



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 14/55 – 2 April 2012



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

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2012, viii 28p

Chair: Mr Stephen Bromhead MP

2 April 2012

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 14 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 14 of 55

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

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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. JUDICIAL OFFICERS AMENDMENT BILL 2012

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

Rule of law

The Committee will always note legislation which may impact upon the separation of powers between the Legislature, the Executive and the Judiciary. However, the Committee is of the view that the requirements in the Bill are limited in scope and do not represent a trespass against personal rights and liberties.

2. LOCAL GOVERNMENT AMENDMENT (MEMBERS OF PARLIAMENT) BILL 2012

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

3. NATIONAL PARK ESTATE (SOUTH-WESTERN CYPRESS RESERVATIONS) AMENDMENT BILL 2012*

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

4. RETAIL TRADING AMENDMENT BILL 2012

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

The Committee will always note when legislation could potentially interfere with a person's observance of religious practice. However, the Committee notes the safeguards enclosed in the Bill that mandate that stores may only roster persons who have freely elected to work on such days and prescribe penalties for breaches of this requirement.

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

Decision making powers

The Committee will always note when decision making powers are transferred to an unelected official, however the Committee considers that such a provision is reasonable in the circumstances of managing the administrative aspects of this Bill.

5. STATE REVENUE LEGISLATION AMENDMENT BILL 2012

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

Retrospectivity

The Committee will always comment when an amendment applies retrospectively. However, as this amendment broadens the definition of a superannuation trust, the Committee does not consider that this will unduly impact on personal rights and liberties. As such, the Committee does not make an adverse comment with respect to this issue.

The Committee will always comment when an amendment applies retrospectively. However, as this amendment broadens the definition of a concessional trust, the Committee does not consider that this will unduly impact on personal rights and liberties. As such, the Committee does not make an adverse comment with respect to this issue.

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

Insufficiently defined conditions

Whilst the Committee is of the opinion that the conditions that the Chief Commissioner may impose should be outlined in the legislation, the Committee does not think it is unreasonable that the Chief Commissioner may provide an exemption from duty with conditions. As such, the Committee does not make any adverse comment with respect to this issue.

PART TWO – REGULATIONS

The Committee has not reported on any regulations in this Digest.

Part One - Bills

1. Judicial Officers Amendment Bill 2012

Date introduced	28 March 2012
House introduced	Legislative Assembly
Minister responsible	The Hon Greg Smith SC MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Judicial Officers Act 1986* to require the Judicial Commission to provide the Attorney General with certain information about complaints made to the Commission about judicial officers.
2. The Bill also makes a consequential amendment to the *Government Information (Public Access) Act 2009*.

BACKGROUND

3. The Judicial Officers Amendment Bill enables the Attorney General to seek and be provided with information from the Judicial Commission with respect to whether a judicial officer is the subject of a complaint and about the progress or resolution of such a complaint.
4. Currently, the *Judicial Officers Act* prohibits officers of the Judicial Commission from disclosing any information in relation to a complaint before the commission, except in limited circumstances.
5. The Attorney General commented that:

Of concern is the inability of the Attorney General to obtain information about complaints before the commission when the existence of a complaint about a judicial officer is already in the public domain.

Under the Act the commission itself also cannot respond to such media reports and cannot confirm whether a matter or complaint was received and whether it was resolved. This lack of transparency can undermine public confidence in the Judicial Commission.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Judicial Officers Act 1986

8. Schedule 1 [1] provides that the Judicial Commission (the Commission) must, at the request of the Attorney General, provide the Attorney General with certain information about complaints made against a particular judicial officer. The Commission will not be required to provide information about a complaint against a particular judicial officer if it considers it is not in the public interest to provide the information, unless the complaint has been referred to the Conduct Division. The Commission must also notify the Attorney General when a complaint is referred to the Conduct Division and when, and the manner in which, such a complaint is disposed of (whether or not the Attorney General has requested information about the complaint).
9. Schedule 1 [2] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. Schedule 1 [3] contains a transitional provision.

Schedule 2 Amendment of Government Information (Public Access) Act 2009

10. Schedule 2 provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information provided by the Commission to the Attorney General under the new provision.

ISSUES CONSIDERED BY COMMITTEE

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

Rule of law

11. The Bill requires the Judicial Commission to provide the Attorney General with information about complaints made against judicial officers on request from the Attorney General. The Judicial Commission does not have to provide information if it considers not to be in the public interest to do so, unless the complaint has been referred to the conduct division.
12. Proposed section 37A(3) provides that the Commission must notify the Attorney General when a complaint has been referred to the conduct division, regardless of whether the Attorney General requested information about the complaint.
13. The Committee is of the view that the rule of law requires compliance with the separation of powers principle. Any erosion of the rule of law can only be justified as being in the public interest in certain circumstances.
14. Requiring the Judicial Commission to provide information to the Attorney General concerning complaints made against judicial officers may be regarded as the Executive interfering with the independence of the Commission and thereby the judicial arm of government.
15. However, the Committee is of the view that the scope of the information required to be provided to the Attorney General is limited and does not prevent the Judicial Commission from discharging its functions under the Act independently.

The Committee will always note legislation which may impact upon the separation of powers between the Legislature, the Executive and the Judiciary. However, the Committee is of the view that the requirements in the Bill are

limited in scope and do not represent a trespass against personal rights and liberties.

2. Local Government Amendment (Members of Parliament) Bill 2012

Date introduced	27 March 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Don Page MP
Portfolio	Local Government

PURPOSE AND DESCRIPTION

1. The object of the Bill is to amend the *Local Government Act 1993* to prohibit a person holding the dual roles of a member of the Parliament of New South Wales and a councillor or mayor of a council.
2. Despite the prohibition, the Bill allows a current member of Parliament who is also a councillor or mayor, or a councillor or mayor who is elected as a member of Parliament in future, to continue to hold the office of councillor or mayor until the next ordinary election of councillors or for the period of 2 years (whichever is the shorter period).
3. The Bill also allows a member of Parliament to nominate for and be elected as councillor or mayor without first needing to resign from Parliament.

BACKGROUND

4. According to the Minister responsible, the Hon. Don Page MP, the Bill is designed to minimise potential conflicts of interest and competing obligations that can arise with respect to Members who have additional responsibilities as either a councillor or mayor. During his Agreement in Principle speech, the Minister advised the House:

The proposal in this Bill gives recognition to the fact that their respective roles of member of the New South Wales Parliament and local government civic office deserve the full attention and efforts of those elected to those roles.

5. In developing this proposal, the Government undertook consultation with the public and local government stakeholders, including the release of a discussion paper and consideration of more than 450 submissions.
6. The amendments provided for in this Bill will align New South Wales with the other mainland States which all prohibit Members of Parliament from simultaneously being councillors or mayors.

OUTLINE OF PROVISIONS

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

9. Schedule 1 [1] and [2] give effect to the object of this Bill as set out in the Overview.
10. Schedule 1 [3] authorises the making of regulations of a savings or transitional nature consequent on the enactment of this Bill.

ISSUES CONSIDERED BY COMMITTEE

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

3. National Park Estate (South-Western Cypress Reservations) Amendment Bill 2012*

Date introduced	29 March 2012
House introduced	Legislative Council
Minister responsible	The Hon Robert Brown MLC
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to revoke the reservation of certain land as part of the Meroo National Park. The relevant land (which was added to the national park on 1 January 2011) will vest in the Crown for an estate in fee simple subject to the *Crown Lands Act 1989*.

BACKGROUND

2. In 2010, the then Government enacted the *National Park Estate (South-Western Cypress Reservations) Act 2010*. The purpose of the Act was to convert 50 State forests in the reserve system mainly to national parks and also to four State parks. One of the effects of this Act was to excise Merry Beach Caravan Park from the Murramarang National Park, with the 85-hectare bed of Meroo Lake being added to the Meroo National Park as an offset.
3. At the time the 2010 Act was implemented, the Hon. Robert Brown MLC noted that Meroo Lake was one of the most popular fishing spots on the South Coast and that the effect of the Act would be that the Lake would be "controlled by a gate and the key will be held by the National Parks and Wildlife Service, which will probably lose it for the duration of the holidays."
4. Fishing licence trusts finance, amongst other things, recreational fishing havens. One such haven was located at Meroo Lake prior to the enactment of the 2010 Act. The effect of incorporating Meroo Lake into the Meroo National Park was described by the Hon. Robert Brown MLC as being "the virtual alienation of this fishing haven, to be given effect by the installation of locked access gates... fishermen have to go all the way to Ulladulla, pay a fee to get the key to gain access, and have to return the key after each day's fishing."
5. The Hon. Robert Brown MLC also noted the adverse impact the incorporation into the Meroo National Park has had with respect to access to Meroo Lake: "the track barely allowed access by four-wheel-drive vehicles".

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.

7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Schedule 1 amends the *National Park Estate (South-Western Cypress Reservations) Act 2010* to achieve the object set out in the above Overview.

ISSUES CONSIDERED BY COMMITTEE

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

4. Retail Trading Amendment Bill 2012

Date introduced	28 March 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Pearce MLC
Portfolio	Finance and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make various amendments to the Retail Trading Act 2008 (the Principal Act). In general, the Principal Act provides that shops are to be kept closed on Good Friday, Easter Sunday, Anzac Day (before 1pm), Christmas Day and Boxing Day (the restricted trading days). That Act also provides that, in general, banks must not be open for retail banking business on specified bank close days, including the first Monday in August (the August Bank Holiday).

BACKGROUND

2. Currently, the *Retail Trading Act 2008* prohibits stores from trading on certain days throughout the year, unless an exemption has been provided.
3. On 13 September 2011, the Department of Finance and Services commenced a review of shop trading legislation, in particular the specified 4 ½ days prescribed as non-trading days for all shops, except those which are exempt. The review received 26 submissions from organisations, including large corporate retailers and representative organisations of employers and employees, faith groups and academia.
4. The Bill was drafted in response to the review.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, other than Schedule 1 [1], [7]–[18] and [20] to the proposed Act which are to commence on 1 July 2013.

Schedule 1 Amendment of Retail Trading Act 2008 No 49

7. Amendments consolidating provisions relating to meaning of “freely elected to work” to single location Schedule 1 [2], [4], [19] and [22] consolidate into one location current provisions of the Principal Act relating to the meaning of “freely elected to work”. Proposed section 3A provides that a person, for the purposes of that Act:
 - (a) has not freely elected to work at a shop or a bank on a day if the person has been coerced, harassed, threatened or intimidated to work on that day by or on behalf of the occupier of the shop or the bank; and,

- (b) is not taken to have freely elected to work on a day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

Amendments relating to general exemptions

8. Schedule 1 [5] substitutes section 8 and also inserts proposed sections 8A and 8B into the Principal Act to give effect to the objectives set out in paragraphs (a)–(d) of the Overview.
9. Currently section 8 (Small shops exemption) of the Principal Act provides that shops with 4 or less employees (not including the occupier or occupiers of the shop or, if the occupier of the shop is a corporation, not including more than 2 natural persons who are shareholders of the corporation) are not required to be kept closed on restricted trading days.
10. Instead proposed section 8 (1) provides that a shop is exempted from the requirement under the Principal Act to be kept closed on a restricted trading day if:
 - (a) the number of persons employed and working in a business carried on in the shop on that day (whether for the full day or a part of the day) is less than 5; and,
 - (b) at any time within the period of 7 days before that day, the number of persons employed by the occupier of the shop and working in any business carried on in shops of any kind in the State is less than 5. This number is to be calculated by dividing the total number of the hours worked by all persons employed and working in the business carried on in those shops during the relevant period by 38 (also known as the number of full time equivalent positions).
11. Proposed section 8 (2) provides for a new exemption for medium sized shops. Under the new provision a shop is exempted from the requirement under the Principal Act to be kept closed on a restricted trading day if:
 - (a) the number of persons employed and working in a business carried on in the shop on that day (whether for the full day or a part of the day) does not exceed 20; and,
 - (b) at any time within the period of 7 days before that day, the number of persons employed by the occupier of the shop and working in any business carried on in shops of any kind in the State does not exceed 100.
12. This exemption for medium sized shops is subject to the condition that, on the restricted trading day, the exempted shop is staffed only by persons who have freely elected to work on that day.
13. Proposed section 8A provides for a new exemption to enable a shop to open on a restricted trading day if the only business activities carried on at the shop during the restricted trading day are the reception, unpacking or preparation of goods for sale at the shop after the conclusion of a restricted trading day. This exemption is subject to the condition that, on the restricted trading day, the shop is staffed only by persons who have freely elected to work on that day.

14. Proposed section 8B provides for a new exemption from the requirement to keep a shop closed on Boxing Day if the exempted shop is staffed only by persons who have freely elected to work on that day. Schedule 1 [3] omits section 4 (3) of the Principal Act that provides for a Boxing Day exemption for shops located in a prescribed Sydney Trading Precinct.
15. Schedule 1 [6] provides that it is an offence carrying a maximum penalty of 50 penalty units (currently \$5,500) for an occupier of a shop to fail to comply with a condition of an exemption imposed under Division 1 of Part 3 of the Principal Act (General exemptions).

Amendments relating to tourist trading precinct exemptions

16. Schedule 1 [10] inserts proposed section 10A into the Principal Act to give effect to the objective set out in paragraph (e) of the Overview.
17. Proposed section 10A enables the Director-General, on application by a local council, to grant an exemption to allow shops in a specified location to open on restricted trading days (a tourist trading precinct exemption). The Director-General must not grant a tourist trading precinct exemption unless he or she is satisfied that the location that is to be the subject of the exemption is, or is within, a tourist area (that is, an area that during a period or periods of the year has a tourist population that is greater than its normal resident population). Section 13 of the Principal Act (as amended by Schedule 1 [19]) will provide that a shop that is opened on a restricted trading day under such an exemption is staffed only by persons who have freely elected to work on that day.
18. Schedule 1 [1], [7]–[9], [11]–[18] and [20] make consequential amendments.

Amendments relating to August Bank Holiday

19. Schedule 1 [21] provides that a bank may open for retail banking business on the August Bank Holiday if the bank is staffed only by persons who have freely elected to work on that day.

Savings or transitional amendments

20. Schedule 1 [23] provides for the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the Principal Act or any Act that amends the Principal Act.
21. Schedule 1 [24] provides that certain exemptions granted under section 89B of the Shops and Industries Act 1962 (being exemptions for certain holiday resort areas) that were saved on the commencement of the Principal Act (formerly the Shop Trading Act 2008) cease to have effect on 30 June 2013. This will coincide with the commencement of the amendments relating to the proposed tourist trading precinct exemptions referred to above—see clause 2 (2) of the proposed Act providing that those amendments are to commence on 1 July 2013.

ISSUES CONSIDERED BY COMMITTEE

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

22. The Committee notes that the Bill increases the variety of shops that are eligible for exemptions from trading restrictions on Boxing Day, with affected employees including those who earn the minimum wage. The Bill contains safeguards to protect workers from being coerced or harassed in regards to working on public holidays and the Committee is aware that it is not its role to predict the effectiveness of such safeguards.

The Committee will always note when legislation could potentially interfere with a person's observance of religious practice. However, the Committee notes the safeguards enclosed in the Bill that mandate that stores may only roster persons who have freely elected to work on such days and prescribe penalties for breaches of this requirement.

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

Decision making powers

23. The Committee notes that the Bill grants decision making powers to the Director General. These decisions include the ability to exempt banks or shops within a tourist precinct from trading restrictions. The Committee notes that the Director General is an unelected official.

The Committee will always note when decision making powers are transferred to an unelected official, however the Committee considers that such a provision is reasonable in the circumstances of managing the administrative aspects of this Bill.

5. State Revenue Legislation Amendment Bill 2012

Date introduced	28 March 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

- (i) to limit a duty concession relating to transfers to self managed superannuation funds, and
- (ii) to limit a duty concession relating to deceased estates, and
- (iii) to establish a duty concession for transfers that are made in partial conformity with agreements that have already been charged with duty, and
- (iv) to extend existing duty concessions relating to transfers between married couples and de facto partners and transfers following the break-up of marriages and de facto relationships, and
- (v) to provide for further circumstances in which the acquisition of an interest in a private unit trust scheme or private company will be chargeable with duty, and
- (vi) to establish a new exemption for corporate reconstruction and corporate consolidation transactions, and
- (vii) to provide for further circumstances in which a transfer of business property between family members is exempt from duty, and
- (viii) to provide for a duty exemption in respect of any Government initiative relating to the Sydney Desalination Plant, and
- (ix) to make other minor and consequential amendments,

(b) to amend the *Land Tax Management Act 1956*:

- (i) to ensure that the tax free threshold can be claimed in respect of land held by self managed superannuation funds that are complying superannuation funds under Commonwealth legislation, and
- (ii) to enable a special disability trust under the *Veterans' Entitlements Act 1986* of the Commonwealth to be treated as a concessional trust for land tax purposes,

(c) to amend the *Payroll Tax Act 2007* to clarify an exemption from payroll tax for wages paid or payable in respect of maternity leave, paternity leave or adoption leave.

BACKGROUND

- 2. The Bill makes amendments to three State taxation Acts – the *Duties Act 1997*, the *Land Tax Management Act 1956* and the *Payroll Tax Act 2007*.
- 3. In amending the *Duties Act 1997*, the Bill extends and simplifies exemption from duty with respect to the restructuring of corporate groups. Most elements of the scheme

are substantially the same as schemes operating in other States. The new provisions are designed to reduce costs for businesses in complying with the requirements for exemption within a framework that is also designed to protect revenue from duty avoidance practices.

4. With respect to the *Land Tax Management Act 1956*, the Bill confirms the land tax threshold entitlement for complying self-managed superannuation funds. It also extends concessional treatment to special disability trusts under the *Commonwealth Veterans' Entitlements Act 1986*.
5. With respect to the *Payroll Tax Act 2007*, the Bill clarifies that part-time employees will attract a pro-rata payroll tax exemption which equates to the payroll tax exemption applied to full-time employees when on maternity, paternity or adoption leave.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Duties Act 1997 No 123

Transfers to self managed superannuation funds

8. Schedule 1 [5] limits the application of a duty concession that applies to transfers to self managed superannuation funds. The amendment allows the concession to be applied in respect of a self managed superannuation fund that has not yet been confirmed as a complying superannuation fund under Commonwealth legislation only if the trustee of the fund is satisfied that the fund will be confirmed as a complying superannuation fund. A fund is confirmed as a complying superannuation fund when notice is given under the relevant Commonwealth superannuation legislation that the fund is a complying superannuation fund. The amendment also allows the Chief Commissioner of State Revenue to assess or reassess the liability to duty in respect of a transfer if satisfied that the fund was not a complying superannuation fund when a liability for duty arose.
9. Schedule 1 [3] and [4] clarify that the rules for obtaining a duty concession in relation to a transfer to a custodian of the trustee of a self managed superannuation fund are the same as the rules for obtaining a duty concession in relation to a transfer to the trustee. That is, the property transferred must be held solely for the benefit of the transferor.
10. Schedule 1 [2] provides for a consequential re-numbering of provisions.

Deceased estates

11. Schedule 1 [6] and [8] change a duty concession that applies to transmission applications by beneficiaries of deceased estates to prevent an avoidance practice. The amendments require a transmission application made by a beneficiary under a will (with the consent of the legal personal representative of a deceased person) to be treated as a transfer of dutiable property by the legal personal representative. This ensures that duty can be charged at an ad valorem rate if the transfer involves a variation to the trusts contained in the will.
12. Schedule 1 [9] is a consequential amendment.

Transfers made in partial conformity with agreements

13. Schedule 1 [10] establishes a duty concession that applies to certain transfers of dutiable property that are made in partial conformity with an agreement for the sale or transfer of dutiable property. The concession applies to a transfer if the transfer conforms with an agreement (in respect of which duty has been paid) apart from the fact that the share in the dutiable property transferred to one or more of the transferees under the transfer exceeds the share agreed to be transferred to the relevant transferee or transferees. Duty is chargeable only on the excess proportion of the dutiable value of the dutiable property, calculated by reference to the proportion by which the share transferred exceeds the share agreed to be transferred.
14. Schedule 1 [1] is a consequential amendment.

Concessions for married couples and de facto partners

15. Schedule 1 [13] extends to superannuation interests a provision that exempts from duty certain transfers of dutiable property that are made to a party to a marriage or de facto relationship as a consequence of the break-up of the marriage or relationship. The amendment extends the provision to transfers of superannuation interests from the trustee or custodian of the trustee of a superannuation fund to the trustee or custodian of the trustee of another superannuation fund for the purpose of providing a retirement benefit to a party to the marriage or relationship.
16. Schedule 1 [15] remakes and extends an existing duty exemption that applies to certain transfers of dutiable property used or intended to be used as the principal place of residence of a married couple or de facto partners. The existing exemption applies to a transfer of property between a married couple or de facto partners of property used or intended to be used solely as their principal place of residence. The new provision will also allow a partial exemption to be claimed where the land is used partially as a principal place of residence, and partially for other purposes. The provisions are similar to the rules that apply to the charging of land tax in respect of a principal place of residence.
17. Schedule 1 [12] and [14] are consequential amendments.

Acquisitions of interests in landholders

18. Schedule 1 [16] makes further provision for the circumstances in which an acquisition of an interest in a private unit trust scheme or private company will be subject to duty, so as to prevent an avoidance practice. The amendment provides that, for the purpose of determining whether an acquisition is dutiable, the land holdings of the private unit trust scheme or private company are taken to include any land holdings recently transferred to the person acquiring the interest, or an associated person. A land holding is recently transferred if it is transferred within 12 months before the acquisition. This means that those land holdings count toward the duty free threshold of \$2,000,000.

Corporate reconstructions

19. Schedule 1 [18] establishes a new duty exemption for transactions that are corporate reconstruction transactions or corporate consolidation transactions. The new provisions replace the existing exemptions for “top hatting” arrangements (repealed by Schedule 1 [17]) and for corporate reconstructions (repealed by Schedule 1 [22]). Currently, in order to be exempt under the corporate reconstruction provision a transaction is required to

be approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer. The amendments remove the requirement for the approval of guidelines and incorporate into the new provisions the matters addressed by the guidelines. The amendments also extend the provision to an acquisition of an interest in a landholder that is made as part of a corporate consolidation.

Transfer of business property between family members

20. Schedule 1 [19]–[21] extend a provision that exempts from duty certain transfers, leases and assignments of primary production land, and certain transfers of shares in a share management fishery, between certain family members. Currently, the exemption applies only if the transferor, lessor or assignor is an *ancestor* of the transferee, lessee or assignee. An *ancestor* of a person includes an individual who is the person's (or the person's spouse's) parent, step-parent, grand-parent, sibling, uncle or aunt (or the spouse of any such person). The amendment extends the exemption to transfers, leases and assignments where the transferor, lessor or assignor is the spouse, child, grandchild, niece or nephew of the transferee, lessee or assignee (or is the child, niece or nephew of the spouse of the transferee, lessee or assignee). A *spouse* includes a former spouse, a de facto partner and a former de facto partner.

Sydney Desalination Plant

21. Schedule 1 [26] gives the Minister (with the concurrence of the Treasurer) power to grant exemptions from duty in respect of any Government initiative relating to the Sydney Desalination Plant. The exemption can be granted before or after a liability for duty arises and has effect according to its terms.

Other amendments

22. Schedule 1 [7] corrects a grammatical error.
23. Schedule 1 [11] repeals a redundant exemption relating to the vesting of property under the Financial Institutions (NSW) Code (*the Code*). The Code previously applied as a law of New South Wales by operation of the *Financial Institutions (New South Wales) Act 1992*. However, that Act was repealed in 1999 by the *Financial Sector Reform (New South Wales) Act 1999* and, accordingly, the Code and the exemption no longer have any operation.
24. Schedule 1 [23] and [25] clarify that a reference to a mortgage, in an exemption that applies in relation to mortgage and asset-backed securities, extends to a charge.
25. Schedule 1 [24] is a consequential amendment.
26. Schedule 1 [29] extends the definition of *related person* that applies for the purpose of various duty concessions. The definition is extended beyond close family members to various relationships that arise because of marriage or a de facto relationship.
27. Schedule 1 [27] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
28. Schedule 1 [28] provides for transitional matters.

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

29. Schedule 2 [1] ensures that self managed superannuation funds that are complying superannuation funds under section 42A of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth are not treated as special trusts for land tax purposes. Beneficial owners of land held by such funds are generally not liable for land tax for the portion of the taxable value of the land that does not exceed the tax-free threshold set out in the *Land Tax Management Act 1956*. The amendment ensures such funds are entitled to the tax-free threshold.
30. Schedule 2 [2] and [3] enable special disability trusts within the meaning of the *Veterans' Entitlements Act 1986* of the Commonwealth to be treated as concessional trusts for land tax purposes. The effect of the amendments is that a land tax exemption can be claimed in respect of land used as a principal place of residence by the principal beneficiary of a special disability trust.
31. Schedule 2 [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
32. Schedule 2 [5] provides for transitional matters.

Schedule 3 Amendment of Payroll Tax Act 2007 No 21

33. Schedule 3 [1] clarifies a provision that exempts from payroll tax wages paid or payable in respect of 14 weeks maternity leave. The amendment provides that wages are exempt from payroll tax if they are paid or payable in respect of a period of maternity leave equivalent to 14 weeks part-time leave at a reduced rate of pay. For example, the exemption may apply to wages paid or payable for maternity leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.
34. Schedule 3 [2] provides for a similar clarification in respect of paternity leave.
35. Schedule 3 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
36. Schedule 3 [4] provides for transitional matters.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

37. Clause 1 of Schedule 2 of the Bill has the effect of broadening the definition of a superannuation trust. Clause 5 of Schedule 2 of the Bill notes that this amendment is taken to apply to the assessment of land tax liabilities in respect of the 2000 land tax year and subsequent land tax years.

The Committee will always comment when an amendment applies retrospectively. However, as this amendment broadens the definition of a superannuation trust, the Committee does not consider that this will unduly impact on personal rights and liberties. As such, the Committee does not make an adverse comment with respect to this issue.

38. The amendments introduced in clauses 2 and 3 of Schedule 2 of the Bill take effect with respect to the 2011 land tax year and subsequent land tax years, as outlined in clause 5.

The Committee will always comment when an amendment applies retrospectively. However, as this amendment broadens the definition of a concessional trust, the Committee does not consider that this will unduly impact on personal rights and liberties. As such, the Committee does not make an adverse comment with respect to this issue.

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

Insufficiently defined conditions

39. Clause 18 of Schedule 1 of the Bill creates a new section 273F which provides that an application for an exemption from duty for a corporate reconstruction transaction or a corporate consolidation transaction is to be made to the Chief Commissioner and that an exemption may be granted with or without conditions.

Whilst the Committee is of the opinion that the conditions that the Chief Commissioner may impose should be outlined in the legislation, the Committee does not think it is unreasonable that the Chief Commissioner may provide an exemption from duty with conditions. As such, the Committee does not make any adverse comment with respect to this issue.

Part Two – Regulations

The Committee has not reported on any regulations in this Digest.

Appendix One – Index of Ministerial Correspondence on Bills

The Committee currently has no Ministerial correspondence in respect of Regulations.

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

The Committee currently has no correspondence in respect of Regulations on which it has reported.