding the identification of the persons making the declarations or affidavits.

13. Schedules 4 and 5 repeal Acts and instruments that are redundant and consolidate Acts that are still in operation. Schedule 5 repeals 28 Acts and one instrument, as well as various provisions of Acts and instruments. Schedule 4 contains amendments that include the transfer into various Acts of the provisions repealed by schedule 5.
14. Together with section 29A of the *Interpretation Act 1987*, this Bill continues to provide a power for the Governor, by proclamation, to revoke the repeal by the bill of any Act or instrument and to restore its operation. Schedule 6 contains general savings, transitional and other provisions.

## OUTLINE OF PROVISIONS

15. Clause 1 sets out the name (also called the short title) of the proposed Act.
16. Clause 2 provides for the commencement of the proposed Act.
17. Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.
18. **Schedule 1** makes amendments to the following Acts:

*Aboriginal Land Rights Act 1983 No 42*  
*Animal Diseases (Emergency Outbreaks) Act 1991 No 73*  
*Barangaroo Delivery Authority Act 2009 No 2*  
*Births, Deaths and Marriages Registration Act 1995 No 62*  
*Crimes Act 1900 No 40*  
*Environmental Planning and Assessment Act 1979 No 203*  
*Evidence (Audio and Audio Visual Links) Act 1998 No 105*  
*Exhibited Animals Protection Act 1986 No 123*  
*Explosives Act 2003 No 39*  
*Firearms Act 1996 No 46*  
*Fisheries Management Act 1994 No 38*  
*Health Care Complaints Act 1993 No 105*  
*Health Records and Information Privacy Act 2002 No 71*  
*Health Services Act 1997 No 154*  
*Heritage Act 1977 No 136*  
*Home Building Act 1989 No 147*  
*Interpretation Act 1987 No 15*  
*Liquor Act 2007 No 90*  
*Motor Vehicle Repairs Act 1980 No 71*  
*Motor Vehicles Taxation Act 1988 No 111*  
*National Parks and Wildlife Act 1974 No 80*  
*Petroleum (Onshore) Act 1991 No 84*  
*Plantations and Reafforestation Act 1999 No 97*  
*Public Health (Tobacco) Act 2008 No 94*  
*Residential Tenancies Act 2010 No 42*  
*Subordinate Legislation Act 1989 No 146*  
*Water Management Act 2000 No 92*

*Water Management Amendment Act 2008 No 73*

*Work Health and Safety Act 2011 No 10*

19. **Schedule 2** amends certain Acts and instruments for the purpose of effecting statute law revision.
20. **Schedule 3** amends certain forms of statutory declarations and affidavits in regulations for the purpose of effecting statute law revision. The amendments are consequential on amendments to the *Oaths Act 1900* relating to the identification of persons making statutory declarations or affidavits.
21. **Schedule 4** contains amendments that enable, or are consequential on, the repeal of Acts by Schedule 5. The amendments include the transfer, into various Acts, of provisions of Acts repealed by clause 4 of Schedule 5.
22. **Schedule 5** repeals a number of Acts and instruments and provisions of Acts and instruments.
23. Clause 1 repeals redundant Acts and instruments and redundant provisions of Acts and instruments. These include the *Fish Marketing Act 1994*, which is repealed at the request of the portfolio concerned on the basis that the Act has fulfilled its purposes (the dissolution of the Fish Marketing Authority, the sale of its business undertaking and the deregulation of fish marketing in New South Wales).
24. Clause 2 repeals Acts, and provisions of Acts, that contain commenced amendments to other Acts and instruments.
25. Clause 3 repeals uncommenced provisions that cannot be commenced because they amend Acts, instruments or provisions that have since been repealed.
26. Clause 4 repeals Acts whose repeal is enabled by the transfer of provisions of those Acts by Schedule 4.
27. **Schedule 6** contains savings, transitional and other provisions of a more general effect than those set out in Schedule 1. The Schedule includes a provision that, in conjunction with section 29A of the *Interpretation Act 1987*, enables the Governor to revoke, by proclamation, the repeal of any Act or instrument, or any provision of an Act or instrument, by the proposed Act and restore its operation.

## ISSUES CONSIDERED BY COMMITTEE

**The Committee has not identified any issues arising under section 8A(1) of the *Legislation Review Act 1987*.**

# Appendix One – Index of Ministerial Correspondence on Bills

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

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

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In 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 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.