



## 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. EDUCATION AMENDMENT (SCHOOL PROVIDERS FOR OVERSEAS STUDENTS) BILL 2013

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

The Committee notes that listing “any other Act that amends this Act” rather than listing the name of each of those amending Acts limits the clarity of Schedule 3. The Committee has a preference for the name of each Act being listed to avoid this lack of clarity. As the list relates to the regulation making power pertaining to provisions of a savings or transitional nature, and recognising that this amendment ensures that the Schedule is comprehensive, the Committee makes no further comment on this issue.

### 2. ENERGY SERVICES CORPORATIONS AMENDMENT (DISTRIBUTOR EFFICIENCY) 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. GAMING MACHINES AMENDMENT (MULTI-TERMINAL GAMING MACHINES IN CLUBS) BILL 2013

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

The Committee notes that listing “any other Act that amends this Act” rather than listing the name of each of those amending Acts limits the clarity of Schedule 1. The Committee has a preference for the name of each Act being listed to avoid this lack of clarity. As the list relates to the regulation making power pertaining to provisions of a savings or transitional nature, and recognising that this amendment ensures that the Schedule is comprehensive, the Committee makes no further comment on this issue.

### 4. MARINE PARKS AMENDMENT (MORATORIUM) BILL 2013

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

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

### 5. MOTOR ACCIDENT INJURIES AMENDMENT BILL 2013

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

#### *Right to compensation for injuries suffered*

Because of the various caps and exclusions in the compensation scheme proposed by the Bill, the Committee is concerned that the scheme may lead to some individuals receiving less compensation for their injuries than they would under the current scheme, resulting in them not being adequately compensated for the injuries they have suffered. The Committee refers this issue to Parliament for consideration.

*Denial of compensation in some circumstances*

The Committee is concerned that some individuals may miss out entirely on compensation under the proposed scheme because they do not suffer permanent impairment greater than 10%. The Committee notes that such individuals may nevertheless suffer from injuries that continue to have a negative impact on their lives. The Committee refers this issue to Parliament for consideration.

*Limit on right to recover legal costs*

The Committee notes that claimants may not be able to recover all of their reasonable and necessary legal costs under the changes proposed by the Bill. The Committee is concerned that if claimants are required to cover part of their legal costs themselves, claimants may have to use a portion of their statutory benefits to fund the remainder of those costs. Alternatively, claimants may not be able to afford adequate legal representation, which may affect the compensation outcome in their matter. The Committee refers these issues to Parliament for consideration.

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

*Removes some of the court's jurisdiction*

The Committee refers to Parliament whether it is appropriate in the circumstances to remove some of the court's jurisdiction to determine whether or not an injured person's degree of permanent impairment is greater than 10%.

*Commencement by proclamation*

The Committee refers to Parliament for consideration whether the commencement of the majority of the provisions in the Bill by proclamation is an inappropriate delegation of legislative powers given that the Bill makes significant changes to the current scheme for claiming compensation in relation to injuries occasioned in motor accidents.

*Retrospectivity*

The Committee considers that any retrospective application of the amendments made by the Bill to existing claims should be specified in the Act, rather than the Regulations. The Committee also refers to Parliament for consideration whether permitting some provisions to operate retrospectively is appropriate in the circumstances, given the significant changes that the Bill proposes to the *Motor Accidents Compensation Act 1999*.

**6. NSW SELF INSURANCE CORPORATION AMENDMENT BILL 2013**

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

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

**7. STATE OWNED CORPORATIONS LEGISLATION AMENDMENT (STAFF DIRECTORS) BILL 2013**

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

**8. VICTIMS RIGHTS AND SUPPORT BILL 2013**

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

*Right to compensation as a victim of crime*

The Committee refers to Parliament for consideration whether differences in the financial compensation structures between the *Victims Support and Rehabilitation Act 1996* and the scheme proposed in the Bill could unduly impact on a victim's rights.

*Retrospectivity affecting victims*

Given the potential for different compensation outcomes under the provisions of the Bill compared to the *Victims Support and Rehabilitation Act 1996*, the Committee refers to Parliament whether it is appropriate to require existing applications for victims compensation to be dealt with under the provisions of the Bill rather than the *Victims Support and Rehabilitation Act 1996*.

*Retrospectivity affecting offenders*

Clauses 17 and 18 of Schedule 2 to the Bill provide that offenders convicted after the commencements of the Bill will be subject to the offender-funded compensation scheme in Part 6 of the Bill and the compensation levies in Part 7 of the Bill even though the proceedings relating to their offences were commenced prior to the Bill commencing. However, because the *Victims Support and Rehabilitation Act 1996* contains similar schemes to those provided for in Parts 6 and 7 of the Bill, the Committee makes no further comment on this issue.

*Time bars on making an application for victims support*

The Committee notes that clause 40 of the Bill does not contain a provision giving the Commissioner of Victims Rights the discretion to accept victims support applications out of time. The Committee refers this issue to Parliament for consideration.

*Access to government information*

Considering this provision is intended fundamentally to protect victims rights, and given a comparable provision exists in the current scheme, the Committee makes no further comment.

**PART TWO - REGULATIONS**

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



## Part One - Bills

### 1. Education Amendment (School Providers for Overseas Students) Bill 2013

Date introduced	7 May 2013
House introduced	Legislative Assembly
Member responsible	The Hon. Adrian Piccoli MP
Portfolio	Minister for Education

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Education Act 1990* to enable the Board of Studies (*the Board*) to continue approving and regulating providers who provide courses at schools to overseas students, following the repeal of the transitional arrangements under which the Board currently carries out these functions. The Board's approval of the providers concerned forms the basis for the Secretary of the Commonwealth Department of Education, Employment and Workplace Relations to register those providers under the *Education Services for Overseas Students Act 2000* of the Commonwealth.
2. The Board approved and regulated the providers concerned under the *Vocational Education and Training Act 2005* until the repeal of that Act in 2011. Following the repeal of that Act, the Board continued to approve and regulate the providers under transitional arrangements set out in the *Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011*. That Regulation is to be repealed at the end of 30 June 2013.

#### BACKGROUND

3. In 2010, the regulation of school and non-school providers of courses to overseas students in New South Wales was transferred from the Vocational Education and Training Accreditation Board to the Board of Studies. This was achieved through amendment to the *Vocational Education and Training Act*.
4. On 30 June 2011, New South Wales referred its powers regarding non-school providers of courses to overseas students to the Commonwealth. The transitional arrangements in relation to this were set out in the *New South Wales Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011*. That regulation is to be repealed at the end of June 2013, with the arrangements being transferred to this Bill.

## 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 on 1 July 2013.

### Schedule 1 Amendment of Education Act 1990 No 8

7. Schedule 1 [1]–[3] make amendments by way of statute law revision, relating to a change of Department name.
8. Schedule 1 [4] amends the *Education Act 1990* by inserting a new Part 7A into that Act to give effect to the object outlined in the Overview above. Schedule 1 [5] makes a consequential amendment.
9. Schedule 1 [6] enables a person to apply to the Administrative Decisions Tribunal (*the Tribunal*) for the review of certain decisions of the Board under the new Part 7A. The decisions concerned are decisions to refuse to grant approval under that Part or decisions to impose conditions on, amend, suspend or cancel such an approval. Schedule 1 [7] makes a consequential amendment.
10. Schedule 1 [8] enables a person to apply to the Tribunal for a review if the Board fails to determine the person’s application for an approval under the new Part 7A within 5 months of lodging the application.
11. Schedule 1 [9] makes an amendment that is related to the power set out in the new Part 7A (proposed section 83D) to inspect the premises of approved providers and the schools at which the courses concerned are provided. In particular, the proposed amendment ensures that a Board inspector who is carrying out an inspection under proposed section 83D has (at all reasonable times) full and free access to the premises and any documents on the premises, and may remove or make copies of any such documents.
12. Schedule 1 [10] provides for the issue of evidentiary certificates by the Board.
13. Schedule 1 [11] enables the Board to make rules that provide guidance with respect to the requirements for approval set out in the new Part 7A.
14. Schedule 1 [12] enacts a savings and transitional regulation-making power.
15. Schedule 1 [13] enacts provisions of a savings and transitional nature as a consequence of the repeal of the *Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011* and the enactment of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

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

*Inappropriate delegation of power*

16. Schedule 3 of the *Education Act 1990* is entitled ‘Savings, transitional and other provisions’. Clause 2(1) of Schedule 3 outlines that “the regulations may contain

provisions of a savings or transitional nature consequent on the enactment of the following Act” and then lists 13 Acts.

17. Schedule 1 of the Bill inserts at the end of clause 2(1) of Schedule 3 “any other Act that amends this Act”.

**The Committee notes that listing “any other Act that amends this Act” rather than listing the name of each of those amending Acts limits the clarity of Schedule 3. The Committee has a preference for the name of each Act being listed to avoid this lack of clarity. As the list relates to the regulation making power pertaining to provisions of a savings or transitional nature, and recognising that this amendment ensures that the Schedule is comprehensive, the Committee makes no further comment on this issue.**

## 2. Energy Services Corporations Amendment (Distributor Efficiency) Bill 2013

Date introduced	9 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Energy Services Corporations Act 1995* to improve the combined operational efficiency of energy distributors by providing for the appointment of a single board of directors that is to be the board of each of the energy distributors and is to act in the best interests of energy distributors as if they formed part of a combined operation.

### BACKGROUND

2. In July 2012, the Government implemented interim governance arrangements for the three State-owned electricity distributors – Ausgird, Endeavour Energy, and Essential Energy. This Bill is designed to improve the combined operations and capital efficiency of those three electricity distributors by creating more streamlined board governance arrangements.
3. Currently, the decisions that help drive electricity reform initiatives are made at three separate board meetings. This Bill will help streamline the decision-making process at aboard level by formally providing for a joint boardroom of the distributors. It is also envisaged that this Bill will remove any potential conflict of interest for board members in observing their directors' duties.

### 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. Schedule 1 [1] provides for the appointment of a single board of directors as the joint board of each of the energy distributors. The joint board is required to act in the best interests of all energy distributors as if they were a combined operation. The amendment also varies the operation of section 20N of the State Owned Corporations Act 1989 which provides for energy distributors to be reimbursed for the costs of complying with directions that are not in their commercial interests. An energy distributor will not be entitled to be reimbursed for the costs of complying with a direction that is not in its commercial interests if the direction is in the combined



commercial interests of energy distributors. The amount an energy distributor will be entitled to be reimbursed for the costs of complying with a direction that is not in the combined commercial interests of energy distributors will be reduced by any net benefit accruing to any other energy distributor as a result of compliance with the direction.

7. Schedule 1 [2] and [3] make consequential procedural amendments to facilitate the appointment of a single board for energy distributors.
8. Schedule 1 [4] provides for the chief executive officer of an energy distributor to delegate functions to an employee of the energy distributor, subject to any directions of the joint board.
9. Schedule 1 [5] and [6] enact consequential savings and transitional provisions.

## 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. Gaming Machines Amendment (Multi-terminal Gaming Machines in Clubs) Bill 2013

Date introduced	8 May 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. The object of this Bill is to amend the *Gaming Machines Act 2001* (the *principal Act*) to allow clubs that hold no more than 33 gaming machine entitlements to keep, as part of the total number of approved gaming machines that may be authorised to be kept by the club, up to five player terminals that form part of multi-terminal gaming machines (or *MTGMs*).
2. A MTGM is a gaming machine that is equipped with more than one player terminal as it is designed to be played by more than one player at a time. Each such player terminal is taken to be a separate gaming machine for the purposes of the principal Act and accordingly each player terminal is counted as part of the total number of gaming machines that may be kept by a club. That total number cannot exceed the number of gaming machine entitlements held by the club.

#### BACKGROUND

3. The current legislation provides that no more than 15 per cent of gaming machines within a club may be multi-terminal gaming machines. This Bill relaxes that requirement in relation to smaller clubs with 33 gaming machines or less. This Bill allows such clubs to have up to five multi-terminal gaming machine player terminals.

#### 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 Gaming Machines Act 2001

6. Schedule 1 [3] will allow the Independent Liquor and Gaming Authority to authorise a club to keep up to (but not more than) 5 player terminals that form part of the MTGMs kept on the club premises but only if no more than 33 gaming machine entitlements are held for the time being by the club. In such a case, the usual 15% limit under section 61A of the principal Act on the number of MTGM player terminals in the club will not apply.

7. Schedule 1 [1] and [2] are consequential amendments.
8. Schedule 1 [4] will enable regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

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

*Inappropriate delegation of power*

9. Schedule 1 of the *Gaming Machines Act 20013* is entitled 'Savings, transitional and other provisions'. Clause 1(1) of Schedule 1 outlines that "the regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Act" and then lists 10 Acts.
10. Schedule 1[4] of this Bill inserts at the end of clause 1(1) of Schedule 1 "any other Act that amends this Act".

**The Committee notes that listing "any other Act that amends this Act" rather than listing the name of each of those amending Acts limits the clarity of Schedule 1. The Committee has a preference for the name of each Act being listed to avoid this lack of clarity. As the list relates to the regulation making power pertaining to provisions of a savings or transitional nature, and recognising that this amendment ensures that the Schedule is comprehensive, the Committee makes no further comment on this issue.**

## 4. Marine Parks Amendment (Moratorium) Bill 2013

Date introduced	8 May 2013
House introduced	Legislative Assembly
Member responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

### PURPOSE AND DESCRIPTION

1. Currently, a moratorium on the creation of new marine parks and the alteration or creation of sanctuary zones within existing marine parks is imposed under the *Marine Parks Act 1997 (the Act)*. The moratorium is imposed for a period of 5 years commencing on the commencement of the *Marine Parks Amendment (Moratorium) Act 2011* or any shorter period specified by order under section 48B of the Act (*the moratorium period*). During the moratorium period, the Marine Parks Authority (*the Authority*) must not conduct a review of a zoning plan for a marine park under section 17D of the Act, and no other action is to be taken under that section in relation to such a plan.
2. The objects of this Bill are as follows:
  - (a) to allow regulations to be made under the Act within the moratorium period to alter the areas of existing sanctuary zones, or to classify areas as new sanctuary zones, within marine parks;
  - (b) to provide for reviews of zoning plans for marine parks at the direction of the relevant Ministers; and
  - (c) to allow the Authority to conduct reviews of, or take other action in relation to, zoning plans for marine parks during the moratorium period.

### BACKGROUND

3. On taking office, the Government passed legislation to implement a five-year moratorium on the alteration of the boundaries of sanctuary zones, the classification of new areas as sanctuary zones and the declaration of new marine parks.
4. This Bill provides that regulations may be made in relation to the alternation of and classification of sanctuary zones, but maintains the moratorium with respect to the declaration of new marine parks.

### 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 on the date of assent to the proposed Act.

## **Schedule 1    Amendment of Marine Parks Act 1997 No 64**

7.    Schedule 1 [2] repeals a provision prohibiting the making of a regulation during the moratorium period to alter the area of an existing sanctuary zone, or to classify an area as a new sanctuary zone, within a marine park. Definitions of expressions used in that provision are consequentially repealed. Schedule 1 [1] makes a consequential amendment.
8.    Schedule 1 [3] provides for the review of a zoning plan for a marine park at the direction of the relevant Ministers, whether or not the review date for the plan referred to in section 17D of the Act has passed.
9.    Schedule 1 [4] repeals a provision prohibiting the Authority from conducting or continuing to conduct a review of a zoning plan for a marine park, or taking other action in relation to such a plan, during the moratorium period. A provision enabling the making of related regulations is consequentially repealed.

## **ISSUES CONSIDERED BY COMMITTEE**

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

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

## 5. Motor Accident Injuries Amendment Bill 2013

Date introduced	9 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer and Minister for Industrial Relations

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Motor Accidents Compensation Act 1999* as follows:
  - (a) The Bill establishes a new scheme for the payment by insurers of no-fault statutory benefits for motor accidents. Statutory benefits will include weekly payments during incapacity for work, payment of treatment and care expenses and payment of lump sum benefits for persons suffering permanent impairment of greater than 10%.
  - (b) Common law damages will be recoverable only for past and future loss of earnings and non-economic loss. No damages will be recoverable unless permanent impairment is greater than 10% (which is the threshold currently applicable to non-economic loss damages).
  - (c) Maximum net weekly earnings for the purposes of an award of damages will be reduced to the level of the maximum weekly statutory benefit amount (which in turn is limited to the maximum weekly workers compensation amount).
  - (d) The Motor Accidents Claims Assessment and Resolution Service (CARS) will have exclusive jurisdiction in respect of claims for statutory benefits, subject to a right of appeal to the Supreme Court on a question of law.
  - (e) Claims for statutory benefits that are unresolved after 2 years (or 1 year after a late claim is made) will be subject to review and direction by CARS to facilitate their finalisation.
  - (f) The insurer who is liable for a claim for statutory benefits will be appointed as the agent of the insurer of an at-fault vehicle to handle any related damages claim (so that a claimant claiming both statutory benefits and damages will deal with the one insurer).
  - (g) Transitional provisions will facilitate the adjustment of third-party premiums for up to 3 years after the commencement of the new no-fault statutory benefits scheme to avoid excess profits and losses arising from the effect on cost of claims of the new scheme and to apply any unearned premium surplus in reduction of premiums.

- (h) The office of CTP Independent Review Officer will be established with functions including dealing with complaints about insurers and reviewing earnings decisions of insurers in relation to statutory benefits claims.
- (i) A claim for damages will not be able to be settled unless the claimant is legally represented or the settlement is approved by a claims assessor.
- (j) The regulations will be able to prescribe standard rates of deduction from damages for contributory negligence.
- (k) Generally, legal costs will not be recoverable for statutory benefits claims. Regulations fixing maximum costs for legal services will be permitted to fix maximum costs by reference to the amount recovered by the claimant.
- (l) CARS claims assessors will be given power to summon and compel witnesses.
- (m) The time within which a claim for damages must be made will be extended from 6 months to 12 months after the motor accident. A claim for statutory benefits will also be required to be made within 12 months.
- (n) Existing provisions that require the parties to a claim for damages to participate in a settlement conference and exchange the documents on which they propose to rely for the purposes of the CARS assessment of the claim will be repealed. The parties to the claim will be required to use their best endeavours to settle the claim before referring it for CARS assessment. A party will be required to give at least 42 days' notice of intention to refer a claim for assessment and a claim will not be able to be referred for assessment more than 3 years after the motor accident unless there is a full and satisfactory explanation for the delay.
- (o) Provisions for insurers to file their third-party premiums for consideration by the MAA will be amended to provide greater flexibility in the arrangements for the filing and commencement of premiums.
- (p) The factors to be used in the calculation of a fully funded premium for a third-party policy will be modified to ensure that insurer costs and expenses and estimates of claims costs and expenses are reasonable. The relevant MAA guidelines will have an enhanced role in the determination of whether a premium will fully fund liabilities.
- (q) The matters for which the various MAA guidelines can make provision under the Act will be expanded and existing provisions for mandatory consultation will be made optional.
- (r) A new duty to act in the utmost good faith will be imposed on claimants and insurers and a new duty to minimise loss will be imposed on a claimant.
- (s) Funding arrangements for the Motor Accidents Authority Fund and the Lifetime Care and Support Authority Fund will be revised to provide for the MAA to determine and collect the levy required to fund both Funds. The payment of grants to the Lifetime Care and Support Authority Fund from the Motor Accidents Authority Fund will be authorised if that Fund is in surplus.

- (t) Other minor and consequential amendments will be made and the name of the Act will be changed.
- 2. The Bill also makes consequential amendments to the *Motor Accidents (Lifetime Care and Support) Act 2006*, the *Civil Liability Act 2002* and the *Motor Accidents Compensation Regulation 2005*.

## BACKGROUND

- 3. The Bill arises from a recent review of the Compulsory Third Party (CTP) Insurance Scheme. In particular, the Minister for Finance and Services directed the Motor Accidents Authority (MAA) to prepare a CTP Pricing Strategy to examine matters such as:
  - (a) mechanisms to lower the components of aggregate revenue collected from motor vehicle owners as premiums; and
  - (b) measures to ensure optimum benefits to those injured in motor vehicle accidents.
- 4. In February 2013, the MAA released a policy document, *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*, which is the basis for the changes proposed by the Bill. The policy document explains that the CTP Insurance Scheme needs to change for a number of reasons, including that green slip prices are too high, the current scheme is highly inefficient, claim frequency and propensity is increasing and those injured in motor vehicle accidents experience significant delays in receiving payments.
- 5. One of the key features of the scheme proposed by the Bill is no-fault statutory benefits for those injured in motor accidents with common law damages still available in some cases.

## 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, except for savings and transitional provisions (which will commence on the date of assent).

### **Schedule 1 Amendment of Motor Accidents Compensation Act 1999 No 41** *Amendments to Chapter 1 (Preliminary)*

- 8. Schedule 1 [1]–[16] make the following amendments to Chapter 1:
  - (a) The name of the Act is changed.
  - (b) Changes that are consequential on the new no-fault statutory benefits scheme are made to various provisions and new definitions are inserted.
  - (c) Existing provisions for no-fault recovery by children are repealed because they are superseded by the new no-fault statutory benefits scheme.
  - (d) The provisions for blameless motor accidents are amended to make it clear that an injured person is not entitled to recover damages for a blameless motor accident where the person caused the motor accident (even though not “at fault”). The



amendment addresses an issue raised by the Court of Appeal in *Axiak v Ingram* [2012] NSWCA 311.

*Amendments to Chapter 2 (Third-party insurance)*

9. Schedule 1 [17]–[34] make the following amendments to Chapter 2:

- (a) Information sharing requirements are expanded to authorise RMS to provide vehicle and driver information that is requested by insurers for use in connection with issuing and quoting for third-party policies and to require provision of that information to the MAA on request.
- (b) The power to issue MAA Premiums Determination Guidelines is changed to make it clear that the power can be used to respond to any provision in the Act that authorises or requires matters to be the subject of those Guidelines.
- (c) The requirement for the approval of the Safety, Return to Work and Support Board for changes to the MAA Premiums Determination Guidelines is removed.
- (d) The premium filing arrangements for insurers are amended for the following purposes:
  - i to make it clear that 2 or more insurers can jointly file premiums,
  - ii to provide flexibility in the period within which the MAA must decide whether to reject a proposed premium and to provide flexibility for insurers by allowing insurers to nominate a proposed commencement date for the commencement of a new premium,
  - iii to allow the relevant MAA guidelines to provide for when premiums must be filed and how often they can be filed, and for the payment of fees in connection with premium filing.
- (e) All acquisition and policy administration expenses of insurers, cost of claims and settlement expenses used in the calculation of a fully funded premium will be required to be reasonable.
- (f) The relevant MAA guidelines are to have an expanded role in the determination of whether a premium will fully fund liabilities and whether it is excessive.
- (g) It is made clear that the regulations for giving effect to premium risk adjustment arrangements can impose obligations and liabilities on insurers in connection with those arrangements.
- (h) The requirement for the approval of the Minister before the MAA can make premium risk adjustment arrangements a condition of an insurer licence is removed.
- (i) Specific limits on the amount of agents' commission that can be taken into account in the determination of third-party premiums are removed (as a consequence of the enhanced role of the relevant MAA guidelines to provide for this matter).

*Amendments to Chapter 3 (Motor accident injuries)*

10. Schedule 1 [35]–[67] make the following amendments to Chapter 3:

- (a) The MAA Medical Guidelines are to be authorised to provide for the matters to be taken into account in determining whether treatment and care to be provided to an injured person is reasonable and necessary.
- (b) Consultation on proposed changes to the MAA Medical Guidelines will no longer be mandatory.
- (c) Existing provisions for the early payment of treatment expenses and lost earnings (in the context of a claim for common law damages) are repealed because the new scheme for no-fault statutory benefits makes them redundant.
- (d) The Act will state the objects of the Motor Accidents Medical Assessment Service.
- (e) The power of a medical assessor to determine a dispute about whether treatment and care is reasonable and necessary is clarified so that it includes power to specify the particular treatment and care that is reasonable and necessary.
- (f) The dispute resolution jurisdiction of medical assessors is expanded to include disputes about whether an injury was caused by a motor accident.
- (g) Persons appointed as medical assessors will be required to be registered health practitioners under the *Health Practitioner Regulation National Law (NSW)*.
- (h) Medical disputes in claims for no-fault statutory benefits will only be able to be referred to a medical assessor by a claims assessor (unless the dispute is about the degree of permanent impairment).
- (i) A medical dispute about permanent impairment will be able to be refused access to medical assessment if the party referring the dispute for assessment has not provided sufficient evidence in support of the degree of permanent impairment asserted by the party.
- (j) Provisions for the assessment of the degree of permanent impairment that results from an injury are relocated and provision is made for the interim assessment of permanent impairment for the purposes of a claim for no-fault statutory benefits when a medical assessor is unable to assess permanent impairment because impairment has not yet become permanent.
- (k) Provision that allows a court hearing a claim for damages to substitute the court's own determination of the degree of permanent impairment is repealed (requiring the matter to be referred for further assessment by a medical assessor).
- (l) A medical dispute will not be able to be referred for further medical assessment except on the grounds of additional relevant information that is capable of having a material effect on the outcome of the previous assessment.
- (m) The parties to a medical dispute that is referred for further assessment or review will be able to agree on the degree of permanent impairment resulting from a particular injury and whether a particular injury was caused by a motor accident.
- (n) The number of medical assessors required to constitute a review panel is reduced from 3 to 2.

- (o) A claims assessor will be authorised to refer a medical issue to a medical assessor for a non-binding opinion for the assistance of the claims assessor.
- (p) The reasonable and necessary costs and expenses incurred by a claimant in obtaining medical reports in connection with a medical assessment will be payable by the insurer.
- (q) The MAA will be authorised to publish details of the decisions of medical assessors.

*New Chapter 3A (No-fault statutory benefits)*

11. Schedule 1 [68] inserts new Chapter 3A which establishes a scheme for the payment by motor accident insurers of no-fault statutory benefits for motor accidents, with the following features:
  - (a) Statutory benefits will be payable in respect of the death of or injury to a person resulting from a motor accident. Statutory benefits will be payable whether or not the motor accident was the fault of any person. Statutory benefits will be payable by the *relevant insurer*, which is the third-party insurer of the vehicle in which the person killed or injured was travelling as either driver or passenger or a third-party insurer nominated by the MAA in any other case. Statutory benefits are only payable if the motor accident occurs in New South Wales and after the commencement of the new scheme.
  - (b) Statutory benefits for death are limited to payment of funeral expenses.
  - (c) Weekly payments of statutory benefits will be payable to an injured person during any period of incapacity for work. Weekly payments will cease 5 years after the motor accident unless the injured person has a degree of permanent impairment of greater than 20%.
  - (d) Statutory benefits will be payable for the reasonable cost of treatment and care that is provided to an injured person if it is reasonable and necessary that the treatment and care be provided. No statutory benefits are payable for gratuitous attendant care services. Statutory benefits for treatment and care will cease 5 years after the motor accident unless the injured person has a degree of permanent impairment of greater than 10%.
  - (e) Lump sum statutory benefits will be payable to an injured person with a degree of permanent impairment of greater than 10%.
  - (f) The scheme provides for the redemption of a claim for statutory benefits by payment of a lump sum that will extinguish all statutory benefits liabilities. Redemption of a claim requires the agreement of the parties or the approval of a claims assessor.
  - (g) The process for the resolution of disputes about statutory benefits requires internal review by an insurer before a dispute can be referred to a claims assessor for binding determination.
  - (h) The CTP Independent Review Officer will also be able to review decisions by insurers about an injured person's earning capacity and make recommendations for the improvement of insurer procedures.

- (i) Claimants will be able to recover their reasonable and necessary costs and expenses incurred in connection with a claim, except for legal costs. Legal costs will usually not be payable or recoverable by a party.
- (j) Statutory benefits will not be payable to an injured person who is entitled to claim workers compensation for the injury. An at-fault driver will not be entitled to statutory benefits if his or her vehicle is uninsured. No statutory benefits will be payable to a person who is charged with or convicted of a serious driving offence.
- (k) Claims assessors will have exclusive jurisdiction to examine, hear and determine all matters arising in connection with a claim for statutory benefits, subject to a right of appeal to the Supreme Court on a question of law.

*Amendments to Chapter 4 (Motor accident claims)*

12. Schedule 1 [69]–[137] make the following amendments to Chapter 4:

- (a) Consultation on proposed changes to the MAA Claims Handling Guidelines and Claims Assessment Guidelines will no longer be mandatory.
- (b) New general duties to act in the utmost good faith will be imposed on both claimants and insurers and a new duty to minimise loss will be imposed on claimants.
- (c) The process for making a claim for damages is adapted for the making of a claim for statutory benefits. Both kinds of claim will require the police accident report that is currently required for a claim for damages. A claim for statutory benefits will also require provisional notice of the claim to be given to the insurer. Shorter time-frames are provided for the handling of claims for statutory benefits by insurers, to expedite payment of statutory benefits.
- (d) A claim for statutory benefits or damages will be required to be made within 12 months after the motor accident. Currently a claim for damages must be made within 6 months after the accident. Provision for the making of a late claim for statutory benefits will require there to be a reasonable cause for the delay, with a maximum claim period of 3 years after the accident (or longer in the case of death or greater than 10% permanent impairment).
- (e) Provision is made for extending a claim for statutory benefits to a claim for damages.
- (f) The insurer against whom a claim for statutory benefits is made is appointed to act as the agent of the insurer of an at-fault vehicle for the purposes of handling and satisfying a claim for damages made against the insurer of the at-fault vehicle.
- (g) Provision is made for a costs penalty of up to 25% to be imposed on insurers who fail to admit liability for a claim for statutory benefits or damages if there was no reasonable basis for the failure.
- (h) A claim for damages will not be able to be settled unless the claimant is legally represented or the settlement is approved by a claims assessor.
- (i) Claims for statutory benefits that are unresolved after 2 years will be subject to review and direction by CARS to facilitate their finalisation.

- (j) Existing provisions that establish CARS are transferred to Chapter 4 and modified to provide for the CARS jurisdiction in respect of claims for statutory benefits.
- (k) Claims assessors are given power to summon and compel witnesses.
- (l) Existing provisions that require the parties to a claim for damages to participate in a settlement conference and exchange the documents on which they propose to rely for the purposes of the CARS assessment of the claim are repealed. The parties to the claim will be required to use their best endeavours to settle the claim before referring it for CARS assessment. A party will be required to give at least 42 days' notice of intention to refer a claim for assessment and a claim will not be able to be referred for assessment more than 3 years after the motor accident unless there is a full and satisfactory explanation for the delay.
- (m) An unintended limitation on the extent to which CARS assessments of certain disputes are binding on the parties is removed to make it clear that dispute determinations are binding.
- (n) An assessor will be permitted to determine the amount of a hardship payment when determining a dispute about whether a hardship payment should be made.
- (o) The MAA will be authorised to publish details of claims assessor decisions.

*Amendments to Chapter 5 (Award of damages)*

13. Schedule 1 [138]–[149] make the following amendments to Chapter 5:

- (a) Damages will only be recoverable for past and future loss of earnings and for non-economic loss.
- (b) No damages will be recoverable unless permanent impairment is greater than 10% (which is the existing threshold requirement for an award of damages for non-economic loss).
- (c) Maximum net weekly earnings for the purposes of an award of damages will be reduced to the level of the maximum weekly statutory benefit amount (which in turn is limited to the maximum weekly workers compensation amount).
- (d) The regulations will be able to prescribe standard rates of deduction from damages for contributory negligence.

*Amendments to Chapter 6 (Costs)*

14. Schedule 1 [150] and [151] make the following amendments to Chapter 6:

- (a) Regulations fixing maximum costs for legal services will be permitted to fix maximum costs by reference to the amount recovered by the claimant.
- (b) The regulations will be able to require parties to a claim to share information about legal costs payable by the parties.

*Amendments to Chapter 7 (Insurers)*

15. Schedule 1 [152]–[154] make the following amendments to Chapter 7:

- (a) It will be made clear that a condition of an insurer licence can limit the kinds of third-party policies that a licensed insurer can issue.
- (b) The MAA will be authorised to publish information about licensed insurers relating to compliance, premium pricing, profitability, performance comparisons and other matters of public interest.
- (c) Government bodies will be able to be approved as self-insurers so they can issue third-party policies for their own vehicles and those of other government bodies.

***Amendments to Chapter 8 (Administration)***

16. Schedule 1 [155]–[164] make the following amendments to Chapter 8:

- (a) The office of CTP Independent Review Officer is established with functions including dealing with complaints about insurers and reviewing earnings decisions of insurers in relation to statutory benefits claims.
- (b) Funding arrangements for the Motor Accidents Authority Fund and the Lifetime Care and Support Authority Fund are revised to provide for the MAA to determine and collect the levy required to fund both Funds, and to authorise the payment of grants to the Lifetime Care and Support Authority Fund from the Motor Accidents Authority Fund if that Fund is in surplus.

***Other amendments***

- 17. Schedule 1 [166] provides for the making of savings and transitional regulations.
- 18. Schedule 1 [167] enacts savings and transitional provisions which provide that in general the amendments made by the Bill will not apply to a motor accident that occurs before commencement of the amendments. A transitional provision will facilitate the adjustment of third-party premiums for up to 3 years after the commencement of the new no-fault statutory benefits scheme, to avoid excess profits and losses arising from the effect on cost of claims of the new scheme and to apply any unearned premium surplus in reduction of premiums.

**Schedule 2 Amendment of Motor Accidents (Lifetime Care and Support) Act 2006 No 16**

- 19. Schedule 2 amends provisions of the *Motor Accidents (Lifetime Care and Support) Act 2006* relating to funding arrangements for the Lifetime Care and Support Authority Fund as a consequence of the fact that the MAA will determine and collect the levy required to fund the Fund.

**Schedule 3 Amendment of Civil Liability Act 2002 No 22**

- 20. Schedule 3 modifies the application of the *Civil Liability Act 2002* in relation to motor accidents (to disapply provisions about damages for loss of capacity to provide domestic services and about loss of superannuation entitlements).

## Schedule 4 Amendment of Motor Accidents Compensation Regulation 2005

21. Schedule 4 makes amendments to the *Motor Accidents Compensation Regulation 2005* that are consequential on the change of name of the Act and the fact that legal costs will usually not be payable or recoverable by a party.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Right to compensation for injuries suffered*

22. The Bill proposes a new scheme for the payment of no-fault statutory benefits for injuries occasioned in motor accidents, including weekly payments during incapacity for work, payment of treatment and care expenses and payment of lump sum benefits in some circumstances. Weekly payments will cease five years after the accident unless the injured person has a degree of permanent impairment of greater than 20% and statutory benefits for treatment and care will cease five years after the accident unless the person has a degree of permanent impairment of greater than 10%.
23. Lump sum benefits will be capped, with a maximum of \$220,000 available if the person's degree of permanent impairment is greater than 75%. If an injured person receives a psychological injury and a physical injury in the same incident, they will only be entitled to receive statutory benefits in relation to one of those injuries –whichever is greater.
24. Common law damages will only be recoverable for past and future loss of earnings and non-economic loss. Damages will no longer be paid for treatment and care expenses, because they will be met under the statutory benefit provisions, and damages for gratuitous attendant care services will not be recoverable.

**Because of the various caps and exclusions in the compensation scheme proposed by the Bill, the Committee is concerned that the scheme may lead to some individuals receiving less compensation for their injuries than they would under the current scheme, resulting in them not being adequately compensated for the injuries they have suffered. The Committee refers this issue to Parliament for consideration.**

#### *Denial of compensation in some circumstances*

25. The Bill proposes various thresholds that injured persons must meet before they will be entitled to compensation. For example, statutory benefits will only be available in circumstances where the individual's permanent impairment is greater than 10%. Common law damages will also only be available where permanent impairment is greater than 10%.

**The Committee is concerned that some individuals may miss out entirely on compensation under the proposed scheme because they do not suffer permanent impairment greater than 10%. The Committee notes that such individuals may nevertheless suffer from injuries that continue to have a negative impact on their lives. The Committee refers this issue to Parliament for consideration.**

*Limit on right to recover legal costs*

26. Proposed clause 65ZZA of the Bill provides that individuals claiming statutory benefits are entitled to claim from the insurer their reasonable and necessary legal costs if those costs are permitted by the Regulations or a claims assessor. The Regulations can fix the maximum legal costs that a claimant is entitled to recover. A claims assessor can only permit payment in limited circumstances, such as if the claimant is under a legal disability or there are exceptional circumstances that justify payment.

**The Committee notes that claimants may not be able to recover all of their reasonable and necessary legal costs under the changes proposed by the Bill. The Committee is concerned that if claimants are required to cover part of their legal costs themselves, claimants may have to use a portion of their statutory benefits to fund the remainder of those costs. Alternatively, claimants may not be able to afford adequate legal representation, which may affect the compensation outcome in their matter. The Committee refers these issues to Parliament for consideration.**

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

*Removes some of the court's jurisdiction*

27. Under section 61 of the *Motor Accidents Compensation Act 1999*, the court can reject a medical assessment certificate as to whether or not an individual's degree of permanent impairment is more than 10% and instead substitute its own determination in relation to this matter. However, the Bill proposes to amend section 61 so that a court will not be able to substitute its own determination as to any medical assessment matter; the issue will instead be referred to a medical assessor for further assessment.

**The Committee refers to Parliament whether it is appropriate in the circumstances to remove some of the court's jurisdiction to determine whether or not an injured person's degree of permanent impairment is greater than 10%.**

*Commencement by proclamation*

28. Clause 2 of the Bill states that the Act commences on a day or days to be appointed by proclamation, however, the amendments to Schedule 5 of the *Motor Accidents Compensation Act 1999* commence on the date of assent.

**The Committee refers to Parliament for consideration whether the commencement of the majority of the provisions in the Bill by proclamation is an inappropriate delegation of legislative powers given that the Bill makes significant changes to the current scheme for claiming compensation in relation to injuries occasioned in motor accidents.**

*Retrospectivity*

29. Schedule 1[167] of the Bill proposes to allow the Regulations to specify circumstances in which amendments made by the Bill to Part 3.4 or Chapter 4 extend to claims that occurred before the commencement of the amendments.

**The Committee considers that any retrospective application of the amendments made by the Bill to existing claims should be specified in the Act,**



rather than the Regulations. The Committee also refers to Parliament for consideration whether permitting some provisions to operate retrospectively is appropriate in the circumstances, given the significant changes that the Bill proposes to the *Motor Accidents Compensation Act 1999*.

## 6. NSW Self Insurance Corporation Amendment Bill 2013

Date introduced	9 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *NSW Self Insurance Corporation Act 2004* to confirm that the NSW Self Insurance Corporation may provide protection on an individual basis to eligible State officials (in addition, or as an alternative) to cover for authorities to which they belong) for claims made against them in connection with the exercise of their functions.
2. The Bill also enables the NSW Self Insurance Corporation to provide principal arranged construction insurance that extends to non-Government contractors for certain major capital works projects undertaken by or on behalf of the State or an authority of the State.

### BACKGROUND

3. The New South Wales Treasury Managed Fund provides protection for the State and State authorities in relation to liabilities incurred by State officials. The fund is not insurance and individuals, typically directors and officers of State authorities, have expressed concern about the enforceability of the cover provided to them. It is proposed that an indemnity will be provided by the NSW Self Insurance Corporation that is enforceable by the official against the NSW Self Insurance Corporation.
4. It is further envisaged that Bill will provide an important clarification and provide a level of certainty to eligible State officials and non-government officials working closely with the government.

### 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 on the date of assent to the proposed Act.
7. Schedule 1 [2], [3] and [5] confirm that the NSW Self Insurance Corporation may provide protection on an individual basis to eligible State officials (in addition, or as an alternative, to cover for authorities to which they belong) for claims made against them in connection with the exercise of their functions.
8. An eligible State official is a person who is:

- (a) an employee or officer of the State, or
  - (b) an employee, or a member, director or other officer, of an authority of the State.
9. An example of an authority of the State is a State owned corporation. Schedule 1 [6] makes it clear that the NSW Self Insurance Corporation is able to provide protection on an individual basis to directors and other officers of such a corporation even if the corporation cannot do so because of the provisions of the State Owned Corporations Act 1989.
10. Schedule 1 [6] makes it clear that the NSW Self Insurance Corporation may enter into contracts of insurance to cover liabilities to which a Government managed fund scheme applies, but only in the capacity of the insured and not as the insurer. To avoid doubt, Schedule 1 [6] also declares entering into insurance or other agreements or arrangements (including the provision of indemnities) to cover the liabilities to which a Government managed fund scheme applies to be an exclude matter for the purposes of the Corporations Act 2001 of the Commonwealth in relation to Chapter 7 (Financial services and markets) of that Act. Section 5F of the Corporations Act 2001 of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.
11. Schedule 1 [8] enables the NSW Self Insurance Corporation to carry on the business of providing principal arranged construction insurance with respect to major capital works projects in New South Wales. Principal arranged construction insurance is defined by Schedule 1 [1] to mean insurance that is arranged by a principal in relation to a construction contract to cover principals and contractors with respect to the risks associated with the construction work to which the construction contract relates. A principal, in relation to a construction contract, is defined to mean any of the following:
- (a) a party to the contract for which the construction work under the contract is being carried out,
  - (b) a person (other than a party to the contract) who is a member of a partnership, joint venture or other arrangement for the benefit of which the construction work under the contract is being carried out.
12. A contractor, in relation to a construction contract, is defined to mean a party to the contract who undertakes to carry out the construction work under the contract, and to include any subcontractors engaged by such a party to carry out work on the party's behalf.
13. A project is a major capital works project if:
- (a) the construction contract for the project provides for the construction of a building, road, tramway, railway, bridge, tunnel or other capital works, and
  - (b) one or more of the principals in relation to the construction contract is or are the State or an authority of the State, and
  - (c) the project is:

- (i) required to have mandatory Government arranged construction insurance (that is, principal arranged construction insurance that is required by the Treasurer or the Secretary of the Treasury to be arranged by the State or an authority of the State with the NSW Self Insurance Corporation), or
  - (ii) a project that the Minister, by order published in the Gazette, has declared to be a project involving major capital works.
- 14. Schedule 1 [13] provides for the establishment of a Construction Risks Insurance Fund in the Special Deposits Account of the Treasury and the investment of money in the Fund. Premiums for principal arranged construction insurance issued by the NSW Self Insurance Corporation will be paid into the Fund and payments of claims on such insurance will be paid out of the Fund. Schedule 1 [9], [10] and [12] make consequential amendments.
- 15. Schedule 1 [11] enables money to be transferred from the Self Insurance Fund to the Construction Risks Insurance Fund with the approval of the Minister.
- 16. Schedule 1 [4] confirms that the NSW Self Insurance Corporation may provide indemnities to cover liabilities to which a Government managed fund scheme applies.
- 17. Schedule 1 [1] inserts definitions for certain terms that are used in provisions to be inserted by the proposed Act.
- 18. Schedule 1 [7] replaces outdated references to the Trade Practices Act 1974 of the
- 19. Schedule 1 [14] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of any Act that amends the NSW Self Insurance Corporation Act 2004 (including the proposed Act).
- 20. Schedule 1 [15] makes provision for certain savings and transitional matters consequent on the enactment of the proposed Act. issues considered by committee

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

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

## 7. State Owned Corporations Legislation Amendment (Staff Directors) Bill 2013

Date introduced	8 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to remove any requirement under the *State Owned Corporations Act 1989* or other legislation relating to State owned corporations (SOCs) for a staff director (including a director nominated by Unions NSW).

### BACKGROUND

2. There is a current requirement that one director on the board of State Owned Corporations to be a representative of the staff.
3. This Bill removes that requirement, in so doing addressing the potential misunderstanding around the role of such directors, who have a fiduciary duty to the State Owned Corporation, not the staff.

### 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 State Owned Corporations Act 1989

6. Schedule 1 [1] amends section 20J of the Act which contains the default provisions relating to the board of directors of a statutory SOC (those provisions are displaced by any specific provisions relating to directors in the various Acts that establish particular statutory SOC). The amendment removes the requirement that one of the directors of a statutory SOC is to be a staff director selected in accordance with the procedure in the foundation charter of the SOC or (in the absence of any such procedure) in accordance with Schedule 8 to the Act. The amendment does not reduce the number of directors that may be appointed to the board of directors.
7. Schedule 1 [2] amends section 38 of the Act to make a consequential amendment.
8. Schedule 1 [3] amends Schedule 2 to the Act to remove the requirement that the constitution of a company SOC contain provision for one of the directors to be a staff director.

9. Schedule 1 [4] amends Schedule 8 to the Act to remove the provision relating to the procedure for the selection of a staff director of a statutory SOC, namely, the selection of a director from among members of staff of the SOC by a selection committee comprising persons nominated by voting shareholders and Unions NSW.
10. Schedule 1 [5] amends Schedule 11 to the Act to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
11. Schedule 1 [6] amends Schedule 11 to the Act to remove spent provisions relating to staff directors arising from a 1995 amending Act.
12. Schedule 1 [7] amends Schedule 11 to the Act to provide that existing staff directors (including directors of SOCs appointed under legislation referred to in Schedule 2 below) continue to hold office until a date determined by the Governor or voting shareholders (unless they sooner cease to hold office).

## **Schedule 2     Amendment of other State owned corporations legislation**

13. The Schedule amends the various Acts that establish statutory SOCs and that have a requirement for a staff director (including a director nominated by Unions NSW). The amendments remove the requirement without reducing the number of directors that may be appointed to the board of directors. The legislation establishing other statutory SOCs that do not have a requirement for a staff director is not affected (Landcom, Sydney Water Corporation and Forests NSW).

### ***Amendment of Energy Services Corporations Act 1995***

14. Subschedule 2.1 removes the requirement that one of the directors of an energy services statutory SOC is to be a staff director selected from a panel of persons nominated by Unions NSW and recommended for appointment by a selection committee comprising persons nominated by both the portfolio Minister and Unions NSW.

### ***Amendment of Hunter Water Act 1991***

15. Subschedule 2.2 removes the requirement that one of the directors of the Hunter Water Corporation (a statutory SOC) is to be a staff director selected from a panel of persons nominated by Unions NSW and recommended for appointment by a Water Corporation (a statutory SOC) is to be a staff director selected from a panel of persons nominated by Unions NSW and recommended for appointment by a selection committee comprising persons nominated by both the voting shareholders and Unions NSW.

### ***Amendment of Ports and Maritime Administration Act 1995 and Ports and Maritime Administration Regulation 2012***

16. Subschedule 2.3 removes the requirement that one of the directors of a Port Corporation statutory SOC is to be a staff director elected by employees of the Port Corporation. Subschedule 2.4 repeals provisions of the regulation under that Act relating to the election of staff directors.

### ***Amendment of State Water Corporation Act 2004***

17. Subschedule 2.5 removes the requirement that one of the directors of State Water Corporation (a statutory SOC) is to be a staff director selected from a panel of

persons nominated by Unions NSW and recommended for appointment by a selection committee comprising persons nominated by both the voting shareholders and Unions NSW.

*Amendment of Superannuation Administration Authority Corporatisation Act 1999*

18. Subschedule 2.6 removes the requirement that one of the directors of the Superannuation Administration Corporation (a statutory SOC called Pillar) is to be a staff director selected from a panel of persons nominated by Unions NSW and recommended for appointment by a selection committee comprising persons nominated by both the portfolio Minister and Unions NSW.

**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.**

## 8. Victims Rights and Support Bill 2013

Date introduced	7 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Minister for Justice

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to repeal the *Victims Support and Rehabilitation Act 1996* (the VSRA) and to replace the statutory scheme for compensation for victims of crimes of violence and approved counselling under that Act with a new support scheme (the new Scheme) that:
  - i provides for the approval of the giving of financial support and counselling and making of payments in recognition of the trauma suffered by certain such victims (recognition payments), and
  - ii provides for the Victims Compensation Tribunal to be abolished and its members to become a new Victims Support Division of the Administrative Decisions Tribunal, which is to have the power to review determinations relating to the approval of the making of recognition payments, and
  - iii provides for the cost of support paid under the new Scheme to be recovered from persons found guilty of the crimes giving rise to the approval of the giving of support, and
  - iv imposes a levy on persons found guilty of crimes punishable by imprisonment for the purpose of partially funding the new Scheme that is similar to the levy that currently funds the statutory scheme for compensation under the VSRA, and
  - v continues the alternative scheme established under the VSRA under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime,
- (b) to repeal and re-enact (with minor modifications) the provisions of the *Victims Rights Act 1996*,
- (c) to provide for a Commissioner of Victims Rights and confer on the Commissioner functions similar to those currently exercised by Victims Services under the VSRA and additional functions intended (among other things) to lead to greater compliance with the Charter of Victims Rights.



## BACKGROUND

2. The Victims Compensation Scheme was established in 1987 and revised in 1996. In 2009, the Auditor-General identified that action needed to be taken to deal with a backlog in claims. The current figures show that victims wait on average at least 30 months before receiving any money.
3. The Attorney-General commissioned PricewaterhouseCoopers (PwC) to assess the scheme, in consultation with relevant stakeholders, and to identify opportunities to provide faster and more effective support to victims.
4. The key issues raised by stakeholders were that:
  - (a) assisting victims as soon as possible after the act of violence results in the best outcome;
  - (b) counselling is useful and should continue; and
  - (c) a lump sum payment in recognition of the trauma suffered by the victim is a key aspect of the rehabilitation process.
5. PwC reported to the Government in the second half of 2012. It recommended closing the Victims Compensation Scheme and replacing it with a new scheme with the following key principles:
  - (a) financial viability so that victims receive prompt support;
  - (b) appropriate prioritisation of funds to meet the immediate needs of victims, provide financial assistance and rehabilitation and acknowledge the trauma that the victim has suffered; and
  - (c) consistency with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
6. The scheme set out in the Bill is modelled very closely on the scheme proposed by PwC.

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

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.
9. Clause 3 defines certain words and expressions used in the proposed Act. *Victims support* is defined as support in the form of approved counselling services, financial support or a recognition payment under the new Scheme.

### Part 2 Victims rights

#### *Division 1 Preliminary*

10. Clause 4 specifies the object of the proposed Part as being to recognise and promote the rights of victims of crime.

11. Clause 5 defines *victim of crime* for the purposes of the proposed Part in the same way as that term is currently defined in the *Victims Rights Act 1996*.

#### ***Division 2 Charter of Victims Rights***

12. Clause 6 sets out the Charter of Victims Rights. It is essentially the same as the Charter currently set out in the *Victims Rights Act 1996*.
13. Clause 7 provides for the implementation of the Charter.

### **Part 3 Administration**

#### ***Division 1 Commissioner of Victims Rights***

14. Clause 8 provides for the employment of a Commissioner of Victims Rights (the Commissioner) and such staff as are necessary for the purposes of the proposed Act and also provides for the engagement of consultants and contractors.
15. Clause 9 provides for the Commissioner to exercise functions conferred on the Commissioner by or under the proposed, and any other, Act and to delegate those functions.
16. Clause 10 specifies in detail the functions of the Commissioner under the proposed Act. The Commissioner will be responsible for exercising the functions currently conferred on Victim Services under section 10 of the *Victims Rights Act 1996*. In addition, the Commissioner is empowered to consider and determine applications for victims support, recommend and assist agencies (including any person or non-government agency funded by the State to provide support services) to improve their compliance with the Charter of Victims Rights, to recommend that agencies apologise to victims of crime for breaches of the Charter of Victims Rights, to conduct, promote and monitor training, public awareness activities and research on victims of crime and to conduct reviews and inquiries, or both, on issues relating to victims of crime at the request of the Attorney General.
17. Clause 11 enables the Commissioner to carry out inquiries and investigations for the purposes of the proposed Act.
18. Clause 12 enables the Commissioner to require a person or agency to produce information (including documents) relevant to the exercise of the Commissioner's functions under the proposed Act.
19. Clause 13 provides for the Commissioner to make reports to Parliament.

#### ***Division 2 Victims Support Fund***

20. Clause 14 establishes the Victims Support Fund (the Fund). Clause 9 of Schedule 2 to the proposed Act makes it clear that this is the same fund as the Victims Compensation Fund currently established under the VSRA.
21. Clause 15 provides for payments into the Fund.
22. Clause 16 provides for payments out of the Fund.

## Part 4 Victims Support Scheme

### *Division 1 Preliminary*

23. Clause 17 describes the object of the proposed Part as being to establish the new Scheme for the provision of victims support.
24. Clause 18 contains definitions for the purposes of the proposed Act. The definition of *injury* is wider than that contained in the VSRA. It extends to grievous bodily harm, which is defined to include destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any harm.
25. Clause 19 defines *act of violence* for the purposes of the proposed Act. The definition is based on that currently contained in the VSRA. It deals with the circumstances in which a series of related acts is to be treated as a single act of violence for which only one approval of victims support is available.
26. Clause 20 defines *primary victim* of an act of violence as a person who is injured, or dies, as a direct result of that act. It includes certain other persons such as persons who are injured or die as a result of trying to help or rescue the person against whom an act of violence is being committed.
27. Clause 21 defines *secondary victim* of an act of violence as a person who is injured as a direct result of witnessing the act of violence that resulted in the injury to, or death of, the primary victim of that act. It includes certain other persons such as parents or guardians of a child victim suffering injury after becoming aware of the act of violence.
28. Clause 22 defines *family victim* of an act of violence as a person who, at the time the act is committed, is a member of the immediate family of a primary victim who has died as a direct result of the act.

### *Division 2 Eligibility for support*

29. Clause 23 describes the eligibility for support of primary, secondary and family victims under the new Scheme. A parent, step-parent or guardian who is caring for a child who is a primary victim of an act of violence is also eligible for support under the new Scheme.
30. Clause 24 describes the effect of the death of a primary or family victim on eligibility for support under the new Scheme.
31. Clause 25 describes the persons who are ineligible for victims support under the new Scheme. The persons described are generally the same as those persons who are not currently eligible for compensation under the statutory scheme under the VSRA.

### *Division 3 Composition of support*

32. Clause 26 describes the composition of the support under the new Scheme for which a primary victim is eligible. This comprises specified approved counselling services, financial assistance for immediate needs (such as the cost of relocating a victim from a situation of domestic violence or the cost of emergency medical or dental treatment), financial assistance for certain economic loss and, in some cases, a lump sum payment in recognition of the trauma suffered by the victim.

- 33. Clause 27 describes the composition of the support for which a parent, step-parent or guardian who is caring for a child who is a primary victim of an act of violence is eligible under the new Scheme. This comprises certain financial assistance for economic loss.
- 34. Clause 28 describes the composition of the support under the new Scheme for which a secondary victim is eligible. This comprises specified approved counselling services.
- 35. Clause 29 describes the composition of the support under the new Scheme for which a family victim is eligible. This comprises specified approved counselling services, financial assistance for immediate needs (such as re-location expenses and expenses arising from cleaning up a crime scene), certain economic loss and funeral expenses and, in some cases where the family member was a parent, step-parent or guardian or dependent on the deceased primary victim, a lump sum payment in recognition of the trauma suffered by the family victim.
- 36. Clause 30 contains provisions relating to the provision of financial assistance.

*Division 4 Approved counselling services*

- 37. Clause 31 enables the Commissioner to approve professional counsellors who may provide approved counselling services for the purposes of the proposed Part and to give approval for a victim resident outside Australia to select a counsellor of the victim's choice to provide such services.
- 38. Clause 32 enables the making of regulations with respect to authorising payment for approved counselling services.
- 39. Clause 33 enables the making of regulations with respect to the amounts to be paid for approved counselling services.

*Division 5 Recognition payments*

- 40. Clause 34 contains definitions for the purposes of the proposed Division.
- 41. Clause 35 describes the categories of recognition payments that may be made in respect of specified kinds of acts of violence.
- 42. Clause 36 specifies the amount payable in respect of each category of recognition payment.
- 43. Clause 37 provides for the making of regulations in relation to recognition payments.

*Division 6 Applications for victims support*

- 44. Clause 38 describes the persons who may make an application for victims support.
- 45. Clause 39 describes the documentary evidence required to accompany an application for victims support.
- 46. Clause 40 imposes time limits for the making of applications for victims support.
- 47. Clause 41 provides for withdrawal of applications for victims support.
- 48. Clause 42 requires the Commissioner to consider each application for victims support.

49. Clause 43 provides for the determination of applications by the Commissioner. The giving of victims support must not be approved unless the Commissioner is satisfied that the person to whom the application relates is a victim or parent, step-parent or guardian caring for a child victim and is eligible to receive support.
50. Clause 44 sets out the reasons for reducing the amount of financial support or recognition payment or refusing to approve the giving of such victims support.
51. Clause 45 provides that, if the applicant is also involved in the act of violence concerned, a proposed amount to be paid under an approval for the giving of victims support can be reduced by the amount of a proposed determination under proposed Part 5 for restitution by the applicant.
52. Clause 46 provides for the payment of financial support or a recognition payment to be made to the person to whom the application for victims support relates or to another person for the benefit of that person.
53. Clause 47 provides for the reimbursement of funeral and certain other expenses paid by persons other than family victims.
54. Clause 48 provides for the imposition of conditions on an approval of the giving of financial support or making of a recognition payment.

*Division 7 Review of decisions concerning victims support*

55. Clause 49 provides for the internal review of decisions with respect to applications for victims support.
56. Clause 50 provides that the procedure under proposed section 49 replaces the procedure for internal review under the *Administrative Decisions Tribunal Act 1997*.
57. Clause 51 provides for applications to the Administrative Decisions Tribunal (the Tribunal) for review of decisions concerning recognition payments.
58. Clause 52 describes the relationship of the proposed Act to certain provisions of the *Administrative Decisions Tribunal Act 1997*.
59. Clause 53 suspends payment of a recognition payment pending review of a decision concerning it by the Tribunal.

*Division 8 Victims support payments*

60. Clause 54 provides for the payment of approved financial support, recognition payments and victims' counselling from the Victims Support Fund (or the Consolidated Fund if that fund does not have sufficient money available).
61. Clause 55 provides that the approval of the giving of victims support does not prevent civil proceedings in connection with the same matter but subrogates any such right to damages to the State to the extent of the amount of support paid.
62. Clause 56 enables the recovery of the amount of victims support paid to a fraudulent applicant.

## **Part 5 Recovery of victims support payments from offenders**

### ***Division 1 Preliminary***

- 63. Clause 57 states the object of the proposed Part as being to enable financial support paid and recognition payments made under the new Scheme to be recovered from persons found guilty of crimes giving rise to the payments.
- 64. Clause 58 contains definitions of terms used in the proposed Part.

### ***Division 2 Restitution by offenders***

- 65. Clause 59 provides that, if a person is convicted of an offence in respect of an act of violence giving rise to an approval of the giving of financial support or making of a recognition payment, the Commissioner may make a provisional order for restitution (of the amount of financial support or recognition payment paid) against the convicted person.
- 66. Clause 60 enables the Commissioner to make a provisional order for restitution (a provisional order) against any person who has disposed of property as part of a scheme for avoiding a liability under the proposed Division.
- 67. Clause 61 requires the Commissioner to serve notice of a provisional order on the person against whom it is made.
- 68. Clause 62 enables a person on whom a provisional order is served to object to the provisional order.
- 69. Clause 63 provides that the Commissioner may confirm a provisional order if the person does not object to it.
- 70. Clause 64 provides for the Commissioner to consider an objection to a provisional order.
- 71. Clause 65 requires the Commissioner to give notice of the Commissioner's decision on an objection to the objector.
- 72. Clause 66 enables an objector to apply to the Tribunal for review of the Commissioner's decision on an objection.
- 73. Clause 67 sets out the powers of the Tribunal to review the Commissioner's decision on an objection.
- 74. Clause 68 enables arrangements to be made for the payment of the amount of restitution under a provisional order.
- 75. Clause 69 makes provision for the matters to be taken into account when the Tribunal confirms a provisional order.
- 76. Clause 70 is a provision concerning costs in review proceedings.
- 77. Clause 71 makes provision with respect to restitution orders consequent on review of decisions with respect to recognition payments by the Tribunal.
- 78. Clause 72 makes an order for restitution enforceable as a judgment debt.

- 79. Clause 73 enables prison earnings to be attached to pay amounts payable under orders for restitution.
- 80. Clause 74 describes the effect of an order for restitution on subsequent civil proceedings with respect to the act of violence to which the order for restitution relates.
- 81. Clause 75 provides access to information about the whereabouts of a person for the purpose of taking action against the person under the proposed Division.
- 82. Clause 76 enables a charge to be placed on property that is subject to a restitution order.
- 83. Clause 77 enables the cancellation of a charge placed on property that is subject to a restitution order.

*Division 3 Restraining orders and orders relating to the disposition of property by offenders*

- 84. Clause 78 states the objects of the proposed Division as being to enable restraining orders to be obtained to prevent persons who may be, or are, subject to restitution orders from disposing of property so as to avoid paying restitution, and to enable orders to be made setting aside certain transactions contravening restraining orders or entered into for the purpose of avoiding payment of restitution.
- 85. Clause 79 applies the proposed Division to certain persons.
- 86. Clause 80 contains definitions of terms used in the proposed Division.
- 87. Clause 81 defines a restraining order for the purposes of the proposed Division.
- 88. Clause 82 enables appropriate officers to apply for restraining orders.
- 89. Clause 83 enables the Supreme Court to make a restraining order if satisfied about certain matters.
- 90. Clause 84 enables the Supreme Court to refuse to make a restraining order if the person applying for the order refuses or fails to give the Supreme Court undertakings as to the payment of costs or damages.
- 91. Clause 85 confers the power on the Supreme Court to make ancillary orders.
- 92. Clause 86 requires authorities to register restraining orders when charges over property may be registered and provides for the consequences of registration. It also enables the lodging of caveats in respect of the property concerned.
- 93. Clause 87 confers power on the Supreme Court to revoke a restraining order.
- 94. Clause 88 sets out the time when a restraining order cease to be in force.
- 95. Clause 89 makes it an offence to knowingly contravene a restraining order or to knowingly dispose of, or otherwise deal with, property for the purpose of avoiding a liability to pay restitution.

96. Clause 90 enables an application to be made to have any disposition or dealing in property contravening a restraining order set aside if not done in good faith or for sufficient consideration and enables the Supreme Court to set aside certain such dispositions or dealings.

## **Part 6 Compensation awarded by court**

### ***Division 1 Preliminary***

97. Clause 91 states the object of the proposed Part as being to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.
98. Clause 92 contains definitions of terms used in the proposed Part.

### ***Division 2 Compensation for injury***

99. Clause 93 defines *aggrieved person* for the purposes of the proposed Division.
100. Clause 94 authorises the court that convicts a person to direct compensation to an aggrieved person from the property of the convicted person. The maximum amount of compensation is \$50,000.
101. Clause 95 specifies certain restrictions on the court's power to direct payment of compensation for injury.

### ***Division 3 Compensation for loss***

102. Clause 96 defines *aggrieved person* for the purposes of the proposed Division.
103. Clause 97 authorises the court that convicts a person to direct compensation to an aggrieved person from the property of the convicted person.
104. Clause 98 specifies certain restrictions on the court's power to direct payment of compensation for loss.

### ***Division 4 General***

105. Clause 99 specifies the factors to be taken into account by a court in directing compensation to be paid for loss or injury under proposed Division 2 or 3.
106. Clause 100 provides for the payment of the amount directed to be paid.
107. Clause 101 enables the amount directed to be paid to be enforced as a judgment debt.
108. Clause 102 deals with the effect of a direction in subsequent civil proceedings.
109. Clause 103 limits rights of appeal against directions.

## **Part 7 Victims support levies**

110. Clause 104 states the object of the proposed Part as being to impose a levy on persons found guilty of crimes for the purpose of funding the Scheme established by the proposed Act.
111. Clause 105 applies the proposed Part to certain offences.



- 112. Clause 106 sets and imposes the levy.
- 113. Clause 107 provides for CPI adjustments of victims support levies.
- 114. Clause 108 stays the liability to pay the levy if proceedings by way of an appeal or review of a conviction or sentence are commenced.

## **Part 8 Victims Advisory Board**

- 115. Clause 109 establishes the Victims Advisory Board (the Board). Clause 10 of Schedule 2 to the proposed Act makes it clear that this is basically the same board as the Victims Advisory Board currently established under the *Victims Rights Act 1996*.
- 116. Clause 110 provides for the membership and procedure of the Board. The Commissioner is to be the Chairperson of the Board as established under the proposed Act.
- 117. Clause 111 specifies the functions of the Board.

## **Part 9 Miscellaneous**

- 118. Clause 112 states that the proposed Act binds the Crown.
- 119. Clause 113 makes certain evidence obtained under the proposed Act inadmissible in legal proceedings.
- 120. Clause 114 limits liability for certain actions taken in good faith.
- 121. Clause 115 provides for the taking of proceedings for offences under the proposed Act.
- 122. Clause 116 provides for the service of documents under the proposed Act.
- 123. Clause 117 provides for the making of regulations for the purposes of the proposed Act.
- 124. Clause 118 repeals the VSRA and statutory instruments made under that Act and the *Victims Rights Act 1996*.
- 125. Clause 119 provides for the review of the proposed Act.

## **Schedule 1 Provisions relating to Victims Advisory Board**

- 126. Schedule 1 contains provisions relating to the membership and procedure of the Victims Advisory Board.

## **Schedule 2 Savings, transitional and other provisions**

- 127. Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. Clauses 4 and 5 provide for the closure of the statutory scheme for compensation under the VSRA on the day the Bill for the proposed Act was first introduced in Parliament and provide for applications for compensation under the closed scheme that were lodged but not finally determined before that day to be dealt with as if they were certain applications for victims support under the new Scheme. Applicants who are not eligible for immediate financial assistance or financial assistance for economic loss under the transitional provisions are eligible for a special grant of \$5,000 from the Victims Support Fund in specified circumstances.

### Schedule 3 Amendment of Acts and statutory instruments

128. Schedule 3 makes consequential amendments to the Acts and statutory instruments specified in the Schedule. Schedule 3.1 contains amendments to the *Administrative Decisions Tribunal Act 1997* to constitute a Victims Support Division of the Tribunal and allocate to that Division the functions of the Tribunal under the proposed Act. It also contains a number of consequential amendments and an amendment to the *Government Information (Public Access) Act 2009* to make certain information supplied by victims excluded information for the purposes of that Act.

### Schedule 4 Victims Rights and Support Regulation 2013

129. Schedule 4 sets out the terms of the *Victims Rights and Support Regulation 2013*. Clause 3 of proposed Schedule 2 provides for the Schedule to be taken to be, and have effect as, a regulation under the proposed Act on the commencement of that clause.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Right to compensation as a victim of crime*

130. There are some differences between the scheme for supporting victims of crime under the Bill and the current scheme in the *Victims Support and Rehabilitation Act 1996*. The Current Act, under section 19(1) provides that the maximum amount of statutory compensation available is \$50,000.
131. Under the scheme proposed by the Bill, lump sum payments are reduced and are tied to the type of violent act rather than the particular injury. However, financial support can be provided to victims through other mechanisms, such as a maximum of \$5,000 to support a victim's immediate needs and a maximum of \$30,000 for economic loss suffered as a result of the act of violence.
132. The Committee is mindful that under section 94 of the Bill, the Court retains the discretion to award compensation from the offender's personal property up to \$50,000.

**The Committee refers to Parliament for consideration whether differences in the financial compensation structures between the *Victims Support and Rehabilitation Act 1996* and the scheme proposed in the Bill could unduly impact on a victim's rights.**

#### *Retrospectivity affecting victims*

133. Clauses 4 and 5 of Schedule 2 to the Bill require compensation applications that have not been finalised before the Bill was introduced into Parliament to be dealt with under the new support scheme proposed by the Bill rather than the *Victims Support and Rehabilitation Act 1996*.

**Given the potential for different compensation outcomes under the provisions of the Bill compared to the *Victims Support and Rehabilitation Act 1996*, the Committee refers to Parliament whether it is appropriate to require existing applications for victims compensation to be dealt with under the provisions of the Bill rather than the *Victims Support and Rehabilitation Act 1996*.**

*Retrospectivity affecting offenders*

134. Part 6 of the Bill allows the court to order a person convicted of an offence to pay compensation to any victim of the crime. Part 7 of the Bill imposes levies on persons found guilty of crimes for the purpose of funding the new scheme.

**Clauses 17 and 18 of Schedule 2 to the Bill provide that offenders convicted after the commencements of the Bill will be subject to the offender-funded compensation scheme in Part 6 of the Bill and the compensation levies in Part 7 of the Bill even though the proceedings relating to their offences were commenced prior to the Bill commencing. However, because the *Victims Support and Rehabilitation Act 1996* contains similar schemes to those provided for in Parts 6 and 7 of the Bill, the Committee makes no further comment on this issue.**

*Time bars on making an application for victims support*

135. Clause 40 of the Bill sets out the timeframes for making an application for victims support. The standard timeframe is within two years after the relevant act of violence occurred. However, there are some exceptions, for example an application for a recognition payment in relation to a domestic violence, child abuse or sexual assault offence must be made within 10 years after the act of violence occurred, and in some cases 10 years after a juvenile turns 18.
136. Under section 26 of the *Victims Support and Rehabilitation Act 1996*, an application for statutory compensation must be lodged within two years after the relevant act of violence occurred or, in the case of a family victim, within two years after the death of the primary victim. However, applications that are lodged out of time can be accepted with the leave of the Director, Victims Services.

**The Committee notes that clause 40 of the Bill does not contain a provision giving the Commissioner of Victims Rights the discretion to accept victims support applications out of time. The Committee refers this issue to Parliament for consideration.**

*Access to government information*

137. Clause 3.10 of Schedule 3 to the Bill amends the *Government Information (Public Access) Act 2009* so that information relating to the Commissioner of Victims Rights' functions in dealing with confidential information concerning victims contained in applications for victims support is excluded information under that Act. Any person, organisation or government agency that wishes to request access to this information under the Act would be unable to make a formal access application.

**Considering this provision is intended fundamentally to protect victims rights, and given a comparable provision exists in the current scheme, the Committee makes no further comment.**

## 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.