



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. ADVOCATE FOR CHILDREN AND YOUNG PEOPLE BILL 2104

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

2. ENERGY LEGISLATION AMENDMENT (RETAIL PRICE DEREGULATION) BILL 2014

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

Matters which should be set by Parliament - Powers and Potential Penalties to be Set by Regulation

The Committee would prefer that the powers of the Market Monitor and any provisions that include penalties to be included in primary, not subordinate legislation. Nonetheless, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.

3. LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT BILL 2014

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

Deprivation of Liberty

The Committee notes that the increase to the maximum investigation period in which an individual can be questioned by police following their arrest – from four hours to six hours – may constitute a further deprivation of the liberty of that individual. The Committee makes no further comment.

Consent

The Committee notes that a new provision which enables a police officer to undertake a search, including a strip search, of an individual who gives their consent may be an interference with their personal, bodily integrity. As there is an absence of provisions that require a police officer to inform the individual that consent does not need to be granted, therefore the Committee refers this matter to Parliament for its further consideration.

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

Commencement by Proclamation

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

4. MINE SUBSIDENCE COMPENSATION AMENDMENT BILL 2014

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

The Committee would prefer commencement of an Act to be on assent or a defined date to ensure those affected can organise their affairs accordingly. This Bill backdates the

commencement of certain provisions to the date the Bill was introduced into Parliament. The Committee notes that provisions in force before the introduction date will still apply to certain claims lodged before the introduction date. As such, the Committee makes no further comment.

5. PARENTS AND CITIZENS ASSOCIATIONS INCORPORATION AMENDMENT BILL 2014

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

PART TWO – REGULATIONS

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

Part One - Bills

1. Advocate for Children and Young People Bill 2104

Date introduced	13 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Minister for Citizenship and Communities, Minister for Aboriginal Affairs, Minister for Veterans Affairs, and Assistant Minister for Education

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to establish the statutory office of the Advocate for Children and Young People (the **Advocate**) and to provide for its functions,
 - (b) to establish a new Youth Advisory Council (the **Council**) and to provide for its functions,
 - (c) to abolish the Commission for Children and Young People.

BACKGROUND

2. In 2013, the Working with Children Check function was transferred from the Commission for Children and Young People to the Children's Guardian. Following this, the Minister for Citizenship and Communities commenced extensive community consultation on advocacy for children and young people.
3. The consultation process included: the appointment of two youth ambassadors to guide and oversee the consultation process; release of a discussion paper; community round tables for children and young people; a non-government organisation round table; and classroom consultations. Responses were received from more than 900 children and young people.
4. Some of the key messages from the consultation included: children and young people should have a say on matters that affect their lives; children and young people should be encouraged and assisted to speak for themselves in ways that suit them; and an advocate should promote the voices of children and young people and stand up for their interests.
5. The Bill reflects the key messages from the consultation process.

OUTLINE OF PROVISIONS

Part 1 Preliminary

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
8. Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Advocate for Children and Young People

9. Clause 4 provides for the appointment of an Advocate for children and young people by the Governor.
10. Clause 5 sets out the term of office of the Advocate and provides for re-appointment of the Advocate.
11. Clause 6 makes it clear that the office of Advocate is a full-time office except to the extent permitted by the Minister.
12. Clause 7 sets out how the employment and remuneration of the Advocate is to be governed.
13. Clause 8 sets out the circumstances that qualify as a vacancy in the office of Advocate and provides for an appointment to fill that vacancy.
14. Clause 9 provides for the removal of the Advocate from office by the Governor in certain circumstances.
15. Clause 10 makes it clear that the Advocate is not a Public Service employee and that provisions of the *Government Sector Employment Act 2013* do not apply to the employment of the Advocate except as provided by proposed section 7.
16. Clause 11 provides for the appointment of an acting Advocate in certain circumstances.
17. Clause 12 provides for staff to be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Advocate to exercise his or her functions.
18. Clause 13 enables the Advocate to delegate functions (other than the power of delegation) to persons including staff of the Advocate.

Part 3 Functions of Advocate

19. Clause 14 outlines the principles that govern the work of the Advocate with paramount considerations being the safety, welfare and well-being of children and young people.
20. Clause 15 outlines the functions of the Advocate which include acting as an advocate for children and young people, promoting their safety, welfare and well-being and promoting the participation of children and young people in the making of decisions that affect their lives. These functions must be exercised in line with certain requirements including the requirement that systemic issues affecting children and young people are

considered, and the requirement that the interests and needs of vulnerable and disadvantaged children and young people are given priority.

21. Clause 16 requires the Advocate and other relevant government or non-government agencies to work co-operatively in exercising their respective functions including the facilitation of access to documents and information on behalf of the Advocate.
22. Clause 17 enables the Advocate to refer certain matters to police and other investigative agencies where a criminal offence may have occurred or where grounds may exist for disciplinary action under any law.
23. Clause 18 outlines how the Advocate can use and obtain information in relation to reports received and submitted under the *Children and Young Persons (Care and Protection) Act 1998*.
24. Clause 19 makes it clear that the Advocate does not have the function of dealing directly with the complaints or concerns of particular children or young people.

Part 4 Youth Advisory Council and other advisory committees

25. Clause 20 establishes the Youth Advisory Council.
26. Clause 21 provides for the membership of the Council, being 12 part-time members at least 6 of whom are under the age of 25 years at the time of their appointment and an ex-officio member, being the Advocate or the Advocate's nominee.
27. Clause 22 outlines the functions of the Council including its role in advising the Minister and the Advocate on the planning, development, integration and implementation of government policies and programs concerning young persons. In exercising its functions the Council must work co-operatively with the Advocate.
28. Clause 23 enables the Advocate to appoint advisory committees to assist the Advocate and the Council in the exercise of their functions.

Part 5 Special inquiries by Advocate

29. Clause 24 authorises the Minister to require the Advocate to conduct a special inquiry into a specified issue affecting children or young people (at the Advocate's request or on the Minister's own initiative).
30. Clause 25 requires the Advocate to make a special report on the results of a special inquiry.
31. Clause 26 deals with the general conduct of a special inquiry. Special inquiries are to be conducted with as little formality as possible and the Advocate may obtain information in whatever manner it wishes and consult whomever he or she believes is appropriate to consult.
32. Clause 27 enables the Advocate to hold hearings for the purposes of a special inquiry. The advocate is required to give the public reasonable notice of such hearings and may call for written submissions to be made before hearings begin. Hearings are to be held in public unless the Advocate is satisfied that it is desirable to hold a confidential hearing

or if the hearing concerns the evidence of a child or young person and that child or young person requests a private hearing.

33. Clause 28 makes it clear that a person appearing at a hearing of a special inquiry is not entitled to be represented by an Australian legal practitioner. The Advocate may authorise such representation where it is necessary or desirable in the public interest or for the safety, welfare or well-being of a child or young person.
34. Clause 29 enables the Advocate to direct that certain information and evidence relating to a private hearing must not be published, including any information that might enable a person who has given evidence at such a hearing to be identified.
35. Clause 30 authorises the Advocate to require employees of government agencies and other persons to give a statement of information, to attend a hearing to give evidence or to produce a document for the purposes of a special inquiry.
36. Clause 31 provides for exemptions in respect of evidence or information to a special inquiry for Cabinet documents and other privileged material.

Part 6 Reports by Advocate

37. Clause 32 requires the Advocate to prepare annual reports to Parliament of its operations and to furnish those reports to the Presiding Officer of each House of Parliament within 4 months after 30 June in each year. Those reports must include a description of the Advocate's activities during that year, an evaluation of the response of relevant authorities to the Advocate's recommendations and any recommendations for changes in the laws of the State or for administrative action that the Advocate considers should be made or taken.
38. Clause 33 requires the Advocate to make such a special report to the Minister at the request of the Minister. The Advocate may also make a report to Parliament on any particular issue or general matter relating to its functions.
39. Clause 34 requires the Advocate to provide the Minister with a draft of each of its reports to Parliament at least one month (or other agreed period) before it is furnished to the Presiding Officers. The Minister may comment on a draft report and require the Advocate to consult about it but the Advocate is not bound to make any changes to its draft report subsequent to any comment of the Minister.
40. Clause 35 provides for a copy of a report furnished to the Presiding Officers to be laid before each House of Parliament. If the report includes a recommendation that the report be made public immediately, the Presiding Officer may make it public whether or not the House is in session and whether or not the report has been laid before the House. Such publicised reports attract the same privileges and immunities as if they had been laid before the House prior to their publication.

Part 7 Parliamentary Joint Committee

41. Clause 36 constitutes a Parliamentary Joint Committee known as the Committee on Children and Young People.

42. Clause 37 outlines the functions of the Committee. These include the monitoring and review of the exercise by the Advocate of the Advocate's functions and the examination of each annual or other report of the Advocate.
43. Clause 38 provides that the Committee is to consist of 7 members, 3 from the Legislative Council and 4 from the Legislative Assembly.

Part 8 Miscellaneous

44. Clause 39 provides that the proposed Act is to bind the Crown.
45. Clause 40 protects the Advocate, members of the Council and other advisory committees and other persons acting on their directions from personal liability for anything done or omitted in good faith in the execution of the proposed Act.
46. Clause 41 provides for the summary disposal of offences against the proposed Act or regulations and makes it clear that proceedings for such offences must be commenced not later than 2 years from when the offence was alleged to have been committed.
47. Clause 42 enables the Governor to make regulations for the purposes of the proposed Act.
48. Clause 43 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Provisions relating to membership and procedure of Youth Advisory Council

49. Schedule 1 contains provisions relating to membership and procedure of the Council including provision for the following:
 - (a) the appointment of a Chair and Deputy Chair of the Council,
 - (b) terms of office of appointed members of the Council,
 - (c) member allowances,
 - (d) vacancies in the office of members of the Council and the filling of those vacancies,
 - (e) excluding the application of the *Government Sector Employment Act 2013* to members,
 - (f) voting and quorum for a meeting of the Council.

Schedule 2 Parliamentary Joint Committee

50. Schedule 2 contains provisions relating to the composition, procedure and reporting requirements of the Parliamentary Joint Committee.

Schedule 3 Savings, transitional and other provisions

51. Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including the abolition of the Commission for Children and Young People and a provision to continue the appointment under the proposed Act

of existing members of the Youth Advisory Council established under the *Youth Advisory Council Act 1989* for the remainder of their terms of appointment.

Schedule 4 Amendment of Acts

52. Schedule 4 makes amendments to Acts specified in the Schedule as a consequence of the proposed Act.

Schedule 5 Repeal of existing Acts and Regulation

53. Schedule 5 repeals the *Commission for Children and Young People Act 1998*, the *Commission for Children and Young People Regulation 2009* and the *Youth Advisory Council Act 1989*.

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.

2. Energy Legislation Amendment (Retail Price Deregulation) Bill 2014

Date introduced	13 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to modify the operation of the National Energy Retail Law (NSW) (the National Law) so that the mandatory scheme requiring energy retailers to offer energy at a regulated price to certain small customers no longer applies in relation to the supply of electricity to those customers and to provide for transitional contract arrangements for those customers,
 - (b) to provide for the monitoring of the performance and competitiveness of the retail electricity market for small customers in New South Wales,
 - (c) to amend the *Electricity Supply Act 1995* and the *Electricity Supply (General) Regulation 2001* to update references and remove provisions as a consequence of the deregulation of retail electricity prices,
 - (d) to provide for gas pricing order provisions to be retained and revived in the *Gas Supply Act 1996*.

BACKGROUND

2. In his Second Reading Speech, the Hon. Anthony Roberts MP, Minister for Resources and Energy, told Parliament that in 2004 the Commonwealth, State and Territory governments of Australia entered into the Australian Energy Market Agreement. The agreement set the agenda for phasing out retail electricity and gas price regulation in markets where competition is found to be effective.
3. Mr Roberts further stated that in 2013, the Australian Energy Market Commission undertook a review of the effectiveness of competition in the NSW retail energy market, consulting extensively with stakeholders. The review found that competition is sufficiently developed in the NSW electricity market to justify removing retail price regulation. However, it also found that competition in the retail gas market has not evolved to the same extent.
4. For this reason, the Bill removes the requirement for the Independent Pricing and Regulatory Tribunal to regulate retail electricity prices and retailers will no longer be required to offer customers regulated retail electricity prices. However, it makes no such change in relation to gas.

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 (except Schedule 5) on 1 July 2014.

Schedule 1 Amendment of National Energy Retail Law (Adoption) Act 2012 No 37

7. Schedule 1 [1] modifies the National Law so that provisions relating to regulated offer prices and contracts will apply only to the supply of gas rather than to both gas and electricity.
8. Schedule 1 [2]–[6] and [8] make consequential amendments.
9. Schedule 1 [7] omits a modification to the National Law that requires pricing conditions relating to regulated offer prices to be imposed on persons exempted from licensing requirements for the retail sale of electricity.
10. Schedule 1 [9] modifies the National Law by inserting proposed Part 9A. The proposed Part establishes a Market Monitor (to be prescribed by regulations) to monitor the performance and competitiveness of the retail electricity market in New South Wales for small customers and to report annually on it. The annual report is to include any steps necessary to improve the competitiveness of the market, whether there is a need for a detailed review of retail prices and profit margins in the market, the participation of small customers in the market, barriers in the market, competition between retailers and other matters. The annual report is to be tabled in Parliament. The Market Monitor must carry out a detailed review of retail prices and profit margins in the market, and other matters, (a special review) if requested to do so by the Minister. Regulations may be made with respect to reports by the Market Monitor, conferring functions on the Market Monitor that are related or ancillary to its review, reporting and monitoring functions and the conduct of special reviews. Regulations may also apply provisions of the Independent Pricing and Regulatory Tribunal Act 1992 while the Independent Pricing and Regulatory Tribunal is prescribed as the Market Monitor.

Schedule 2 Amendment of National Energy Retail Law (Adoption) Regulation 2013

11. Schedule 2 [1] omits the prescription of the consumption threshold for electricity for a regulated offer customer as a consequence of the removal of the application of regulated offer provisions to electricity customers. Schedule 2 [2] makes a consequential amendment.
12. Schedule 2 [3] omits a provision that specifies retailers as regulated offer retailers for electricity customers as a consequence of the removal of the application of regulated offer provisions to electricity customers.
13. Schedule 2 [4] prescribes the Independent Pricing and Regulatory Tribunal as the Market Monitor for the purposes of proposed Part 9A of the National Law and provides for the conduct of special reviews by the Market Monitor. It also enables the Market Monitor to require information to be provided for the purposes of a special review and protects

certain confidential information that is provided. It will be an offence to refuse or fail to comply with a notice to provide information, to knowingly provide false information or give false evidence or to obstruct or interfere with the exercise of functions for the purposes of a special review.

14. Schedule 2 [5]–[7] update references.
15. Schedule 2 [8] inserts transitional provisions relating to the modifications to the regulated offer provisions of the National Law made by the proposed Act. A regulated offer customer for the supply of electricity will become a standing offer customer of the designated retailer for the customer on the terms and conditions (including standing offer prices) available on a standing offer contract between a small customer and the designated retailer.

Schedule 3 Amendment of Electricity Supply Act 1995 No 94

16. Schedule 3 [1]–[4], [19], [21] and [23] change references to certain customers who participate in the solar bonus scheme so as to reflect the removal of the category of regulated offer customers from the National Law. Schedule 1 [20] makes a consequential amendment.
17. Schedule 3 [5] and [6] omit provisions which enable the Independent Pricing and Regulatory Tribunal (the Tribunal) to investigate and report on and determine regulated retail tariffs or regulated retail charges for electricity. The amendment is consequential on the removal of regulated offer prices from the National Law. Schedule 3 [7]–[10] and [24] make consequential amendments.
18. Schedule 3 [11] removes from the Tribunal its functions relating to monitoring regulated offer prices. Schedule 3 [13] and [14] make consequential amendments.
19. Schedule 3 [12] omits a provision that requires the Minister to provide information to the Tribunal in relation to compliance with Tribunal determinations about regulated offer prices.
20. Schedule 3 [15] omits a requirement for the Tribunal to report on compliance with Tribunal determinations about regulated offer prices.
21. Schedule 3 [16] and [17] omit references to disputes or complaints concerning regulated offer customers to whom electricity is supplied from provisions setting out matters that an energy ombudsman scheme may deal with.
22. Schedule 3 [18] omits a reference to a dispute or complaint concerning a regulated offer customer from a provision that imposes a condition on a licence of an electricity distributor.
23. Schedule 3 [22] inserts savings and transitional provisions.

Schedule 4 Amendment of Electricity Supply (General) Regulation 2001

24. Schedule 4 [1] amends a provision that confers a right to apply to an energy ombudsman so as to remove the application of the provision to regulated offer customers for electricity.

25. Schedule 4 [2] and [3] remove references to regulated offer customers.
26. Schedule 4 [4] is consequential on the amendment made by Schedule 3 [9].

Schedule 5 Amendment of Gas Supply Act 1996 No 38

27. Schedule 5 [1] omits a provision which provided for gas pricing order provisions to cease to have effect on 30 June 2013.
28. Schedule 5 [2] changes a reference to arrangements relating to gas pricing.
29. Schedule 5 [3] revives the gas pricing order provisions as if they had not ceased to have effect. No gas pricing orders have been made under the provisions.

ISSUES CONSIDERED BY COMMITTEE

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

Matters which should be set by Parliament - Powers and Potential Penalties to be Set by Regulation

30. The Committee notes that schedule 1, item 9, proposed section 234D of the Bill provides that regulations may be made conferring powers on the Market Monitor to require certain persons to provide information or other evidence for the purposes of an energy-related 'special review' under the Bill. These regulations may also prohibit or regulate the disclosure of information or the provision of evidence to the Market Monitor. The Committee notes that provisions prohibiting conduct are generally backed by penalties.

The Committee would prefer that the powers of the Market Monitor and any provisions that include penalties to be included in primary, not subordinate legislation. Nonetheless, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Owing to this safeguard, the Committee makes no further comment.

3. Law Enforcement (Powers and Responsibilities) Amendment Bill 2014

Date introduced	15 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney-General and Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002(LEPRA) to give effect to the recommendations of the statutory review of LEPRA, including the recommendations in a report to the Government on the statutory review by Mr Andrew Tink and the Hon Paul Whelan that relate to Part 9 (Investigations and questioning) and Part 15 (Safeguards relating to police powers) of LEPRA. In particular, the Bill amends LEPRA as follows:
2. (a) to clarify and revise the safeguards under Part 9 relating to investigations and questioning, and in particular:
 - (i) to provide separate safeguards for persons detained after arrest (detained persons) and for suspects who are in the company of a police officer for the purpose of an investigation but who have been told they are free to leave (protected suspects), and to remove references to persons deemed to be under arrest, and
 - (ii) to provide that the safeguards under Division 2 of Part 9 apply only to detained persons and not to protected suspects (eg the time limits on the investigation period), and to provide that the safeguards under Division 3 of Part 9 apply to both detained persons and protected suspects (eg the giving of a caution that they do not have to say anything; their right to contact a friend, relative, guardian or independent person; their right to medical attention; and their right to reasonable refreshment and facilities), and
 - (iii) to extend the initial investigation period for a detained person from 4 hours to 6 hours but to retain the overall maximum investigation period of 12 hours by limiting the additional period of investigation under a detention warrant issued by an authorised officer to 6 hours instead of 8 hours, and
 - (iv) to require an authorised officer to whom an application is made for a detention warrant to take into account the period before detention during which the person was a protected suspect in the company of a police officer, and
 - (v) to apply Part 9 to a detained person or protected suspect who remains at premises that are being searched under a search warrant (including provision for an independent police officer to exercise the functions of a custody manager; provision to dispense with requirements relating to contact with friends, relatives, guardians or independent persons if there is a reasonable suspicion that it may result in bodily

injury to any other person; and provision to enable the custody record to be included in a video recording of the execution of the search warrant), and

(vi) to enable information required to be given to detained persons and protected suspects to be given in summary form prescribed by the regulations,

3. (b) to clarify and simplify the provisions of Part 15 (relating to safeguards applying to the exercise of police powers) by recasting the provisions in plain language, and in particular:

(i) to clarify the time at which police officers exercising a relevant police power must provide evidence they are a police officer (if not in uniform), provide their name and place of duty and provide the reason for exercising the power (so that it is to be provided as soon as reasonably practicable or, in the case of direction, requirement or request to a single person, before exercising the power), and

(ii) to consolidate the warnings to a person to whom a direction, requirement or request is given to a single warning that the person must by law comply with the direction, requirement or request (instead of a warning that the person must comply and a warning that failure to comply is an offence), and

(iii) to retain the requirement that a police officer provide his or her name and place of duty, but to provide that a failure to do so does not render the exercise of the power unlawful (except in the case of a direction, requirement or request to a single person), and

(iv) to provide that the Ombudsman is to monitor the operation of the Part relating to the provision of the name and place of duty of a police officer and provide a report for tabling in Parliament,

4. (c) to make miscellaneous amendments, including:

(i) to amalgamate existing provisions relating to ordinary and frisk searches, and

(ii) to remove the requirement that a strip search may be carried out at a police station or other place of detention only if the seriousness or urgency of the circumstances require the search to be carried out but to provide that such a requirement will continue to apply to strip searches carried out in any other place, and

(iii) to limit the circumstances in which a strip search of a child or person with impaired intellectual functioning can be carried out in the absence of a parent, guardian or support person, and

(iv) to allow persons while they are being searched to be asked questions that relate to issues of personal safety associated with the search, and

(v) to expand the powers that may be exercised at a crime scene before a crime scene warrant is obtained (including extending the period during which such powers may be exercised before obtaining a warrant), and

(vi) to provide that a crime scene warrant may relate to more than one set of premises.

BACKGROUND

5. This Bill gives effect to the recommendations of the statutory review of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). These recommendations were included in two reports into the operation of the LEPRA.
6. The first report, prepared by former Minister for Police the Hon. Paul Whelan, and former Shadow Attorney General, Mr Andrew Tink, dealt with parts 9 and 15 of the Act. These parts respectively deal with investigations and questioning, and safeguards relating to powers under the Act.
7. The second report dealt with the balance of the LEPRA was a statutory review completed by the former Department of Attorney General and Justice, as it then was, and the Ministry for Police and Emergency Services.

OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.
9. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
10. Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to investigations and questioning under Part 9.
11. The Schedule amends the provisions of Part 9 of LEPRA to give effect to paragraph (a) of the Overview above.
12. Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103 relating to safeguards under Part 15.
13. The Schedule amends the provisions of Part 15 of LEPRA to give effect to paragraph (b) of the Overview above.
14. Schedule 3 [14] makes it clear that, in conducting a personal search, any requirement by a police officer that the person open his or her mouth is to enable the mouth to be searched. Schedule 3 [1] is a consequential amendment which provides that a person's body cavities (which are not authorised to be searched under LEPRA) do not include the person's mouth.
15. Schedule 3 [15] and [16] make it clear that the power to search a person who is in lawful custody of the police is a power that may be exercised following the person's arrest and that the power may be exercised immediately before or during the transportation of the person after being arrested to or from a police station or other place of detention.
16. Schedule 3 [20] provides that the provisions of LEPRA applying to personal searches extend to searches carried out by a police officer after obtaining the person's consent to carry out the search. In such a case, the purpose for carrying out the search will be the purpose for which the police officer obtained consent to search. Schedule 3 [29] provides that a consensual search may only be carried out if the police officer has sought the person's consent before carrying out the search and the officer provides the person with evidence that the officer is a police officer and with the officer's name and place of duty.

17. Schedule 3 [21] amalgamates existing provisions relating to ordinary searches and frisk searches and continues the powers that may be exercised for the purposes of carrying out the search of a person currently set out in the definitions of “ordinary search” and “frisk search” which are being consequentially omitted. Schedule 3 [2] and [17] are consequential amendments.
18. Schedule 3 [24] restates an existing provision that requires a search to be conducted by a police officer who is of the same sex as the person to be searched. However, in the case where no such officer is available, the power to conduct the search may be delegated to a person who is of the same sex as the person to be searched and who is of a class of persons prescribed by the regulations. Schedule 3 [3] provides that references in LEPR to persons of the same sex or opposite sex will cover transgender persons. Schedule 3 [1], [23] and [26] are consequential amendments.
19. Schedule 3 [25] provides that the prohibition on asking a person questions while the person is being searched will not apply to questions that relate to issues of personal safety associated with the search.
20. Schedule 3 [22] provides that a police officer may conduct a strip search at a police station or other place of detention if the police officer conducting the search reasonably suspects that the strip search is necessary for the purposes of conducting the search. A strip search may be conducted elsewhere if the police officer conducting the search reasonably suspects that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.
21. Schedule 3 [27] makes it clear that the prohibition on a strip search being conducted in the presence or view of a person who is of the opposite sex to the person being searched does not prevent a parent, guardian or personal representative of the opposite sex to the person being searched from being present during the search.
22. Schedule 3 [28] provides that a strip search of a child or person with impaired intellectual functioning may be conducted in the absence of a parent, guardian or support person but only if a police officer reasonably suspects that delaying the search is likely to result in evidence being concealed or destroyed or an immediate search is necessary to protect the safety of a person. In such a case, the police officer conducting the strip search must record the reasons for conducting the search in the absence of a parent, guardian or support person.
23. Schedule 3 [32] authorises a police officer to remain in a dwelling on which a domestic violence offence is being or may have been committed and to exercise functions similar to those in relation to a crime scene (such as directing a person to leave, or not to enter, the dwelling) so that evidence of the commission of the offence can be preserved.
24. Schedule 3 [31] and [33]–[35] are consequential amendments and Schedule 3 [36] makes it an offence to obstruct or hinder a police officer who is exercising crime scene powers in relation to a domestic violence offence.
25. Schedule 3 [37] provides that the prohibition on establishing a crime scene on the same premises more than once in any 24 hour period does not prevent a subsequent crime scene being established during that period on the same premises for the purposes of

investigating a separate offence that is not related to the offence for which the initial crime scene was established.

26. Schedule 3 [38] expands the powers that may be exercised at a crime scene without a crime scene warrant to include investigative powers (including the power to search the crime scene but not powers to seize or detain things). Schedule 3 [40] provides that the police may, in exercising crime scene powers without a warrant, open a thing that is locked only if it is possible to do so without causing any damage.
27. Schedule 3 [39] extends from 3 to 4 hours the period during which crime scene powers may be exercised before a crime scene warrant is obtained (in the case of a rural area the period is extended to 6 hours). Schedule 3 [41] is a consequential amendment.
28. Schedule 3 [42] provides that a crime scene warrant may, if a crime scene relating to an offence is established on more than one set of premises, apply to each such set of premises.
29. Schedule 3 [43] enables the occupier of private premises in respect of which a crime scene warrant is issued to apply to an authorised officer for a review of the grounds on which the warrant is issued. Any such application does not stay the operation of the warrant.
30. Schedule 3 [45] provides that, in the case where crime scene powers are exercised on premises with the occupier's consent, the consent may only be given if the occupier has been informed by the police of the powers proposed to be exercised, the reasons for exercising those powers and that the occupier has the right to refuse to give consent.
31. Schedule 3 [44] requires the occupier's consent to be in writing if reasonably practicable.
32. Schedule 3 [10] makes it clear that the direction by a police officer to stop a vehicle is not given under the provisions of LEPR that relate to the power of police officers to require drivers or passengers to disclose their identity.
33. Schedule 3 [4]–[9], [11]–[13] and [18] ensure that, in the case of certain police powers under LEPR that must be complied with by the person in respect of whom the power is exercised, the power is expressed as a requirement rather than as a request by a police officer. The amendments merely bring certain provisions into line with other provisions of LEPR that contain police powers that must be complied with.
34. Schedule 3 [19] rearranges the order of existing provisions that authorise the carrying out of personal searches so that the power to search for knives and other dangerous implements, which is based on a reasonable suspicion that a person has such an implement in his or her possession, will immediately follow other existing search powers that are also based on a reasonable suspicion and will precede those powers relating to the search of persons on arrest or while in custody (which involve a different test). Schedule 3 [48] is a consequential amendment.
35. Schedule 3 [30] simplifies the grounds on which a notice to an authorised deposit-taking institution to produce documents is issued.

36. Schedule 3 [46] repeals a provision that prevents police in-car video equipment from being used to record a conversation between a police officer and a person after the person has been arrested.
37. Schedule 3 [47] makes it clear that the recording of a conversation between police officers by means of police in-car video equipment does not constitute the use of a listening device for the purposes of the Surveillance Devices Act 2007.
38. Schedule 3 [49] enables the Commissioner of Police to order the destruction of any identification particulars of a person taken while the person is in custody. Such a power does not affect any existing requirement relating to destruction of identification particulars.
39. Schedule 3 [54] transfers the provisions of Part 12 of LEPR (which contains police powers relating to the regulation of traffic and vehicles, including the use of tyre deflation devices and preventing intoxicated drivers from driving) to the Road Transport Act 2013. Schedule 3 [50]–[53] are related amendments.
40. Schedule 3 [55] enables the regulations to prescribe a code of practice relating to the power of police to give directions under Part 14 of LEPR.
41. Schedule 4 [1] provides that a receipt of the items seized during the execution of a covert search warrant must be provided to the occupier of the premises when the occupier is notified of the search unless the provision of the receipt would result in a person's safety being jeopardised or would compromise the investigation of a matter. Schedule 4 [2] requires a copy of any such receipt that is provided to the occupier to be kept.
42. Schedule 4 [3] provides that, in the case of a crime scene warrant that relates to more than one set of premises, the occupier's right to inspect the warrant is restricted only to the part that relates to the occupier's premises.
43. Schedule 4 [4] and [5] make consequential amendments to forms.
44. Schedule 5 makes amendments to other Acts and a regulation that refer to provisions of Part 15 of LEPR as a consequence of the substitution of that Part by the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Deprivation of Liberty

45. Schedule 1, clauses [9] and [11] will extend the maximum investigation period in which an individual can be questioned by police following their arrest, from four hours to six hours. The Committee notes that under clause 12, police will be limited in the time sought for an extension to the initial investigation period, with new provisions capping the extended investigation period to a further six hours, down from the current eight.

The Committee notes that the increase to the maximum investigation period in which an individual can be questioned by police following their arrest – from four hours to six hours – may constitute a further deprivation of the liberty of that individual. The Committee makes no further comment.

Consent

46. Schedule 3, clause [29] provides for a new category in which a police officer may undertake a search, including a strip search, of an individual. In particular, this clause provides that a police officer may search a person with the person's consent if the police officer has sought the person's consent before carrying out the search.

The Committee notes that a new provision which enables a police officer to undertake a search, including a strip search, of an individual who gives their consent may be an interference with their personal, bodily integrity. As there is an absence of provisions that require a police officer to inform the individual that consent does not need to be granted, therefore the Committee refers this matter to Parliament for its further consideration.

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

Commencement by Proclamation

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

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

4. Mine Subsidence Compensation Amendment Bill 2014

Date introduced	15 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make amendments to the *Mine Subsidence Compensation Act 1961* (the Principal Act) as follows:
 - (a) to provide that the Mine Subsidence Board (the Board) is not to pay out a claim for compensation from the Mine Subsidence Compensation Fund (the Fund) relating to preventative or mitigative expenses incurred or proposed before the relevant subsidence occurs,
 - (b) to provide that the Board may reject a claim for compensation for preventative or mitigative expenses if the Board is of the opinion it is disproportionate to the expense of repairing or replacing the improvements or household or other effects concerned,
 - (c) to make it clear that the Board must notify claimants of its decisions relating to claims for compensation and the reasons for those decisions,
 - (d) to clarify the operation of provisions relating to Board approvals and certificates of compliance,
 - (e) to make savings and transitional amendments.

BACKGROUND

2. This Bill seeks to clarify the operation of a number of provisions within the *Mine Subsidence Compensation Act 1961* following court decisions, including a 2011 High Court decision, which highlighted ambiguities in its operation.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Mine Subsidence Compensation Act 1961 No 22

Amendments relating to claims for preventative or mitigative expenses incurred or proposed before subsidence occurs

The Compensation Scheme

5. The Principal Act establishes a compensation scheme to allow persons to make claims for compensation from the Fund for damage to certain assets (improvements and household and other effects) caused by coal or shale mining subsidence. Proprietors of colliery holdings are required to make contributions to the Fund. So long as a proprietor of a colliery holding has paid its required contributions to the Fund and observed the requirements to the relevant mining title, it is not liable for any damage caused by subsidence arising from its activities.
6. The compensation scheme established by the Principal Act also provides that claims for compensation may be made for proper and necessary expenses incurred in preventing or mitigating such damage where, in the opinion of the Board, an owner of an asset could reasonably have anticipated that the damage would otherwise have arisen from a subsidence that has taken place—see current section 12A (1) (b) of the Principal Act.
7. For example, an owner of a house may claim compensation for preventative or mitigating work (such as building retaining walls or underpinnings, etc), before damage to the house occurs, if the damage is reasonably anticipated damage from a subsidence that has taken place.
8. The Board also has a function under section 13A of the Principal Act that enables it to arrange for preventative or mitigating works to be carried out as a means to reduce the total prospective liability of the Fund. The exercise of this function is within the discretion of the Board and the Principal Act does not provide for a statutory appeal to the Land and Environment Court regarding such decisions.

The High Court Decision

9. The High Court case of *Jemena Gas Networks (NSW) Limited v Mine Subsidence Board* [2011] HCA 19 expanded the operation of this scheme. In this case, Jemena Gas Networks (NSW) Limited, the owner of gas pipelines between Moomba and Sydney, was made aware that coal mining would take place under certain of their pipelines. Expert consultants predicted that the planned coal mining would cause subsidence that would damage a pipeline unless preventative or mitigating works were carried out. Consequently Jemena caused these works to be carried out (excavating the pipeline, decoupling it from the soil and carrying out associated filling). When Jemena claimed for compensation for the works, the Board refused to pay the claim relying on the fact that subsidence had not occurred before the expense of the works was incurred.
10. The High Court held, as a matter of legal interpretation, that a claim could be made under this scheme even before the subsidence had commenced, so long as it was reasonably anticipated that the subsidence would commence. The High Court reasoned that the Board's interpretation of the law would mean that an owner faced with slow subsidence would be able to claim compensation for preventative and mitigating works, but an owner faced with simultaneous subsidence and damage would not. In the opinion of the High Court, this result could not have been the intention of Parliament.

11. The High Court's expanded interpretation of section 12A of the Principal Act is now the law that governs the payment of compensation from the scheme.

The Amendments

12. Schedule 1 [3] and [4] amend section 12A of the Principal Act to modify and limit the operation of the compensation scheme as expanded by the High Court. Under the proposed new section 12A (1A), the Board must not make a payment from the Fund for a claim for any preventative or mitigative expense unless:
 - (a) the claim is made after the subsidence concerned has commenced, and
 - (b) the expense is incurred or proposed after the subsidence concerned has commenced, and
 - (c) at the time the expense is incurred or proposed the damage concerned is more likely than not to occur, and
 - (d) the Board is satisfied that the preventative or mitigating work (or proposed preventative or mitigating work) is appropriate and necessary to prevent or mitigate the damage concerned, and
 - (e) the subsidence concerned is not due to operations carried on by the owner.
13. Schedule 1 [3] also inserts proposed section 12A (1B) into the Principal Act to provide that the Board may reject a claim for preventative or mitigative expenses if the Board is of the opinion that the total preventative or mitigative expenses claimed are disproportionate to the reasonably expected total expense of repairing or replacing the improvements or household or other effects concerned if no preventative or mitigating work had been or were to be carried out.
14. Schedule 1 [5] and [6] make consequential amendments to section 12B (Appeals) of the Principal Act.

Amendments relating to notification of Mine Subsidence Board decisions and reasons for decisions

15. Schedule 1 [2] and [4] insert provisions into the Principal Act to make it clear that the Board must notify claimants of its decisions relating to claims for compensation under sections 12 and 12A of that Act and the reasons for those decisions.

Amendments relating to approvals and certificates of compliance

16. Schedule 1 [7] extends the duration of approvals to alter or erect improvements, or to subdivide land, within a mine subsidence district from 2 years to the period specified in the approval concerned, being a period of at least 2 years, but not more than 5 years, from the date of the approval.
17. Schedule 1 [9] makes it clear that the prohibition against making compensation payments from the Fund in relation to improvements that have been erected or altered, or subdivisions of land made, without the approval of the Board (or not in accordance with any such approval) extends to:

- (a) claims for preventative or mitigative expenses under section 12A of the Principal Act, and
 - (b) claims relating to household or other effects fixed or attached to the unapproved improvement or damaged as a consequence of damage to the unapproved improvement, and
 - (c) claims relating to improvements on land within an unapproved subdivision that were erected or altered after the land was subdivided, and
 - (d) claims relating to household or other effects on land within an unapproved subdivision for the purpose of erecting or altering an improvement.
18. Schedule 1 [1] and [8] make consequential amendments.
19. Schedule 1 [10] deals with the circumstances in which the Board may issue a certificate of compliance after an improvement was altered or erected, or a subdivision of land made, in such circumstances. A certificate of compliance is for all purposes deemed to be conclusive evidence that the requirements of the Principal Act relating to the improvement or the subdivision have been complied with up to the date of the certificate.
20. The proposed new provisions provide that the Board may issue such a certificate if the Board is satisfied that it is appropriate to do so having regard to the circumstances of the case. However, the Board must not issue the certificate in relation to the following:
- (a) an improvement that is a residential building that was altered or erected more than 15 years before the application for the certificate was made, unless the Board is of the opinion that:
 - i the failure to obtain the approval was not the fault of the applicant, or
 - ii exceptional circumstances exist,
 - (b) an improvement that is not a residential building, unless the Board is of the opinion that exceptional circumstances exist.

Amendment relating to classified roads

21. Schedule 1 [11] inserts a provision into the Principal Act to make it clear that Roads and Maritime Services (RMS) may make claims for compensation under sections 12 and 12A of the Principal Act in relation to any classified road as if RMS were the owner of the road and payments may be made from the Fund to RMS accordingly.

Savings and transitional amendments

22. Schedule 1 [12] and [13] contain savings and transitional amendments. Schedule 1 [12] enables regulations of a savings or transitional nature to be made. Schedule 1 [13] provides that the proposed amendments to sections 12A and 15 (5) (b) of the Principal Act by the proposed Act are to be taken to have commenced on the date that the Bill for the proposed Act was first introduced into Parliament (the introduction date). However, those provisions, as in force immediately before the introduction date, continue to apply in relation to the following:

- (a) a claim lodged with the Board before the introduction date,
- (b) a claim lodged with the Board after the introduction date in relation to an expense incurred before that date.

ISSUES CONSIDERED BY COMMITTEE

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

Commencement

- 23. Schedule 1[13] provides that the proposed amendments to section 12A and 15 (5) (b) are to be taken to have commenced on the date that the Bill was introduced into Parliament. The remaining amendments are to commence on assent.
- 24. Schedule 1[13] also provides that the provisions in force before the Bill was introduced into Parliament will still apply in relation to claims lodged before the introduction date and to claims lodged after the introduction date but that relate to expenses incurred before the introduction date.

The Committee would prefer commencement of an Act to be on assent or a defined date to ensure those affected can organise their affairs accordingly. This Bill backdates the commencement of certain provisions to the date the Bill was introduced into Parliament. The Committee notes that provisions in force before the introduction date will still apply to certain claims lodged before the introduction date. As such, the Committee makes no further comment.

5. Parents and Citizens Associations Incorporation Amendment Bill 2014

Date introduced	13 May 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Adrian Piccoli MP
Portfolio	Minister for Education

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Parents and Citizens Associations Incorporation Act 1976 as follows:
 - (a) to continue in existence the Federation of Parents and Citizens Associations of New South Wales (the federation),
 - (b) to provide for matters relating to the incorporation of the federation under the Act and the procedures of its board of management and executive committee,
 - (c) to provide for matters relating to the election of councillors and delegates to the federation,
 - (d) to provide for the appointment of an administrator of the federation to exercise all of the functions of the federation during the period leading up to the election of the first councillors and delegates of the federation.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Adrian Piccoli MP, Minister for Education, stated that the current governance model for the Federation of Parents and Citizens Associations is unwieldy and has led to internal tension, and that its nature and structure needs modernisation.
3. Mr Piccoli further informed Parliament that in 2011 the Federation of Parents and Citizens Associations commissioned an audit into its own activities and functions and the ongoing internal tension. The audit was conducted by Mr David Roden, an expert in public affairs and governance. The resulting audit report recommended a new organisational structure with clearer, more practical and modern allocation of roles and responsibilities; and a new legal framework to support structural and organisational changes and to provide the federation and affiliated parents and citizens associations with enhanced accountability and governance and increased flexibility of operations. Mr Piccoli told Parliament that the Bill makes these changes.

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.

Schedule 1 Amendment of Parents and Citizens Associations Incorporation Act 1976 No 50

Preliminary

6. Schedule 1 amends Part 1 of the Act (dealing with preliminary matters) by including an objects provision for the Act and a provision defining certain words and expressions used in the Act.

The Federation of Parents and Citizens Associations of New South Wales

7. Schedule 1 replaces Part 2 of the Act (dealing with the incorporation of the Federation of Parents and Citizens Associations of New South Wales) with provisions providing for the following matters:
 - (a) continuing in existence the Federation of Parents and Citizens Associations of New South Wales,
 - (b) the status, functions, powers and membership of the federation,
 - (c) the declaration and amendment of a new constitution for the federation,
 - (d) the establishment, functions and membership of a board of management and an executive committee of the federation,
 - (e) the holding of an annual general meeting of the federation, and eligibility of persons to attend and vote on matters at the annual general meeting,
 - (f) the execution of documents by, and the service of documents on, the federation,
 - (g) other minor matters relating to the federation.

Parents and citizens associations

8. Schedule 1 amends Part 3 of the Act (dealing with the incorporation of parents and citizens associations) by:
 - (a) providing that parents and citizens associations incorporated under the Act must have public liability insurance for a cover of at least \$20,000,000 instead of \$2,000,000, and
 - (b) making other minor or consequential amendments to the Part.

Election of councillors and delegates

9. Schedule 1 inserts new Part 3A of the Act (dealing with the election of councillors and delegates of the federation) to provide for the following matters:
 - (a) the conduct and holding of elections for councillors and delegates of the federation,
 - (b) requirements relating to the number and designation of electorates for electing councillors and delegates,

- (c) the election of one councillor and two delegates for each electorate,
- (d) the eligibility requirements for a person to be elected as a councillor or delegate and the eligibility requirements for a person to vote at an election,
- (e) the role and terms of office of a councillor or delegate,
- (f) the appointment of a councillor or delegate for an electorate if no-one is elected as a councillor or delegate for the electorate,
- (g) the payment of the cost of an election by the federation.

General matters

10. Schedule 1 amends Part 4 of the Act (dealing with miscellaneous matters) by:
- (a) providing for the Minister to be able to delegate the exercise of any function of the Minister under the Act to the Secretary of the department of a Public Service senior executive of the department, and
 - (b) making it clear that the Act (which includes the regulations made under the Act) prevails to the extent of any inconsistency with the constitution of the federation.

Board of management and executive committee of the federation

11. Schedule 1 inserts new Schedule 1 to the Act to provide for matters relating to the membership and procedures of the board of management and the executive committee of the federation.

Savings, transitional and other provisions

12. Schedule 1 inserts new Schedule 2 to the Act to provide for the following matters:
- (a) a regulation-making power to make regulations of a savings or transitional nature consequent on the enactment of this Bill and any other Act that amends the Act,
 - (b) the appointment of an administrator to exercise all of the functions of the federation, and its board of management and executive committee, during the period leading up to the election of the first councillors and delegates of the federation,
 - (c) the legal status and functions of the administrator,
 - (d) the terms and conditions of the administrator's appointment,
 - (e) the reporting obligations of the administrator,
 - (f) other minor matters relating to the administrator and the exercise of the administrator's functions,
 - (g) the application of the Act during the period in which the administrator is exercising the functions of the federation and its board of management or executive committee,
 - (h) the dissolution of current governing bodies of the Federation of Parents and Citizens Associations of New South Wales and the removal from office of all office holders in those governing bodies,

- (i) the continuation in employment of current employees of the Federation of Parents and Citizens Associations of New South Wales,
- (j) other minor or consequential transitional provisions relating to the proposed amendments under this Bill.

ISSUES CONSIDERED BY COMMITTEE

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

Part Two – Regulations

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

Appendix One – Index of Ministerial Correspondence on Bills

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

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

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In Digest 12/55, the Committee reported on the Water Management (General) Amendment (Water Sharing Plans) Regulation (No 2) 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
3. In Digest 16/55, the Committee reported on the Home Building Amendment (Threshold for Home Warrant Insurance) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
4. In Digest 12/55, the Committee reported on the Local Government (General) Amendment (Election Procedures) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 21 June 2012 which addresses to the Committee's satisfaction the issues raised.
5. In Digest 15/55, the Committee reported on the Police Amendment (Death and Disability) Regulation 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister received 9 July 2012 which addresses to the Committee's satisfaction the issues raised.
6. On 8 May 2012 the Committee wrote to the Attorney General in relation to James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012. The Committee was in receipt of a response from the Attorney General dated 10 August 2012 which addressed to the Committee's satisfaction the issues raised. Further information in relation to this can be found in Digest 23/55.