



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. BAIL BILL 2013

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

Right to have application for bail heard

The Committee notes that a general principle of the bail regime is to allow applicants to apply for bail. However, the Committee notes that proposed sub-section 72(3) prevents a court from refusing to hear a bail application if the application is made by an accused person on a first appearance. The Committee also notes that the grounds for refusing to hear a bail application are outlined in proposed sub-section 72(1) and appear reasonable in the circumstances.

Procedural fairness

The Committee notes that in order to provide the accused with an opportunity to present a response to a bail application, it is appropriate for the accused and/or the accused's legal representative to be present at a bail application hearing. The Committee refers to Parliament whether it is appropriate for provision to be made for circumstances in which a bail application may be heard in the absence of the accused person or the accused person's legal representative. The Committee also refers to Parliament whether it is appropriate for such circumstances to be included in the regulations, rather than the principal legislation.

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

Widely-defined powers

The Committee notes that bail conditions under this Bill may include enforcement conditions that, without sufficient limits, may make rights and liberties unduly dependent upon insufficiently defined powers.

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

Powers in Regulation

The Committee notes that it may be more appropriate for matters relating to the conclusion of proceedings in a criminal trial to be left in principal legislation, and considers that allowing such matters to be determined by regulation may be an inappropriate delegation of legislative power.

Commencement by Proclamation

In light of the comments explaining the reasons for the delay in commencement, the Committee does not consider there to be an inappropriate delegation of legislative power in these circumstances.

2. RIGHTS OF THE TERMINALLY ILL BILL 2013*

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

Right to life

The Committee notes that clause 7 of the Bill sets out a number of conditions that a medical practitioner must meet if they are assisting a terminally ill individual to end their life. Nevertheless, the Committee refers to Parliament for its careful consideration whether the framework set out in the Bill could unduly trespass on a terminally ill individual's right to life.

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

No definition of medical practitioner

While the Committee assumes that the term 'medical practitioner' is only intended to cover registered doctors, given that the framework proposed by the Bill allows medical practitioners to assist terminally ill individuals to end their lives in certain circumstances, the Committee refers to Parliament for consideration whether the term 'medical practitioner' should be defined in the Bill.

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

Commencement three months after assent, unless sooner by proclamation

The Committee refers to Parliament whether it is appropriate to allow the Act to commence by proclamation, rather than on an ascertainable date, given that the Bill proposes significant changes to the current law in NSW to allow medical practitioners to assist terminally ill individuals to end their lives in certain circumstances.

3. STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT (COORDINATION AND NOTIFICATION OF RESCUES) BILL 2013

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

PART TWO - REGULATIONS

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

Part One - Bills

1. Bail Bill 2013

Date introduced	1 May 2013
House introduced	Legislative Assembly
Member responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make provision for bail in connection with criminal and other proceedings.
2. This Bill repeals and replaces the *Bail Act 1978* (***the 1978 Act***).
3. Bail is authority to be at liberty for an offence (including an alleged offence). A person who is in custody because of an offence is, if granted bail for the offence, entitled to be released from custody. Bail can be granted for an offence if substantive proceedings for the offence have not concluded.
4. The Bill sets out a new scheme for the making of bail decisions in respect of accused persons. The key features of the Bill are as follows:
 - (a) the Bill empowers bail authorities (certain police officers, authorised justices and courts) to make bail decisions in respect of accused persons,
 - (b) four types of bail decision can be made:
 - i a decision to release a person without bail (which can only be made by a police officer), or
 - ii a decision to dispense with bail (which can only be made by a court or authorised justice), or
 - iii a decision to grant bail, with or without conditions, or
 - iv a decision to refuse bail,
 - (c) the Bill establishes a simplified test for making bail decisions, based on unacceptable risk, and applies that test to all offences (this replaces the test in the 1978 Act that requires presumptions for or against bail to be applied to specified offences, and requires some offences to be treated as offences for which there is no presumption),
 - (d) a bail authority is required, before making a bail decision, to consider whether there is any unacceptable risk that an accused person, if released from custody, will:
 - i fail to appear at any proceedings for the offence, or

- ii commit a serious offence, or
 - iii endanger the safety of victims, individuals or the community, or
 - iv interfere with witnesses or evidence,
- (e) bail can be refused only if there is an unacceptable risk that cannot be sufficiently mitigated by the imposition of bail conditions,
- (f) bail conditions can be imposed only for the purpose of mitigating an unacceptable risk and are subject to certain general rules (such as reasonableness and proportionality),
- (g) for certain offences there is a right to release, which means that bail cannot be refused,
- (h) bail has effect (unless a bail authority specifies otherwise) until substantive proceedings for the offence conclude (the 1978 Act provides for the grant of bail for specified periods),
- (i) it will be mandatory for an accused person granted bail for an offence to appear before a court in proceedings for the offence and to comply with any bail conditions (the 1978 Act requires an accused person to agree to appear and to agree to conduct restraints imposed by bail conditions),
- (j) three distinct types of bail application can be made (a release application, a detention application or a variation application),
- (k) the rules for determining whether a court or authorised justice has power to hear a bail application are simplified.

BACKGROUND

5. In June 2011, the Government announced that the New South Wales Law Reform Commission would be undertaking a review of the *Bail Act 1978*. The Government provided the Law Reform Commission with wide-ranging terms of reference for the review so that it could take a fundamental look at bail laws in New South Wales. The Commission's report on the review was tabled in both Houses of Parliament on 13 June 2012. The Government tabled its response in November 2012.
6. The Government agreed to adopt a large number of the recommendations made by the review. However, rather than implement a justification approach to bail, as favoured by the Law Reform Commission, the Government decided to adopt a risk-management approach to bail decision-making. The Bill has been drafted in accordance with the Government response and its key feature is a simple unacceptable risk for bail decisions.

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 a day or days to be appointed by proclamation.

9. Clause 3 provides that the purpose of the proposed Act is to provide a legislative framework for a decision as to whether a person accused of an offence or who is otherwise required to appear before a court should be detained or released, with or without conditions. It also requires regard to be had to the presumption of innocence and the general right to be at liberty.
10. Clause 4 defines certain words and expressions used in the proposed Act. Key expressions are as follows:

accused person or person accused of an offence includes the following:

- (a) a person who has been charged with or convicted of an offence,
- (b) a person whose conviction for an offence is stayed,
- (c) a person in respect of whom proceedings on an appeal against conviction or sentence for the offence are pending,
- (d) a person in respect of whom a new trial has been ordered to be held for an offence.

bail authority means a police officer, an authorised justice or a court.

11. Clause 5 defines proceedings for an offence to mean criminal proceedings against a person for an offence, including committal proceedings, proceedings relating to bail, proceedings relating to sentence and proceedings on an appeal against conviction or sentence. All proceedings for an offence are substantive, other than bail proceedings, interlocutory proceedings and any proceedings declared to be non-substantive by the regulations.
12. Clause 6 explains when proceedings for an offence conclude. (Bail ceases to have effect if substantive proceedings for an offence conclude, and a bail decision cannot be made if substantive proceedings for an offence conclude and no further proceedings are pending.)

Part 2 General provisions

13. Clause 7 explains that bail is authority to be at liberty for an offence. As a general rule, a person in custody for an offence who is granted bail for the offence is entitled to be released from custody.
14. Clause 8 provides for the types of bail decisions that can be made under the proposed Act, namely:
 - (a) a decision to release a person without bail, or
 - (b) a decision to dispense with bail, or
 - (c) a decision to grant bail (with or without the imposition of bail conditions), or
 - (d) a decision to refuse bail.
15. Clause 9 provides that a decision to release a person without bail can only be made by a police officer with power to make that bail decision. Clause 10 provides that a decision

to dispense with bail can only be made by a court or authorised justice, and provides for the circumstances in which a court or authorised justice is taken to have dispensed with bail.

16. Clause 11 provides that a decision to grant or refuse bail can only be made by a police officer, court or authorised justice with power to make that bail decision.
17. Clause 12 provides that bail ceases to have effect if it is revoked or substantive proceedings for the offence conclude (and no further proceedings are pending). Bail may also be granted for a specified period and may be continued, if it would otherwise cease to have effect.
18. Clause 13 provides that a person to whom bail is granted, or in respect of whom bail is dispensed with, is required to appear before a court, and surrender to the custody of the court, as and when required to do so in proceedings for the offence.
19. Clause 14 makes it clear that the entitlement to be at liberty conferred by bail is subject to certain limitations, namely:
 - (a) the accused person is not entitled to be released until he or she signs a copy of the bail acknowledgment for the decision and gives it to the bail authority, and
 - (b) the accused person is not entitled to be released on bail unless all pre-release requirements of bail conditions have been complied with, and
 - (c) the accused person must appear before a court in accordance with his or her bail acknowledgment, and
 - (d) the accused person is not entitled to be at liberty if the accused person is in custody for some other offence, or reason, because of which the person is not entitled to be at liberty.

Part 3 Making and variation of bail decisions

Division 1 Preliminary

20. Clause 15 requires all bail decisions to be made or varied in accordance with proposed Part 3.
21. Clause 16 sets out a flow chart that illustrates the key features of the making of a bail decision. These are explained below.

Division 2 How a bail decision is to be made

22. Clause 17 requires a bail authority, before making a bail decision, to consider whether there are any unacceptable risks. An unacceptable risk is an unacceptable risk that the accused person, if released from custody, will:
 - (a) fail to appear at any proceedings for the offence, or
 - (b) commit a serious offence, or
 - (c) endanger the safety of victims, individuals or the community, or

- (d) interfere with witnesses or evidence. The provision also lists the matters that are to be considered in deciding whether there is an unacceptable risk. These include the circumstances of the accused person, the nature and seriousness of the offence, the strength of the prosecution case, and other matters.
23. Clause 18 provides that the following bail decisions can be made if there are no unacceptable risks:
- (a) a decision to release a person without bail,
 - (b) a decision to dispense with bail,
 - (c) a decision to grant bail (without the imposition of bail conditions).
24. Clause 19 provides that the following bail decisions can be made if there is an unacceptable risk:
- (a) a decision to grant bail,
 - (b) a decision to refuse bail.
25. Clause 20 provides that bail for an offence can be refused only if the bail authority is satisfied that there is an unacceptable risk that cannot be sufficiently mitigated by the imposition of bail conditions. Bail cannot be refused for an offence for which there is a right to release.
26. Clause 21 provides that the following decisions are the only bail decisions that can be made for an offence for which there is a right to release:
- (a) a decision to release a person without bail,
 - (b) a decision to dispense with bail,
 - (c) a decision to grant bail (with or without the imposition of bail conditions).
27. Offences for which there is a right to release include offences not punishable by a sentence of imprisonment (fine-only offences) and some summary offences.
28. Clause 22 limits the power of a court to grant or dispense with bail for an indictable offence when the accused person has been convicted of the offence and an appeal is pending.

Division 3 Bail conditions

29. Clause 23 provides that bail can be granted subject to conditions or unconditionally.
30. Clause 24 sets out general rules for the imposition of bail conditions. The key rule is that a bail condition can be imposed only for the purpose of mitigating an unacceptable risk. Bail conditions must also be reasonable, proportionate to the offence and appropriate to the unacceptable risk.
31. Clause 25 provides that bail conditions can impose conduct requirements on an accused person.

32. Clause 26 provides that a bail condition may require security to be provided for compliance with a bail acknowledgment.
33. Clause 27 provides that a bail condition may require one or more character acknowledgments to be provided in respect of an accused person.
34. Clause 28 provides that a bail condition may require suitable accommodation arrangements to be secured for an accused person before the accused person is released on bail.
35. Clause 29 limits the powers of a bail authority to impose bail conditions as pre-release requirements (these are requirements that must be complied with before the accused person is released on bail).
36. Clause 30 permits a court to impose one or more bail conditions (enforcement conditions) for the purpose of monitoring or enforcing compliance with other bail conditions.

Division 4 Procedural requirements

37. Clause 31 provides that the rules of evidence do not apply to the exercise of a bail authority's functions in relation to bail.
38. Clause 32 requires bail matters to be decided on the balance of probabilities.

Part 4 Procedures after decision is made or varied

Division 1 Functions of bail authorities

39. Clause 33 requires a bail authority that grants bail to ensure that the accused person is given a bail acknowledgment. The bail acknowledgment is a written notice that:
 - (a) requires the accused person to appear before a court, on such day and at such time and place as are from time to time specified in a notice given or sent to the person as prescribed by the regulations, and
 - (b) requires the accused person to notify the court before which he or she is required to appear of any change in the person's residential address.
40. The bail acknowledgment also sets out bail conditions (if any) and other information relating to bail.
41. Clause 34 requires a bail authority (if a court or authorised justice) to give an accused person notice of a decision to refuse bail (including information about the review or variation of the decision).
42. Clause 35 requires a bail authority that varies a bail condition to give the accused person notice of the terms of the bail condition as varied.
43. Clause 36 requires a bail authority to provide information about bail security agreements.
44. Clause 37 requires a bail authority to provide information about character acknowledgments.

45. Clause 38 requires reasons for decisions to grant or refuse bail, or to impose bail conditions, to be recorded. Clause 39 confers power to issue warrants of commitment in connection with the making and variation of bail decisions.

Division 2 General

46. Clause 40 provides for a stay of a decision to grant bail or dispense with bail for a serious offence if a detention application is to be made to the Supreme Court.
47. Clause 41 limits the length of adjournments that can be made if bail is refused.
48. Clause 42 requires a court to be given notice if an accused person who has been granted bail remains in custody after having been granted bail because bail conditions have not been complied with.

Part 5 Powers to make and vary bail decisions

Division 1 Powers of police officers

49. Clause 43 confers power on a police officer to make a bail decision for an offence if the person accused of the offence is present at a police station and the officer is of or above the rank of sergeant or for the time being in charge of the police station.
50. Clause 44 requires a bail decision to be made as soon as reasonably practicable after a person in police custody is charged with an offence. If a bail decision is not made, the person must be brought before a court or authorised justice. The accused person must also be given information about eligibility for bail.
51. Clause 45 provides for additional police procedures after a bail decision is made.
52. Clause 46 requires a person who is refused bail by a police officer with power to make a bail decision, or who is not released on bail, to be brought before a court or authorised justice.
53. Clause 47 permits a senior police officer to review a decision of a police officer to refuse bail or grant bail subject to conditions.

Division 2 Powers of courts and authorised justices—bail applications

54. Clause 48 confers power on a court or authorised justice to make or vary a bail decision under the proposed Division on a bail application. The powers of a court or authorised justice to hear a bail application are set out in detail in Part 6. The following types of bail application can be made under the proposed Act:
- (a) a release application,
 - (b) a detention application,
 - (c) a variation application.
55. Clause 49 permits an accused person to make a release application (an application for bail to be granted or dispensed with) to a court or authorised justice and provides for the powers of the court or authorised justice on hearing the application. Clause 50 permits the prosecutor in proceedings for an offence to make a detention application

(an application for the refusal or revocation of bail) to a court or authorised justice and provides for the powers of the court or authorised justice on hearing the application.

- 56. Clause 51 permits any interested person to make a variation application (an application for variation of bail conditions) to a court or authorised justice and provides for the powers of the court or authorised justice on hearing the application.
- 57. An interested person is defined to include the accused person, the prosecutor in the proceedings for the offence, the complainant in a domestic violence offence and the Attorney General.
- 58. Clause 52 limits the powers of authorised justices to vary bail conditions on a variation application.

Division 3 Additional powers of courts and authorised justices

- 59. Clause 53 gives a court or authorised justice discretion to grant bail or vary a bail decision, of its own motion, to benefit the accused person.
- 60. Clause 54 gives a court or authorised justice discretion to refuse bail or affirm a decision to refuse bail, of its own motion, on a first appearance for an offence, if:
 - (a) no bail decision has been made or bail has been refused, and
 - (b) a bail application is not made.
- 61. Clause 55 gives a court or authorised justice that has power to hear a variation application power to conduct a hearing (without application) if an accused person granted bail has remained in custody because a bail condition has not been complied with. The court or authorised justice may vary the bail conditions after conducting a hearing.
- 62. Clause 56 gives a court or authorised justice discretion to defer making a bail decision in respect of an accused person who is an intoxicated person.

Division 4 Restrictions on powers of courts and authorised justices

- 63. Clause 57 prohibits the Local Court or an authorised justice from varying a bail condition, under the proposed Part, if a higher court has directed the court or authorised justice not to do so, except (in the case of the Local Court) with the consent of the accused person and the prosecutor in the proceedings. The provision does not limit the functions of a court or authorised justice on a breach of bail.
- 64. Clause 58 provides that an authorised justice must not vary enforcement conditions or impose new enforcement conditions.

Part 6 Powers to hear bail applications

Division 1 Interpretation

- 65. Clause 59 explains that a reference to proceedings pending before a court is a reference to substantive proceedings only. Accordingly, a power conferred on a court to hear a bail application if proceedings for the offence are pending in the court applies only if the proceedings are substantive proceedings.

66. Clause 60 makes it clear that Part 6 does not limit the powers of a court or authorised justice under other Parts of the proposed Act.

Division 2 General powers

67. Clause 61 confers power on a court to hear a bail application if proceedings for the offence are pending in the court.
68. Clause 62 confers power on a court to hear a bail application if proceedings on an appeal against a conviction or sentence of the court are pending in another court, and the accused person has not yet made a first appearance in those proceedings.
69. Clause 63 confers power on a court to hear variation application for a bail decision made by the court, and on an authorised justice to hear a variation application for a bail decision made by an authorised justice.

Division 3 Additional powers

70. Clause 64 confers additional powers to hear a bail application on the Local Court and on authorised justices.
71. Clause 65 confers additional powers on the District Court.
72. Clause 66 confers additional powers on the Supreme Court.
73. Clause 67 confers additional powers on the Court of Criminal Appeal.

Division 4 Restrictions on powers

74. Clause 68 limits the power of the Local Court to hear a bail application if proceedings for the offence are pending in another court.
75. Clause 69 limits the powers of courts to hear a bail application in relation to a Supreme Court decision.
76. Clause 70 limits the powers of authorised justices to hear bail applications.

Part 7 General provisions about bail applications

77. Clause 71 requires bail applications to be dealt with expeditiously.
78. Clause 72 requires a court or authorised justice to hear any release application or variation application made by an accused person on a first appearance in substantive proceedings for an offence.
79. Clause 73 gives a court or authorised justice discretion to refuse to hear a bail application if the application is frivolous or vexatious or if the application is without substance or otherwise has no reasonable prospect of success.
80. Clause 74 requires a court that refuses bail or affirms a decision to refuse bail after hearing a release application to refuse to hear another release application made by the accused person for the same offence unless there are particular grounds for a further release application. Similarly, a court that grants or dispenses with bail, or that affirms a decision to grant or dispense with bail, after hearing a detention application must refuse to hear another detention application made by the prosecution for the same offence.

unless there are particular grounds for a further detention application. The particular grounds for a further release application or detention application are specified.

- 81. Clause 75 requires any bail application to be dealt with as a new hearing.
- 82. Clause 76 enables regulations to be made about bail applications.

Part 8 Enforcement of bail requirements

- 83. Clause 77 lists the actions that can be taken by a police officer if an accused person granted bail fails to comply with, or is about to fail to comply with, a bail acknowledgment or bail condition. These actions include issuing a warning, issuing a notice requiring the accused person to appear before a court, and arresting the person. A police officer can also decide to take no action. A police officer is required to have regard to specified matters (such as the relative seriousness of the failure) in deciding whether to take action and what action to take.
- 84. Clause 78 provides for the powers of a bail authority in respect of a person who has failed or was about to fail to comply with a bail acknowledgment or bail condition. In such a case, a bail authority may release the person on the person's original bail or vary the bail decision that applies to the person (including by revoking bail).
- 85. Clause 79 makes it an offence for an accused person granted bail to fail to appear before a court in accordance with a bail acknowledgment.
- 86. Clause 80 provides for the summary disposal of proceedings for a fail to appear offence.
- 87. Clause 81 confers power on police officers to give directions in accordance with enforcement conditions of bail.

Part 9 General provisions about security requirements

- 88. Clause 82 provides for the way in which money or security deposited under a bail condition is to be dealt with by a bail authority.
- 89. Clause 83 allows a bail guarantor (a person other than the accused person who has entered into a bail security agreement) to apply to a court to be discharged of his or her liability under a bail security agreement. A court may vary bail conditions if a bail guarantor is discharged of liability.
- 90. Clause 84 makes it an offence to dispose of bail security for the purpose of preventing it from being realised.
- 91. Clause 85 confers power on a court to revoke bail if it appears that any bail security provided under a bail condition has ceased to be intact.
- 92. Clause 86 makes it an offence to give or accept an indemnity in connection with entering into a bail security agreement.
- 93. Clause 87 makes it clear that a person who enters into a bail security agreement does not have a right to arrest an accused person as a result of entering into the agreement.

94. Clause 88 requires a court to consider returning bail money and security if a finding about guilt is made.

Part 10 Miscellaneous

95. Clause 89 restricts the publication of bail conditions that prohibit or restrict an accused person from associating with a named person.
96. Clause 90 makes it clear that the proposed Act does not affect the availability of relief in the nature of bail for a contempt of court.
97. Clause 91 makes it clear that the proposed Act does not affect the powers of the Supreme Court in respect of a writ of habeas corpus.
98. Clause 92 provides that a person granted bail who is present on court premises when the matter is called is taken to be in the custody of the court from the time it is called and until the court completes its dealing with the matter.
99. Clause 93 facilitates proof of bail acknowledgments and bail decisions.
100. Clause 94 facilitates proof of a failure to appear.
101. Clause 95 provides for the exercise of functions of a bail authority by officers of a court and other persons.
102. Clause 96 applies the Criminal Procedure Act 1986 to court attendance notices and warrants issued under the proposed Act.
103. Clause 97 provides for proceedings for an offence against the proposed Act.
104. Clause 98 enables the Governor to make regulations for the purposes of the proposed Act.
105. Clause 99 enables rules of court to be made in connection with bail.
106. Clause 100 repeals the 1978 Act.
107. Clause 101 provides for the review of the proposed Act 3 years after the repeal of the 1978 Act.

Schedule 1 Application of Act to non-offenders

108. Schedule 1 provides for the application of the proposed Act to persons who are not accused of an offence.
109. Clause 1 provides for the application of the proposed Act in proceedings for the administration of sentence (for example, proceedings on a breach of a good behaviour bond).
110. Clause 2 makes it clear that other Acts may make provision for the grant of bail to persons who are not accused persons. For example, existing laws permit bail to be granted to a person who is a witness in proceedings and fails to appear in those proceedings. The other Acts may modify the operation of the proposed Act.

Schedule 2 Forfeiture of security

111. Schedule 2 provides for the forfeiture of security provided for the grant of bail when an accused person contravenes a bail acknowledgment by failing to appear before a court.
112. The provisions deal with the making of forfeiture orders, and objections to or appeals against, forfeiture orders. The provisions are substantially the same as Part 7A of the 1978 Act.

Schedule 3 Savings, transitional and other provisions

113. Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act and the repeal of the 1978 Act.
114. These include provisions that:
 - (a) continue bail granted under the 1978 Act, and
 - (b) continue obligations imposed in connection with bail under the 1978 Act, and
 - (c) provide for bail applications pending under the 1978 Act to be dealt with under the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right to have application for bail heard

115. Proposed section 72 outlines that the court may refuse to hear a bail application if it is satisfied that the application is frivolous, vexatious, without substance or otherwise has no reasonable prospect of success.

The Committee notes that a general principle of the bail regime is to allow applicants to apply for bail. However, the Committee notes that proposed sub-section 72(3) prevents a court from refusing to hear a bail application if the application is made by an accused person on a first appearance. The Committee also notes that the grounds for refusing to hear a bail application are outlined in proposed sub-section 72(1) and appear reasonable in the circumstances.

Procedural fairness

116. Proposed sub-section 76(c) provides that the regulations may make provision for circumstances in which a bail application may be heard in the absence of the accused person or the accused person's legal representative.

The Committee notes that in order to provide the accused with an opportunity to present a response to a bail application, it is appropriate for the accused and/or the accused's legal representative to be present at a bail application hearing. The Committee refers to Parliament whether it is appropriate for provision to be made for circumstances in which a bail application may be heard in the absence of the accused person or the accused person's legal representative. The Committee also refers to Parliament whether it is

appropriate for such circumstances to be included in the regulations, rather than the principal legislation.

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

Widely-defined powers

117. Section 30 of the Bill provides that bail conditions may include enforcement conditions for the purpose of monitoring or enforcing compliance with another bail condition. Although section 30(5) provides that an enforcement condition can be imposed only if the court considers it reasonable and necessary in the circumstances having given consideration to various criteria, the Bill does not provide limits to what constitutes an enforcement condition. An example of an enforcement condition could be to compel an individual to undergo drug and alcohol testing in connection with an underlying bail condition to refrain from drugs and alcohol.
118. This could potentially expose individuals on bail to have their rights and liberties unduly dependent on insufficiently defined limits on the enforcement condition.

The Committee notes that bail conditions under this Bill may include enforcement conditions that, without sufficient limits, may make rights and liberties unduly dependent upon insufficiently defined powers.

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

Powers in Regulation

119. Section 6(5) provides that the regulations may make further provision for the time at which proceedings for an offence are to be regarded as concluded.

The Committee notes that it may be more appropriate for matters relating to the conclusion of proceedings in a criminal trial to be left in principal legislation, and considers that allowing such matters to be determined by regulation may be an inappropriate delegation of legislative power.

Commencement by Proclamation

120. Section 2 provides that the Act is to commence on a day or days to be appointed by proclamation. The Committee has generally preferred that legislation which affects individual rights and liberties should commence on a fixed date or on assent.

121. However, according to the Attorney General in his Second Reading Speech:

... the Government expects the new Act to commence operation approximately 12 months from the date of its assent. The Government is aware that its new bail model is a paradigm shift. Therefore, the period between passage of the legislation and its commencement will be used to mount an education and training campaign for police, legal practitioners and courts regarding the new legislation. Further, changes will be made to the courts' JusticeLink system, the New South Wales Police information technology system and bail forms to ensure a smooth transition to the new regime. Supporting regulations for the new legislation will also be drafted in anticipation of its commencement.

In light of the comments explaining the reasons for the delay in commencement, the Committee does not consider there to be an inappropriate delegation of legislative power in these circumstances.

2. Rights of the Terminally Ill Bill 2013*

Date introduced	2 May 2013
House introduced	Legislative Council
Member responsible	The Hon. Cate Faehrmann MLC
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide a legislative framework for the rights of terminally ill persons to request and receive assistance to end their lives voluntarily. Under this framework, terminally ill persons may be assisted by their medical practitioners to administer a substance to themselves.
2. The Bill provides protection for persons providing such assistance and sets up safeguards against possible abuse of the right recognised by the Bill.

BACKGROUND

3. The Bill has been introduced following concerns that terminally ill people are experiencing pain that may be prevented.
4. Responding to community concerns in relation to assisted dying, the Bill includes safeguards including limiting assisted dying to persons of at least 18 years of age, resident to NSW, who are suffering from a terminal illness which is causing severe pain, suffering or distress and that those persons have been fully informed of the diagnosis and prognosis of their disease and all other options, including palliative care. Such persons would also need to have decision-making capacity and be making the decision freely, voluntarily and after due consideration. An independent psychiatrist would be required to examine the patient to certify that they are fully informed of all medical options, that they are able to make an informed decision and that they are not under any duress to make the request for assisted dying.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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 3 months after the date of assent to the proposed Act, unless sooner commenced by proclamation.
7. Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Request for and provision of assistance

8. Clause 4 enables a patient with a terminal illness who is experiencing pain, suffering or distress to an unacceptable extent to request a medical practitioner (the *primary medical practitioner*) to assist the patient to end the patient's life.

9. Clause 5 empowers the primary medical practitioner (in due course) to assist the patient to end the patient's life, or to refuse to provide such assistance.
10. Clause 6 makes it an offence for a person:
 - (a) to give or promise any reward or advantage, or
 - (b) to cause or threaten to cause any disadvantage,to a primary medical practitioner or other person:
 - (c) for assisting in ending a life, or
 - (d) for refusing to assist in ending a life, or
 - (e) for the purpose of compelling or persuading the primary medical practitioner or other person to assist or refuse to assist in ending a life.
11. This clause also prevents the gift or promise of any such reward or advantage from being legally enforced or retained.
12. Clause 7 sets out the conditions that must be satisfied before a primary medical practitioner may provide assistance under the proposed Act.
13. Clause 8 deals with the situation where the patient requesting assistance under the proposed Act is physically unable to sign a certificate. In this case the patient may nominate a person to sign the certificate on the patient's behalf.
14. Clause 9 allows a patient who has requested assistance to rescind that request at any time. The primary medical practitioner must then destroy the patient's certificate of request and note the fact on the patient's medical record.
15. Clause 10 makes it an offence to procure the signing or witnessing of a certificate of request by deception or improper influence. A person who commits this offence forfeits any financial benefit that might follow from the death of the patient concerned.

Part 3 Records and reporting of death

16. Clause 11 sets out the information that a primary medical practitioner providing assistance under the proposed Act must keep as part of the patient's medical record.
17. Clause 12 facilitates the recording and notification of a death resulting from assistance provided under the proposed Act.
18. Clause 13 requires a primary medical practitioner who provides assistance under the proposed Act to send to the Voluntary Assisted Deaths Review Panel established under Part 4 (the *Panel*) a copy of the death notification required under the *Births, Deaths and Marriages Registration Act 1995* and so much of the patient's medical record as relates to the terminal illness and death of the patient.

Part 4 Voluntary Assisted Deaths Review Panel

19. Clause 14 provides for the establishment and composition of the Panel.

20. Clause 15 provides that the functions of the Panel are to review deaths that occur as a result of assistance provided under the proposed Act, to report to Parliament on matters relating to the exercise of the functions of the Panel, to communicate breaches of the proposed Act to appropriate authorities and to foster research into the operation of the Act.
21. Clause 16 requires the Panel to review each death of a patient that occurs as a result of assistance provided under the proposed Act. In conducting the review, the Panel is to have regard to the notice of death, and medical records, provided by the primary medical practitioner in relation to the patient.
22. Clause 17 allows the Panel to require a person to provide information or documents for the purpose of conducting a review. It is an offence to fail to comply with such a requirement or to provide false or misleading information in response to such requirement.
23. Clause 18 provides for the referral to appropriate authorities of matters relating to breaches of the proposed Act.
24. Clause 19 makes it an offence to make a record of, or disclose to any person, any information acquired by a person by the operation of the proposed Act, except in the exercise of functions under the proposed Act or otherwise in connection with the administration of the proposed Act.
25. Clause 20 provides for the reporting by the Panel on matters relating to the Panel's functions to each House of Parliament and to the Minister.
26. Clause 21 provides for the procedures relating to the provision of reports to Parliament.

Part 5 Miscellaneous

27. Clause 22 provides that action taken by a medical practitioner or other health care provider in accordance with the proposed Act does not constitute an offence, or an attempt or conspiracy to commit an offence, or aiding, abetting, counselling or procuring the commission of an offence, against the *Crimes Act 1900* or any other Act or law.
28. Clause 23 provides that a certificate of request for assistance under the proposed Act is admissible and prima facie evidence before a court of the request contained in the certificate.
29. Clause 24 provides that a will, contract or other agreement is not valid to the extent that it would affect whether a person may make or rescind a request for assistance under the proposed Act or provide or refuse to provide that assistance. This clause also provides that contractual obligations are not affected by the making or rescinding of a request for assistance under the proposed Act.
30. Clause 25 provides that insurance contracts are not affected by the making or rescinding of a request for, or the provision of, assistance under the proposed Act.

31. Clause 26 confers immunity from civil or criminal action and professional disciplinary action for anything done in good faith and without negligence in compliance with the proposed Act.
32. Clause 27 allows the Governor to make regulations for the purposes of the proposed Act.
33. Clause 28 confers jurisdiction on the Local Court for offences against the proposed Act (other than offences against section 6 or 10).
34. Clause 29 provides for a review of the proposed Act by the Minister after the period of 5 years from the commencement of the proposed Act.

Schedule 1 Form

35. Schedule 1 sets out the form of certificate to be used in relation to a request for assistance under the proposed Act.

Schedule 2 Members and procedure of Panel

36. Schedule 2 contains ancillary provisions relating to the members and procedure of the Panel.

ISSUES CONSIDERED BY COMMITTEE

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

Right to life

37. The Bill proposes a framework for terminally ill individuals who are experiencing pain, suffering or distress to an unacceptable extent to obtain assistance from medical practitioners to end their lives in certain circumstances.

The Committee notes that clause 7 of the Bill sets out a number of conditions that a medical practitioner must meet if they are assisting a terminally ill individual to end their life. Nevertheless, the Committee refers to Parliament for its careful consideration whether the framework set out in the Bill could unduly trespass on a terminally ill individual's right to life.

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

No definition of medical practitioner

38. Clause 4 of the Bill allows a terminally ill individual to request a medical practitioner to assist them in ending their life in certain circumstances. However, the Bill does not define which health professionals are included in the term, 'medical practitioner'.

While the Committee assumes that the term 'medical practitioner' is only intended to cover registered doctors, given that the framework proposed by the Bill allows medical practitioners to assist terminally ill individuals to end their lives in certain circumstances, the Committee refers to Parliament for consideration whether the term 'medical practitioner' should be defined in the Bill.

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

Commencement three months after assent, unless sooner by proclamation

39. Clause 2 of the Bill provides that the Act will commence three months after the date of assent, unless the Act is commenced sooner by proclamation.

The Committee refers to Parliament whether it is appropriate to allow the Act to commence by proclamation, rather than on an ascertainable date, given that the Bill proposes significant changes to the current law in NSW to allow medical practitioners to assist terminally ill individuals to end their lives in certain circumstances.

3. State Emergency and Rescue Management Amendment (Co-ordination and Notification of Rescues) Bill 2013

Date introduced	1 May 2013
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Minister for Police and Emergency Services, Minister for the Hunter

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *State Emergency and Rescue Management Act 1989* (the principal Act) to ensure that the NSW Police Force is responsible for co-ordinating rescue operations and is notified by emergency services organisations of any incident requiring the rescue of a person.

BACKGROUND

2. The Bill implements two of the recommendations from Mr Philip Koperberg's report, *Inshore water rescue – A review of procedures*, which was released in November 2012.
3. The report was commissioned by the Minister for Health and the Minister for Police and Emergency Services following the drowning death of a fisherman at Little Bay in 2012. Mr Koperberg was commissioned to oversee the implementation of new emergency response protocols for inshore water rescues. In particular, he was asked to oversee the strengthening of response procedures between different emergency services organisations where a person in the water requires rescuing.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. At present under section 50 of the principal Act, the senior police officer present at the scene of a rescue operation is responsible for co-ordinating and determining the priorities of action of the agencies engaged in the rescue operation. Instead of limiting the responsibility for co-ordinating a particular rescue operation to the senior police officer at the scene, Schedule 1 [2] will ensure that the NSW Police Force generally has responsibility for the co-ordination of all rescue operations in the State, including responsibility for determining the priorities of action to be taken.

7. Co-ordination is currently defined in the principal Act as the bringing together of agencies and individuals to ensure effective emergency or rescue management. The amendment does not affect the current exception where the control of a particular rescue operation is vested by law in another agency. Schedule 1 [1] and [3] are consequential amendments.
8. Schedule 1 [4] provides that all emergency services organisations (eg Fire and Rescue NSW, Rural Fire Brigades and the Ambulance Service of NSW) must notify a member of the NSW Police Force immediately after becoming aware of an incident requiring the rescue of a person.

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.