



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

NO. 22/55 – 21 August 2012



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

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# Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Garry Edwards MP, Member for Swansea Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon. Shaoquett Moselmane MLC The Hon. Dr Peter Phelps MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 3050 / 02 9230 2096
FACSIMILE	02 9230 3052
E-MAIL	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# 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. CRIME COMMISSION BILL 2012

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

#### *Legal representation*

The Committee notes that denying an individual their choice of legal representation may constitute an undue trespass on personal rights and liberties. However, the Committee notes the purpose of this clause is to prevent prejudice to ongoing investigations and also notes the reasonable grounds and good faith aspects of the clause. As such, the Committee makes may no further comment in relation to this issue.

The Committee notes the practical effect of requiring the immediate attendance of an individual before the Commission may impact on an individual's right to legal representation. The Committee also notes that the operation of clause 36 provides that should a person served with a summons to appear as a witness fail to attend as required, the Commission may issue a warrant for the arrest of the witness. Given the purpose of the legislation, the Committee considers this to be reasonable in the circumstances.

#### *Rules of evidence*

The Committee notes the powers of the Commission outlined in clause 14 of the Bill – which are to do all things necessary for or in connection with, or reasonably incidental to, the exercise of its functions. Given the purpose of the legislation, the Committee considers Clause 23 to be reasonable in the circumstances.

The Committee refers to parliament whether not including the general matters in relation to which the Commission intends to question a person is reasonable in these circumstances. Given the purpose of the legislation, the Committee considers this to be reasonable in the circumstances.

#### *Self-incrimination*

The Committee notes that requiring the production of a document or thing may have the practical effect of self-incrimination, and refers to Parliament whether the operation of subclause 24(6) and clause 39 is reasonable in the circumstances.

#### *Arrest without charge*

The Committee notes that the effect of subclause 36(2)(b) is to enable the Commissioner to issue a warrant in relation to an individual who has not been charged and may not have refused to attend, or indicated a refusal to attend, a hearing at which the witness has been summoned to attend. Given the purpose of the legislation, the Committee considers this to be reasonable in the circumstances.

#### *Imprisonment without charge*

The Committee notes that clause 38 provides witnesses with the opportunity to apply to the Supreme Court for a review of a decision not to release the witness or the terms of the

conditions of their release. Given the purpose of the legislation, the Committee considers clauses 36(5) and 37 to be reasonable in the circumstances. the Committee refers to Parliament whether clauses 36(5) and 37 are appropriate in the circumstances.

#### *Privacy*

The Committee notes that the requirements outlined at clauses 75 and 77 of the Bill impact on an individual's right to privacy. However, having regard to the nature of the employment of an officer of the Commission and the corruption and integrity risks associated with employment, the Committee makes no adverse comment in relation to these clauses.

#### *Freedom of Speech*

The Committee notes that the effect of clause 81 of the Bill is to limit freedom of speech. However, as this limitation relates to an ongoing crime commission investigation, and the limitation only relates to disclosure that is likely to prejudice the investigation, the Committee makes no further comment in relation to this clause.

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

#### *Power to issue search warrants*

The Committee notes that granting the power to issue search warrants to an employee of the Attorney General's Department provides such an employee with a broad administrative power that is traditionally the purview of the judicial arm of government. The Committee refers to parliament whether it is appropriate for an employee of the Attorney General's Department to have the power to issue search warrants.

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

#### *Commencement by proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative arrangements that are required in relation to transitioning from the previous legislative scheme to the proposed legislative scheme and as such makes no further comment with respect to this issue.

## **2. CRIMES LEGISLATION AMENDMENT BILL 2012**

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

#### *Right to silence*

The Committee notes that abolishing the common law rule that a person cannot be found guilty of an offence involving the failure to disclose a crime committed by that person's husband, wife or de facto partner may impact on the right to silence. The Committee refers to Parliament whether this is appropriate in the circumstances.

#### *Retrospectivity*

The Committee notes that Clause 6 of Schedule 3 to the Bill has the effect of retrospectively changing the law with respect to the destruction of records of warnings and the disclosure of records of warnings, cautions and conferences to the Bureau of Crime Statistics and Research. Whilst the Committee notes the policy reasons for ensuring young offenders warning, caution

and conference records are destroyed where appropriate, the Committee also notes the policy reasons for sharing information in relation to warning, caution and conference records with the Bureau of Crime Statistics and Research. On balance, the Committee makes no further comment in relation to this issue.

### 3. COURTS AND OTHER LEGISLATION AMENDMENT BILL 2012

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

#### *Privacy*

The Committee will always note when Government agencies share an individual's personal information. However, as this information may only be shared when determining an individual's eligibility for jury duty selection, the Committee makes no adverse comment.

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

#### *Commencement by proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the sections that are due to commence by proclamation relate to administrative arrangements. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

#### *Retrospectivity*

The Committee will always be concerned when legislation is permitted to have retrospective effect. However, considering that the application relates to savings and transitional provisions the Committee makes no adverse comments.

The Committee will always be concerned when legislation is permitted to have retrospective effect. However, as the amendments serve to clarify the existing law, the Committee considers this amendment to be reasonable in the circumstances.

The Committee will always be concerned when legislation is permitted to have retrospective effect. However, as the amendments relate to the transfer of information strictly for the purposes of testing information systems, the Committee makes no adverse comments.

#### *Access to information*

The Committee refers to Parliament whether removing the statutory requirement that an application for probate or administration is to be published in a newspaper, and enable publication to be made by other means, inappropriately delegates legislative power.

### 4. FINES AMENDMENT BILL 2012

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

#### *Privacy*

The Committee will always be concerned where legislation extends the power of a Government agency to obtain private information. The Committee notes however, the competing public interest in the successful enforcement of fines and ensuring offenders meet their obligations under the law. The Committee notes that the access to information provisions contained in the Bill were drafted in consultation with the Office of the Privacy Commissioner

and the Department of Attorney General and Justice. The Committee makes no further comment on the Bill.

5. INTERPRETATION AMENDMENT (INTERNATIONAL HUMAN RIGHTS OBLIGATIONS) BILL 2012\*

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

*Transfer of legislative power to the judiciary*

The Committee is concerned that the practical effect of this Bill would be to vest legislative (or quasi-legislative) powers in the judiciary. Allowing the judiciary to use external treaties for interpretive purposes – in the absence of Australian legislative enactment of those treaties or their mention in the contested Act – effectively permits the creation of new laws that may not have been the intention of the Parliament in the original Act. Indeed, the proposed Bill indicates that international obligations under a treaty may be used by the judiciary to override the plain words of a statute, not merely in the case of ambiguity or obscurity but in any circumstance.

6. NSW JOBS COMMISSION BILL 2012\*

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

7. STATE SENATE BILL 2012\*

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

8. SUCCESSION AMENDMENT (INTERNATIONAL WILLS) BILL 2012

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

*Commencement by proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee understands that this Bill gives effect to an international convention that is yet to be ratified by the Commonwealth Government. As ratification is necessary for a convention to have effect, the Committee considers commencement by proclamation to be reasonable in these circumstances.

PART TWO - REGULATIONS

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

# Part One - Bills

## 1. Crime Commission Bill 2012

Date introduced	15 August 2012
House introduced	Legislative Council
Minister responsible	The Hon. Mike Gallacher MLC
Portfolio	Minister for Police

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to re-enact (in modernised form) the *New South Wales Crime Commission Act 1985* (the *NSWCC Act*) so as to implement certain recommendations contained in the Report of the Special Commission of Inquiry into the New South Wales Crimes Commission of 30 November 2011 (the Patten Report) in whole or in part and to make other modifications,
  - (b) to repeal the *NSWCC Act*,
  - (c) to amend the *Criminal Assets Recovery Act 1990* (the *CAR Act*) as follows:
    - (i) to overcome the decision in *New South Wales Crime Commission v Cook* [2011] NSWSC 1348 by enabling the Supreme Court to make consent orders giving effect to the terms of agreements negotiated between the Commission and persons whose interest in property are subject to confiscation orders under that Act without being required to take into account certain restrictions on payment of legal expenses set out in the Act,
    - (ii) to provide that such consent orders may only be made if the Commissioner for the New South Wales Crime Commission (the *Commission*) has certified that guidelines with respect to the negotiation of terms of agreements with respect to the making of consent orders set by the New South Wales Crime Commission Management Committee (the *Management Committee*) have been complied with,
    - (iii) to enable the Supreme Court to direct the NSW Trustee and Guardian to pay certain legal expenses incurred in respect of proceedings for confiscation orders in stages,
  - (d) to make consequential amendments to the *CAR Act* and other statutory instruments.
2. In re-enacting the *NSWCC Act*, the Bill makes the following main changes and additions to the provisions of that Act:
  - (a) the object of the proposed Act is widened to emphasise the Commission's role in combatting all organised and other serious crime (not primarily the reduction of the incidence of illegal drug trafficking as in the *NSWCC Act*),

- (b) as a corollary of the expansion of the object of the proposed Act, the functions of the Commission are expanded to cover relevant criminal activity in relation to any offence punishable by imprisonment for life or a term of 3 or more years or a serious crime concern (involving the committal of such offences on an organised, systemic or sustained basis),
- (c) the Commission is re-structured as a statutory corporation with no members, all the functions of which are exercisable by the Commissioner for the NSW Crime Commission (the *Commissioner*),
- (d) a person may be appointed as Commissioner only if he or she has special legal qualifications (as defined in the proposed Act),
- (e) provision is made for the appointment of two or more full or part-time Assistant Commissioners, at least one of whom must have such special legal qualifications,
- (f) provision is made for appointment of an Inspector of the Commission (having similar powers of scrutiny of the Commission and its officers as the Inspector of the Police Integrity Commission has with respect to that Commission and its officers),
- (g) the joint committee currently known as the Committee on the Office of the Ombudsman and the Police Integrity Commission (to be re-named as the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission by the proposed Act) is given the power to veto the appointments of the Commissioner and the Inspector and powers of oversight over the exercise of functions by the Commissioner, the Inspector and the Management Committee,
- (h) the Management Committee will consist of 5 (instead of 4 members), one of whom will be the Chief Executive of the Ministry for Police and Emergency Services (instead of the Minister for Police) and one of whom will be an independent chairperson who must be a former Judge of the Supreme Court of a State or Territory or the Federal Court or a former Justice of the High Court,
- (i) the Management Committee is given the power to refer matters relating to serious crime concerns (as defined in the proposed Act) to the Commission for investigation,
- (j) the prohibition in the NSWCC Act against the Management Committee referring a matter to the Commission for investigation unless it is satisfied that ordinary police methods of investigation are unlikely to be effective is removed and replaced with a new test requiring the Commission to consider whether use of the powers of the Commission appears necessary to fully investigate the matter concerned, whether it is in the public interest for the Commission to investigate the matter and whether the relevant criminal activity or serious crime concern is sufficiently serious or prevalent to warrant investigation,
- (k) the Management Committee is required to review references on a regular basis and is given expanded powers to approve and set guidelines with respect to the exercise of functions by the Commission (including guidelines with respect to the negotiation of the terms of consent orders under the CAR Act),
- (l) the Management Committee is empowered to make arrangements with the head of one or more investigative agencies for bodies of persons from those agencies (*task forces*) to assist the Commission in carrying out an investigation into matters relating to a relevant criminal activity or a serious crime concern or any of its other functions (not only, as at present under the NSWCC Act, for the use of police task forces),

- (m) provisions relating to the investigative powers of the Commission and hearings are modernised and clarified in various respects, (n) provision is made to require officers of the Commission, and applicants for positions as officers of the Commission, to disclose the pecuniary and financial interests of themselves and certain of their associates.

## BACKGROUND

3. The Bill seeks to achieve two aims: the implementation of a number of the recommendations outlined in the Patten report and the re-enactment of the New South Wales Crime Commission Act 1985 to modernise the legislation.
4. When in opposition, the now Police Minister indicated that when in government he would seek to ensure that an independent inquiry into the Crime Commission was conducted. Following the sentencing of the former assistant director of the Crime Commission, the Government established the Special Commission of Inquiry into the New South Wales Crime Commission. Mr David Patten was appointed to conduct the inquiry. Mr Patten was the Deputy President of the Administrative Decisions Tribunal and had worked as a judge on both the Supreme Court and the District Court.
5. The Patten inquiry examined the structure, procedures, accountability and oversight of the New South Wales Crime Commission. The report of the Special Commission of Inquiry into the New South Wales Crime Commission by Mr David Patten was handed down on 30 November 2011.
6. The Crime Commission had been operating for more than 20 years without review and as a result of the special commission of inquiry Mr Patten made 57 recommendations to improve the structure, oversight, accountability, powers and procedures of the Crime Commission. This Bill adopts a number of the recommendations and in so doing seeks to strengthen the accountability of the Crime Commission to limit corruption. The Bill includes increased oversight and management of the Crime Commission, a stronger independent management committee, oversight by a parliamentary joint committee, scrutiny of an independent inspector and improved procedures relating to employment, management and human resource handling.

## 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 proclaimed.
9. Clause 3 states that the object of the proposed Act is to reduce the incidence of organised and other serious crime. Clause 4 defines terms used in the proposed Act, including *serious crime concern*.
10. Clause 5 defines *relevant offence*.
11. Clause 6 provides that notes do not form part of the proposed Act.

## Part 2 New South Wales Crime Commission

### *Division 1 Constitution of Commission*

12. Clauses 7–9 constitute the Commission and provide for the appointment of the Commissioner and Assistant Commissioners.

### *Division 2 Functions of Commission*

13. Clauses 10–15 specify the functions of the Commission and provide for delegation of those functions.

### *Division 3 Search warrants*

14. Clauses 16–18 deal with the issue of search warrants for the purposes of investigations.

### *Division 4 Hearings*

15. Clauses 19–27 empower the Commission to hold private hearings for the purposes of an investigation and deal with the attendance of witnesses before the Commission.

### *Division 5 Obtaining information, documents and things*

16. Clauses 28–31 contain provisions relating to information gathering by the Commission.

### *Division 6 Refusal or failure to produce documents or things or answer questions*

17. Clauses 32–35 deal with reviews by the Supreme Court of decisions of the Commission relating to refusals or failures to produce documents or things or answer questions.

### *Division 7 Attendance before Commission*

18. Clauses 36–43 deal with attendance of witnesses before the Commission.

### *Division 8 Protection of witnesses and evidence*

19. Clauses 44–46 contain provisions for the protection of witnesses and evidence.

### *Division 9 Miscellaneous*

20. Clauses 47 and 48 create offences relating to contempt of the Commission and protect executive officers and others from liability.

## Part 3 New South Wales Crime Commission

### *Management Committee*

21. Clauses 49–59 constitute the Management Committee and outline its functions, powers and duties.

## Part 4 Inspector of the New South Wales Crime Commission

22. Clauses 60–69 provide for the appointment of the Inspector and outline the Inspector's powers, functions and duties.

## Part 5 Parliamentary Joint Committee

23. Clauses 70 and 71 outline the functions of the Joint Committee.

## Part 6 Officers of the Commission

24. Clauses 72–78 provide for the appointment or engagement of staff of the Commission and require officers of the Commission, and applicants for positions as officers of the Commission, to disclose the pecuniary and financial interests of themselves and certain of their associates.

## Part 7 Miscellaneous

25. Clauses 79–88 contain miscellaneous provisions, including provisions relating to public sittings, disclosures and divulging of information, annual reports and service of documents and machinery provisions.

### *Schedule 1 Provisions relating to Commissioner and Assistant Commissioners*

26. Schedule 1 contains ancillary provisions relating to the offices of Commissioner and Assistant Commissioner.

### *Schedule 2 Provisions relating to the members and procedure of the Management Committee*

27. Schedule 2 contains ancillary provisions relating to the Management Committee.

### *Schedule 3 Provisions relating to Inspector*

28. Schedule 3 contains ancillary provisions relating to the office of Inspector.

### *Schedule 4 Savings, transitional and other provisions*

29. Schedule 4 contains savings, transitional and other provisions.

### *Schedule 5 Amendment of Acts and regulations*

30. Schedule 5 contains consequential amendments to a number of Acts and regulations. It also contains the amendments to the *Criminal Assets Recovery Act 1990* described in the Overview of the Bill above (Schedule 5.2).

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Legal representation*

31. Subclause 22(2) of the Bill provides the Commission with the power to refuse to permit a particular Australian legal practitioner to represent a particular witness in an investigation if it believes on reasonable grounds and in good faith that to allow representation by the particular legal practitioner will, or is likely to, prejudice its investigation.

**The Committee notes that denying an individual their choice of legal representation may constitute an undue trespass on personal rights and liberties. However, the Committee notes the purpose of this clause is to prevent prejudice to ongoing investigations and also notes the reasonable grounds and good faith aspects of the clause. As such, the Committee makes may no further comment in relation to this issue.**

32. Subclause 24(2) of the Bill outlines that a summons may require the immediate attendance of a person before the Commission.

**The Committee notes the practical effect of requiring the immediate attendance of an individual before the Commission may impact on an individual's right to legal representation. The Committee also notes that the operation of clause 36 provides that should a person served with a summons to appear as a witness fail to attend as required, the Commission may issue a warrant for the arrest of the witness. Given the purpose of the legislation, the Committee considers this to be reasonable in the circumstances.**

#### *Rules of evidence*

33. Clause 23 of the Bill outlines that the Commission is not bound by the rules or practice of evidence.

**The Committee notes the powers of the Commission outlined in clause 14 of the Bill – which are to do all things necessary for or in connection with, or reasonably incidental to, the exercise of its functions. Given the purpose of the legislation, the Committee considers Clause 23 to be reasonable in the circumstances.**

34. Subclause 24(4) outlines that a summons need not include the general nature of the matters in relation to which the Commission intends to question the person if the Commission is satisfied that in so doing it would prejudice the effectiveness of the investigation.

**The Committee refers to parliament whether not including the general matters in relation to which the Commission intends to question a person is reasonable in these circumstances. Given the purpose of the legislation, the Committee considers this to be reasonable in the circumstances.**

#### *Self-incrimination*

35. Subclause 24(6) outlines that the Commission may require the production of a document or other thing. Clause 39 of the Bill outlines that a witness is not excused from answering any question or producing any document or thing on the ground that the answer or production may incriminate or tend to incriminate the witness.

**The Committee notes that requiring the production of a document or thing may have the practical effect of self-incrimination, and refers to Parliament whether the operation of subclause 24(6) and clause 39 is reasonable in the circumstances.**

#### *Arrest without charge*

36. Subclause 36(2)(b) of the Bill provides that the Commissioner may issue a warrant for the arrest of a person who has been served with a summons to appear as a witness at a hearing if the Commissioner is satisfied that it is in the public interest that the person be compelled to do so to avoid serious prejudice to the conduct of an investigation.

**The Committee notes that the effect of subclause 36(2)(b) is to enable the Commissioner to issue a warrant in relation to an individual who has not been charged and may not have refused to attend, or indicated a refusal to attend, a**

**hearing at which the witness has been summoned to attend. Given the purpose of the legislation, the Committee considers this to be reasonable in the circumstances.**

*Imprisonment without charge*

37. Subclause 36(5) of the Bill provides that a witness who is the subject of a warrant may be detained in prison until released by order of the Commissioner. Clause 37 of the Bill outlines that the Commissioner may make the release of a witness under clause 36(5) subject to conditions including sureties, requirements in relation to where the witness will live and regular reporting.

**The Committee notes that clause 38 provides witnesses with the opportunity to apply to the Supreme Court for a review of a decision not to release the witness or the terms of the conditions of their release. Given the purpose of the legislation, the Committee considers clauses 36(5) and 37 to be reasonable in the circumstances. the Committee refers to Parliament whether clauses 36(5) and 37 are appropriate in the circumstances.**

*Privacy*

38. Clause 75 of the Bill outlines that on becoming an officer of the Commission, the officer must furnish to the Commission a statement of financial interests. Clause 77 of the Bill provides that the regulations may make provision for disclosure with respect to real or personal property, income, gifts, financial or other contributions to any travel, shareholdings, partnerships, trusts, occupations, trades, professions, debts, payments of money or transfers of property and any other direct or indirect benefits.

**The Committee notes that the requirements outlined at clauses 75 and 77 of the Bill impact on an individual's right to privacy. However, having regard to the nature of the employment of an officer of the Commission and the corruption and integrity risks associated with employment, the Committee makes no adverse comment in relation to these clauses.**

*Freedom of Speech*

39. Clause 81 of the Bill outlines that a person who is required to attend or produce a document under clauses 24, 28 or 29 must not disclose any information about the notice or summons that is likely to prejudice the investigation to which it relates.

**The Committee notes that the effect of clause 81 of the Bill is to limit freedom of speech. However, as this limitation relates to an ongoing crime commission investigation, and the limitation only relates to disclosure that is likely to prejudice the investigation, the Committee makes no further comment in relation to this clause.**

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

*Power to issue search warrants*

40. Clause 17 of the Bill provides that an authorised officer may issue search warrants in certain circumstances. The definition of an 'authorised officer' includes an employee of the Attorney General's Department.

**The Committee notes that granting the power to issue search warrants to an employee of the Attorney General's Department provides such an employee with a broad administrative power that is traditionally the purview of the judicial arm of government. The Committee refers to parliament whether it is appropriate for an employee of the Attorney General's Department to have the power to issue search warrants.**

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

*Commencement by proclamation*

41. Clause 2 of the Bill outlines that the legislation is to commence on a day or days to be appointed by proclamation.

**The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative arrangements that are required in relation to transitioning from the previous legislative scheme to the proposed legislative scheme and as such makes no further comment with respect to this issue.**

## 2. Crimes Legislation Amendment Bill 2012

Date introduced	15 August 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to make various amendments to the *Crimes Act 1900*, including by creating a new offence of kidnapping with intent to commit a serious indictable offence,
- (b) to amend the *Criminal Procedure Act 1986* in relation to sensitive evidence,
- (c) to amend the *Crimes (Domestic and Personal Violence) Act 2007* to enable the guardian of a person under the *Guardianship Act 1987* to make an application for an apprehended violence order on behalf of that person,
- (d) to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Sentencing Procedure) Regulation 2010* in relation to the signing of lists of additional charges and certificates relating to charge negotiations in various prosecutions,
- (e) to amend the *Crimes (Serious Sex Offenders) Act 2006* to provide that certain criminal offences are serious sex offences under that Act,
- (f) to amend the *Young Offenders Act 1997* and the *Young Offenders Regulation 2010* to enable records of warnings, cautions and conferences given to children under the Act to be disclosed to the Bureau of Crime Statistics and Research for statistical and research purposes,
- (g) to repeal the *Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008* and the *Sporting Venues (Offenders Banning Orders) Act 2005*.

### BACKGROUND

2. The bill amends a number of Acts to improve the efficiency and operation of the State's criminal laws as part of the Government's regular legislative review and monitoring program. The bill also contains provisions to repeal certain legislation. Areas of amendment relate to kidnapping, sensitive evidence, guardianship, the signing of certificates, serious sex offences, young offenders and sporting venues.

## OUTLINE OF PROVISIONS

### Preliminary

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

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

5. Schedule 1 [3] creates a new offence of kidnapping with intent to commit a serious indictable offence.
6. Schedule 1 [4] abolishes the common law rule that a person cannot be found guilty of an offence involving failing to disclose a crime committed by the person's husband or wife or de facto partner.
7. Schedule 1 [2] extends the meaning of a relationship of special care for the purposes of the offence of sexual intercourse with a child between 16 and 18 under special care to include circumstances in which the offender is the de facto partner of a parent, guardian or foster parent of the victim.
8. Schedule 1 [1] updates a reference to de facto partner (which is defined in → section 21C of the *Interpretation Act 1987*).
9. Schedule 1 [5] is a transitional provision.

### Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

10. Schedule 2 [1] amends the Criminal Procedure Act 1986 to extend the meaning of sensitive evidence to include, as well as images, an audio recording of a person committing an offence against another person that is obscene or indecent, or the release of which would interfere with the victim's privacy. Under the Act, an accused person has restricted access to sensitive evidence in criminal investigations and proceedings.
11. Schedule 2 [2]–[6] are consequential amendments.
12. Schedule 2 [7] and [8] are savings and transitional provisions.

### Schedule 3 Amendment of other legislation

#### *Crimes (Domestic and Personal Violence) Act 2007 No 80*

13. Schedule 3.1 enables the guardian of a person under the *Guardianship Act 1987* to make an application for an apprehended violence order on behalf of that person.

#### *Crimes (Sentencing Procedure) Act 1999 No 92 and Crimes (Sentencing Procedure) Regulation 2010*

14. Schedule 3.2 amends the *Crimes (Sentencing Procedure) Act 1999* to provide that lists of additional charges and certificates relating to charge negotiations that are filed by the prosecution in proceedings may be signed either by or on behalf of the Director of Public Prosecutions or by a person, or a person who belongs to a class of persons, prescribed

by the regulations. Previously, the prescribed persons were required to sign the documents on behalf of the Director of Public Prosecutions.

15. Schedule 3.3 makes consequential amendments to the *Crimes (Sentencing Procedure) Regulation 2010* and also provides that the Chief Executive Officer of the Food Authority is authorised to sign a list of additional charges for the purposes of prosecutions under the *Food Act 2003*.

#### *Crimes (Serious Sex Offenders) Act 2006 No 7*

16. Schedule 3.4 amends the *Crimes (Serious Sex Offenders) Act 2006* to provide that the new offence of kidnapping with intent to commit a serious indictable offence (proposed section 86 (1) (a1) of the *Crimes Act 1900*) and the offences under section 114 (1) (a), (c) and (d) of the *Crimes Act 1900* relating to being armed with intent to commit an indictable offence are serious sex offences. As a result, a person who is sentenced to imprisonment for these offences may be subject to extended supervision orders and continuing detention orders under the *Crimes (Serious Sex Offenders) Act 2006*.

#### *Young Offenders Act 1997 No 54 and Young Offenders Regulation 2010*

17. Schedule 3.5 [3] and [4] amend the *Young Offenders Act 1997* to authorise the disclosure of information relating to warnings, cautions and conferences under the Act to the Bureau of Crime Statistics and Research, subject to any regulations.
18. Schedule 3.5 [2] provides that the requirement that records of warnings must be destroyed when the child concerned reaches the age of 21 years does not apply to records held by the Bureau.
19. Schedule 3.6 [3] amends the *Young Offenders Regulation 2010* to provide that records relating to warnings, cautions and conferences may be divulged to the Bureau of Crime Statistics and Research if the information will be used for research and statistical purposes only and if publication of the information by the Bureau will not identify the children to whom the records relate.
20. Schedule 3.5 [1] and 3.6 [1], [2] and [4] update references to the Department of Attorney General and Justice to reflect changes to administrative arrangements that occurred in 2011.
21. Schedule 3.5 [5] and [6] contain savings and transitional provisions and a validation.

#### **Schedule 4 Repeal of legislation and consequential amendments**

22. Schedule 4.3 repeals the *Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Act 2008*, which contains amendments relating to dealing with the property of a detained person. These amendments are no longer proceeding and the existing provisions will continue to apply.
23. Schedule 4.4 repeals the *Sporting Venues (Offenders Banning Orders) Act 2005* following a statutory review of the Act.
24. Schedule 4.1 and 4.2 make consequential amendments on the repeal of that Act.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Right to silence*

25. Clause 4 of Schedule 1 of the Bill outlines that any common law rule that a person cannot be found guilty of an offence involving failing to disclose a crime committed by the person's husband or wife or de facto partner is abolished.

**The Committee notes that abolishing the common law rule that a person cannot be found guilty of an offence involving the failure to disclose a crime committed by that person's husband, wife or de facto partner may impact on the right to silence. The Committee refers to Parliament whether this is appropriate in the circumstances.**

#### *Retrospectivity*

26. Clause 6 of Schedule 3 to the Bill amends the *Young Offenders Act* to outline that the new provisions are taken to have been in force in relation to any previous action with respect to the destruction of records of warnings or the disclosure of such records.

**The Committee notes that Clause 6 of Schedule 3 to the Bill has the effect of retrospectively changing the law with respect to the destruction of records of warnings and the disclosure of records of warnings, cautions and conferences to the Bureau of Crime Statistics and Research. Whilst the Committee notes the policy reasons for ensuring young offenders warning, caution and conference records are destroyed where appropriate, the Committee also notes the policy reasons for sharing information in relation to warning, caution and conference records with the Bureau of Crime Statistics and Research. On balance, the Committee makes no further comment in relation to this issue.**

### 3. Courts and Other Legislation Amendment Bill 2012

Date introduced	14 August 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney-General

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to simplify the process for referring forfeiture orders under the Bail Act 1978 to the State Debt Recovery Office for enforcement,
- (b) to ensure that the language used to define carers is consistent in both the Children (Protection and Parental Responsibility) Act 1997 and the Children and Young Persons (Care and Protection) Act 1998,
- (c) to allow the senior judicial officer of a court to direct the registrar or other court official to exercise any of the court's functions,
- (d) to provide for the making of regulations that prescribe additional items, or classes of items, that a security officer may require a person entering or on court premises to deposit with the officer while the person remains on the premises,
- (e) to allow for the making of regulations relating to the payment of court fees by NSW Government agencies and statutory bodies representing the Crown,
- (f) to make it clear that, for the purposes of the District Court Act 1973 and the Judges' Pensions Act 1953, only the period during which the Chief Magistrate serves as Chief Magistrate while also holding office as a Judge is to be taken to be service in the office of a Judge,
- (g) to make it clear that the Information Commissioner may disclose government information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner as required by the Government Information (Public Access) Act 2009,
- (h) to clarify the information that the sheriff can request from Roads and Maritime Services for the purposes of determining whether a person should be excluded from jury service,
- (i) to allow an acting Commissioner of the Land and Environment Court to complete or otherwise deal with any matter that the acting Commissioner had

heard or partly heard before the expiry of his or her term of appointment as an acting Commissioner,

- (j) to require a person (other than an Australian legal practitioner) to provide certain information to a client before the Land and Environment Court may grant leave for the person to appear as an agent for the client in proceedings before that Court,
- (k) to make it clear that the Land and Environment Court has jurisdiction in respect of disputes arising from a determination made by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services in relation to an objection to the granting of a mining lease,
- (l) to allow regulations declaring one public sector agency to be part of another public sector agency made for the purposes of the Privacy and Personal Information Protection Act 1998 to be limited to specified functions of the relevant agency,
- (m) to remove the requirement that an application for probate or administration is to be published in the newspaper and enable publication to be made by other means,
- (n) to allow for the making of rules under the Civil Procedure Act 2005 regulating practice and procedure with respect to probate and administration,
- (o) to make consequential amendments and provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

## BACKGROUND

2. The Attorney General stated in the Agreement in Principle speech that this Bill is:

"to make miscellaneous amendments to legislation affecting the operation of the courts of New South Wales and other legislation administered by the Attorney General and Minister for Justice. The bill is part of the Government's regular legislative review and monitoring program and will amend a number of Acts to improve the efficiency and operation of our courts and the operation of agencies within the Department of Attorney General and Justice."

## OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, except as follows:
- (a) Schedule 9 [1] and [2] commence on the date of assent to the proposed Act or on the day on which Schedule 1 [20] to the Jury Amendment Act 2010 commences, whichever is the later,
  - (b) Schedules 5 and 10 [2] and [3] commence on a day or days to be appointed by proclamation.

### Schedule 1 Amendment of Bail Act 1978 No 161

5. Schedule 1 [1] replaces section 53I of the Bail Act 1978. Proposed section 53I provides for the notification of forfeiture orders to the State Debt Recovery Office by the registrar of a court. Such a notification may be made electronically. The proposed section also provides that the State Debt Recovery Office may require the registrar who made the notification to provide certain documents related to the forfeiture order. Schedule 1 [2] makes a consequential amendment.
6. Schedule 1 [3] inserts a transitional provision in relation to forfeiture orders made, but in respect of which the State Debt Recovery Office has not been notified, before the commencement of Schedule 1 [1].

### Schedule 2 Amendment of Children (Protection and Parental Responsibility) Act 1997 No 78

7. Schedule 2 gives effect to the aim set out in paragraph (b) of the Overview above.

### Schedule 3 Amendment of Civil Procedure Act 2005 No 28

8. Schedule 3 [1] amends the Civil Procedure Act 2005 to allow the senior judicial officer of a court to direct that functions of the court under that Act or any other Act or law (including the uniform rules) may be exercised by a registrar or other officer of the court. Presently, such directions are limited to the functions of the court under the Civil Procedure Act 2005 and the uniform rules.
9. Schedule 3 [2] enables savings and transitional regulations to be made as a consequence of any amendment to the Civil Procedure Act 2005.
10. Schedule 3 [3] inserts a transitional provision that validates the exercise of functions of the court under the direction of a senior judicial officer, where the exercise of those functions would have been validly carried out if section 13 (as amended by Schedule 3 [1]) had been in force at the time the direction was given.

### Schedule 4 Amendment of Court Security Act 2005 No 1

11. Schedule 4 gives effect to the aim set out in paragraph (d) of the Overview above.

### Schedule 5 Amendment of Criminal Procedure Act 1986 No 209

12. Schedule 5 gives effect to the aim set out in paragraph (e) of the Overview above.

### Schedule 6 Amendment of District Court Act 1973 No 9

13. Schedule 6 gives effect to the aim set out in paragraph (f) of the Overview above.

### Schedule 7 Amendment of Government Information (Information Commissioner) Act 2009 No 53

14. Schedule 7 amends the Government Information (Information Commissioner) Act 2009, as a consequence of the amendment made by Schedule 8, to maintain consistency between that Act and the Government Information (Public Access) Act 2009.

### Schedule 8 Amendment of Government Information (Public Access) Act 2009 No 52

15. Schedule 8 gives effect to the aim set out in paragraph (g) of the Overview above.

### Schedule 9 Amendment of Jury Act 1977 No 18

16. Schedule 9 [1] and [2] give effect to the aim set out in paragraph (h) of the Overview above.
17. Schedule 9 [3] inserts a transitional provision to allow the sheriff, Commissioner of Police and Roads and Maritime Services to disclose information for the purposes of testing information systems in advance of the commencement of the other amendments to the Jury Act 1977.

### Schedule 10 Amendment of Land and Environment Court Act 1979 No 204

18. Schedule 10 [1] gives effect to the aim set out in paragraph (i) of the Overview above.
19. Schedule 10 [3] amends the Land and Environment Court Act 1979 to impose conditions on the granting of leave for a person to appear before the Land and Environment Court by an agent (as opposed to being represented by an Australian legal practitioner). The Court must consider whether the agent has provided the person with the information required by the Land and Environment Court Rules and whether the granting of leave is in the best interests of the person.
20. Schedule 10 [2] extends the requirements for the granting of leave for a person to appear by an agent to all classes of the Court's jurisdiction.
21. Schedule 10 [4] enables savings and transitional regulations to be made as a consequence of any amendment to the Land and Environment Court Act 1979.
22. Schedule 10 [5] inserts savings and transitional provisions consequent on the amendment of the Land and Environment Court Act 1979 by the proposed Act.

### Schedule 11 Amendment of Local Court Act 2007 No 93

23. Schedule 11 amends the Local Court Act 2007 as a consequence of the amendment of the District Court Act 1973 by Schedule 6.

### Schedule 12 Amendment of Mining Act 1992 No 29

24. Schedule 12 gives effect to the aim set out in paragraph (k) of the Overview above.

### Schedule 13 Amendment of Privacy and Personal Information Protection Act 1998 No 133

25. Schedule 13 gives effect to the aim set out in paragraph (l) of the Overview above.

### Schedule 14 Amendment of Probate and Administration Act 1898 No 13

26. Schedule 14 [2] removes the requirement that an application for probate or administration is to be published in such newspapers as may be prescribed by the Rules of Court, and instead requires that such an application must be published as may be prescribed by the Rules of Court. The amendment also makes provision for notice of an

application to be given after the application in cases where the application is made by way of cross-claim. Schedule 14 [3] makes similar amendments with respect to an application for the affixing of the seal of the Court to probate or letters of administration granted in another jurisdiction.

27. Schedule 14 [4] allows for the making of Rules of Court under the Civil Procedure Act 2005 regulating practice and procedure with respect to probate and administration (in addition to the making of such rules under the Supreme Court Act 1970). Schedule 14 [1] makes a consequential amendment.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Privacy*

28. Schedule 9[1] states that for the purposes of determining whether a person proposed to be summoned for jury service should be excluded from jury service, the sheriff may obtain information about a person's address, drivers licence number and status from Roads and Maritime Services. The Bill permits the sheriff to share this information with the Commissioner of Police for the purposes of completing the information request.

**The Committee will always note when Government agencies share an individual's personal information. However, as this information may only be shared when determining an individual's eligibility for jury duty selection, the Committee makes no adverse comment.**

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

#### *Commencement by proclamation*

29. Schedules 5 and 10[2] and [3] commence on a day or days to be appointed by proclamation.

**The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the sections that are due to commence by proclamation relate to administrative arrangements. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.**

#### *Retrospectivity*

30. Schedule 1[3] extends the application of the substitute s53I to forfeiture orders made prior to commencement of the substitution section.

**The Committee will always be concerned when legislation is permitted to have retrospective effect. However, considering that the application relates to savings and transitional provisions the Committee makes no adverse comments.**

31. Schedule 3[3] states that the amendments made by this Act to s13 of the *Civil Procedure Act 2005* are to be taken to be, and to have always been, valid in relation to any direction given by a senior court officer prior to the commencement of this Act.

**The Committee will always be concerned when legislation is permitted to have retrospective effect. However, as the amendments serve to clarify the existing law, the Committee considers this amendment to be reasonable in the circumstances.**

32. Schedule 9 [3] permits the sheriff, Commissioner of Police and Roads and Maritime Services to, prior to the commencement of the amendments to *Jury Service Act 1977* by the *Jury Amendment Act 2010*, disclose private information of an individual's address, drivers licence number and status for the purposes of testing an information system being developed for the purposes of the implementation of the amendments made by this Act.

**The Committee will always be concerned when legislation is permitted to have retrospective effect. However, as the amendments relate to the transfer of information strictly for the purposes of testing information systems, the Committee makes no adverse comments.**

*Access to information*

**The Committee refers to Parliament whether removing the statutory requirement that an application for probate or administration is to be published in a newspaper, and enable publication to be made by other means, inappropriately delegates legislative power.**

## 4. Fines Amendment Bill 2012

Date introduced	15 August 2012
House introduced	Legislative Council
Minister responsible	The Hon Gregory Pearce MLC
Portfolio	Finance and Services

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Fines Act 1996* as follows:
  - (a) to reframe time limits applying to elections to have a penalty notice matter dealt with by a court so that they are directly referable to whether or not a penalty reminder notice has been issued,
  - (b) to allow a person to elect to have a penalty notice matter dealt with by a court at any time during an internal review of the decision to issue the penalty notice,
  - (c) to extend the time within which a person may elect to have a penalty notice matter dealt with by a court following an internal review that confirms the decision to issue the penalty notice,
  - (d) to provide for the time within which a person who is not issued a penalty reminder notice may apply for an internal review of the decision to issue the penalty notice,
  - (e) to extend the power of the State Debt Recovery Office to obtain information about fine defaulters (including from credit reporting agencies),
  - (f) to provide that amounts paid under penalty notices or penalty reminder notices that are to be refunded under the Act are to be refunded to the persons by whom they were paid (rather than to the alleged offender),
  - (g) to allow garnishee orders to be served electronically on corporations,
  - (h) to make minor, consequential or ancillary amendments.

### BACKGROUND

2. The *Fines Amendment Bill 2012* seeks to improve the administration and enforcement of fines. It amends the *Fines Act 1996* to provide the State Debt Recovery Office (SDRO) with greater power to obtain information to identify fine defaulters. Currently information the SDRO can obtain from Government agencies is limited to criminal record, address and assets of a fine defaulter.
3. The Bill also seeks to clarify the time limits relating to options available to penalty notice recipients and adopts consistent wording for the refund provisions under the *Fines Act 1996* to ensure that in the event an amount needs to be repaid, it is repaid to the person who paid the penalty notice.

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of Fines Act 1996 No 99

#### *Time for electing to go to court*

6. Schedule 1 [2] and [8] reframe time limits that apply to elections to have a penalty notice matter dealt with by a court so that those limits are directly referable to whether or not a penalty reminder notice has been issued.
7. Currently, a person who fully pays the penalty amount by the due date specified in the penalty notice or who is issued a penalty reminder notice, having fully or partly paid the penalty amount, may elect to go to court no later than 90 days after the penalty notice was issued and a person who is issued a penalty reminder notice, having paid none of the penalty amount, may elect to go to court no later than the due date specified in the reminder notice.
8. Generally, the effect of the proposed amendments is that a person who fully pays the penalty amount by the due date specified in the penalty notice may elect to go to court no later than 90 days after the penalty notice was issued, and a person who receives a penalty reminder notice (as in the case of a person who has not, or has only partly, paid the penalty amount by that due date) may make such an election no later than the due date specified in the reminder notice. However, regardless of these time limits:
  - (a) a person who seeks an internal review of a decision to issue a penalty notice may make such an election at any time during the review, and
  - (b) if a person who has fully paid the penalty amount by the due date specified in the penalty notice applies for an internal review which confirms the decision to issue the penalty notice, the person may make such an election no later than 28 days after being notified of the outcome of the review.
9. Schedule 1 [1], [5], [7] and [9]–[12] make consequential and ancillary amendments.
10. Schedule 1 [6] omits a provision so as to extend the time limit for court election by a person who is issued with a replacement penalty reminder notice following an internal review that confirms the decision to issue the penalty notice, from the due date specified in the replaced penalty reminder notice to that in the replacement penalty reminder notice.

#### *Time for applying for internal review*

11. Schedule 1 [4] restates the time limit that applies to applications by persons who have been issued with a penalty reminder notice, for an internal review of the decision to issue the penalty notice, and expressly provides for the time limit for the making of such applications by persons who are not issued a penalty reminder notice (having fully paid the penalty amount by the due date specified in the penalty notice).
12. Schedule 1 [5] makes a consequential amendment.

*Repayment of amounts under penalty notices*

13. Schedule 1 [3] makes various references to the person to whom an amount paid under a penalty notice or penalty reminder notice is to be repaid (for example, if the notice is withdrawn) consistent with other such references in the Act, so that it is always to be repaid to the person by whom it was paid (rather than to the alleged offender).

*Access to information by SDRO*

14. Schedule 1 [16]–[18] extend the power of the State Debt Recovery Office (the SDRO) to obtain information about fine defaulters. Schedule 1 [16] and [17] require police officers and Government agencies and utilities to provide the SDRO, on request, with available information about a fine defaulter’s property (expressed as “assets” in the current provision), date of birth or driver licence number for the purposes of fine enforcement, and about a fine defaulter’s bank account number or employer for the purposes of making a garnishee order against the person.
15. Schedule 1 [18] authorises credit reporting agencies (within the meaning of the *Privacy Act 1988* of the Commonwealth) to disclose to the SDRO, on request, relevant information about a fine defaulter contained in the person’s credit information file (within the meaning of that Act), for the purposes of fine enforcement. Relevant information is any information that is reasonably necessary in order to identify the individual to whom the file relates. The following kinds of information have been determined under that Act to be reasonably necessary to be included in a person’s credit information file to identify the person:
  - (a) full name (including any known aliases), sex and date of birth,
  - (b) a maximum of 3 addresses consisting of a current or last known address and 2 immediately previous addresses,
  - (c) name of current or last known employer,
  - (d) driver licence number.

16. Schedule 1 [13] updates a cross-reference.

*Service of garnishee orders*

17. Schedule 1 [14] enables a garnishee order made under the Act to be served electronically on a corporation.

*Statute law revision and savings and transitional provisions*

18. Schedule 1 [15] updates a reference to a Division of the Government Service to reflect administrative changes.
19. Schedule 1 [19] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
20. Schedule 1 [20] enacts transitional provisions concerning the application of various amendments made by the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Privacy*

21. Clauses 16 to 18 of the Bill extend the power of the State Debt Recovery Office to obtain private information about fine defaulters. The provisions require police officers and Government agencies to provide the SDRO with information about a fine defaulter's property, date of birth, driver licence number, and bank account details or employer details for the purpose of making a garnishee order. The Bill also permits credit reporting agencies to disclose to the SDRO information about a fine defaulter including, date of birth, current and previous personal addresses and current employer details.

**The Committee will always be concerned where legislation extends the power of a Government agency to obtain private information. The Committee notes however, the competing public interest in the successful enforcement of fines and ensuring offenders meet their obligations under the law. The Committee notes that the access to information provisions contained in the Bill were drafted in consultation with the Office of the Privacy Commissioner and the Department of Attorney General and Justice. The Committee makes no further comment on the Bill.**

## 5. Interpretation Amendment (International Human Rights Obligations) Bill 2012\*

Date introduced	16 August 2012
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Lynch MP
	*Private member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Interpretation Act 1987* to provide that in the interpretation of a provision of an Act, statutory rule or other instrument consideration may, in certain circumstances, be given to Australia's obligations under the international human rights treaties to which Australia is a party.

### BACKGROUND

2. As a result of ratification of international human rights treaties, Australia has agreed to be bound a number of human rights treaties including: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Political Rights of Women; the International Convention on the Elimination of all forms of Racial Discrimination; the Convention on the Elimination of all forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; the Convention on the Rights of the Child; the Convention on the Reduction of Statelessness; the Convention relating to the Status of Stateless Persons; the Convention Relating to the Status of Refugees; the Slavery Convention of 1926; the Supplementary Convention on Slavery; and, the Convention on the Rights of Persons with Disabilities.
3. The use of human rights in the interpretation of legislation by Australian and New South Wales courts has been a source of contention.
4. Currently, the courts in New South Wales are permitted by the *Acts Interpretation Act 1977* to the use any treaty or other international agreement as material that may be considered in the interpretation of a provision of an Act, or a statutory rule made under the Act, if the treaty or other agreement is mentioned in the Act.

### OUTLINE OF PROVISIONS

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

## Schedule 1 Amendment of Interpretation Act 1987 No 15

7. Schedule 1 provides that in the interpretation of a provision of an Act or instrument, consideration may be given to Australia's international human rights obligations:
  - (a) if the provision is ambiguous or obscure—to determine the meaning of the provision, or
  - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to determine the meaning of the provision, or
  - (c) in any other case—to confirm the ordinary meaning of the provision.
8. Australia's international human rights obligations are Australia's obligations under the following international human rights treaties:
  - (a) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
  - (b) Convention on the Elimination of All Forms of Discrimination against Women,
  - (c) Convention on the Rights of Persons with Disabilities,
  - (d) Convention on the Rights of the Child,
  - (e) International Covenant on Civil and Political Rights,
  - (f) International Covenant on Economic, Social and Cultural Rights,
  - (g) International Convention on the Elimination of All Forms of Racial Discrimination.
9. These treaties are available through the Australian Treaties Library at <http://www.austlii.edu.au/au/other/dfat/>.
10. The new provision is in addition to existing section 34 of the Interpretation Act 1987, which provides that treaties or international agreements that are referred to in an Act or a statutory rule may be used in the interpretation of the provisions of the Act or statutory rule. Because of section 5 of the Interpretation Act 1987, the new provision will apply to all Acts and instruments, whether made before or after the commencement of the proposed Act.

## ISSUES CONSIDERED BY COMMITTEE

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

*Transfer of legislative power to the judiciary*

**The Committee is concerned that the practical effect of this Bill would be to vest legislative (or quasi-legislative) powers in the judiciary. Allowing the judiciary to use external treaties for interpretive purposes – in the absence of Australian legislative enactment of those treaties or their mention in the contested Act – effectively permits the creation of new laws that may not have been the intention of the Parliament in the original Act. Indeed, the proposed**

**Bill indicates that international obligations under a treaty may be used by the judiciary to override the plain words of a statute, not merely in the case of ambiguity or obscurity but in any circumstance.**

## 6. NSW Jobs Commission Bill 2012\*

Date introduced	16 August 2012
House introduced	Legislative Assembly
Member with carriage	The Hon John Robertson MP
	*Private member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to establish a NSW Jobs Commission to inquire into and advise on matters affecting jobs growth and retention particularly in relation to regional areas.

### BACKGROUND

2. The NSW Jobs Commission Bill establishes an independent Jobs Commission with functions including:
  - conducting inquiries into communities and industries affected by job losses
  - identifying issues affecting jobs growth
  - evaluating regional development funding initiatives
  - undertaking regional impact studies on proposals to remove or relocate public sector jobs, services or operations
  - identifying skills shortages in industry sectors and regional communities.

### OUTLINE OF PROVISIONS

#### Part 1 Preliminary

3. Part 1 (clauses 1–3) contains provisions relating to the name of the proposed Act, its commencement and the meaning of certain words and expressions used in the proposed Act.

#### Part 2 NSW Jobs Commission

4. Part 2 (clauses 4–9) constitutes the NSW Jobs Commission as a NSW Government agency and provides for its membership and functions. The Commission will consist of a NSW Jobs Commissioner appointed by the Governor and up to 5 other part-time members with relevant skills, knowledge or experience, who will be appointed by the Premier. The Commission will be subject to the control and direction of the Premier.
5. Its functions will include conducting inquiries into communities and industries that have been affected by job losses, making recommendations to enhance economic opportunities in these areas and identifying issues affecting jobs growth and retention. It will also evaluate regional development funding initiatives. The Commission will be able to delegate its functions to the Commissioner and its staff will be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

### Part 3 Miscellaneous

6. Part 3 (clauses 10–12) excludes certain persons from personal liability, enables the Governor to make regulations for the purposes of the proposed Act and provides for a review by the Premier after 5 years of the effectiveness with which the Commission exercises its functions.
7. Schedule 1 contains provisions relating to the members and procedure of the Commission that are the standard provisions relating to statutory corporations.
8. Schedule 2.1 amends the *Public Finance and Audit Act 1983* to provide for financial auditing and annual reporting by the Commission.
9. Schedule 2.2 amends the *Public Sector Employment and Management Act 2002* to add the NSW Jobs Commissioner to the list of statutory officers who hold senior executive positions for the purposes of that Act.

### 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.**

## 7. State Senate Bill 2012\*

Date introduced	16 August 2012
House introduced	Legislative Council
Member with carriage	The Hon. Rev. Fred Nile MLC
	*Private member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to authorise the use of the terms State Senate as a reference to the Legislative Council and State Senator as a reference to a Member of the Legislative Council.

### BACKGROUND

2. The Hon. Rev Fred Nile MLC introduced a similar bill in 2010. However, that Bill lapsed on prorogation at the second reading stage.
3. This Bill is a private member's Bill that seeks to authorise the use of the term 'State Senate' as an alternative to 'Legislative Council'. In the Second Reading speech, Revd the Hon Fred Nile MLC advised that this change is designed to remove the connotation of the term 'Legislative Council' from its traditional role as an advisory body to the Governor. In its place, the title 'State Senate' will afford the chamber proper recognition as a legislative body by conferring onto it a title that is internationally understood.
4. In addition, this Bill seeks to authorise the use of the term 'State Senator' for any individual who is a member of the Legislative Council. In his Second Reading speech, Revd Nile advised that 'State Senator' is more contemporary and relevant than the term 'the Honourable', which is regarded as archaic.

### OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Clause 3 gives effect to the object described above.

### ISSUES CONSIDERED BY COMMITTEE

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

## 8. Succession Amendment (International Wills) Bill 2012

Date introduced	15 August 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney-General

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Succession Act 2006* to adopt into New South Wales law the Uniform Law contained in the UNIDROIT Convention providing a *Uniform Law on the Form of an International Will 1973* (the Convention). The Uniform Law provides for an additional form of will, known as an international will. An international will made in accordance with the requirements of the Uniform Law may be recognised as a valid will by a court in Australia or another country that is a party to the Convention, irrespective of where the will was made, the location of assets or where the testator lives, and without the court having to examine the laws of foreign countries to determine whether the will has been properly executed.
2. The Bill is based on model provisions and gives effect to a decision by the Standing Committee of Attorneys-General that each State and Territory would implement legislation in order to enable Australia to accede to the Convention.

### BACKGROUND

3. The UNIDROIT Convention providing a Uniform Law on the Form of an International Will 1973 (the Convention), created a Uniform Law on wills, was signed in Washington D.C. in 1973.
4. The Convention aims to eliminate the problems that arise with respect to wills resulting from cross-border issues.
5. The Convention provides for an additional form of a will, an International Will, which, if compliant with the Uniform Law, is valid in all States who are party to the Convention.
6. The primary objective of the Convention is to eliminate problems that arise when cross border issues affect a will, for example, where a will deals with assets located overseas or where the will-maker's country of residence is different to the country in which the will is executed.
7. The Uniform Law does not affect issues such as capacity or construction, which will continue to be prescribed by State law.
8. In July 2010, the Standing Committee of Attorneys-General decided for all Australian States and Territories to adopt the Uniform Law, thus acceding Australia to the Convention.

## OUTLINE OF PROVISIONS

9. Clause 1 sets out the name (also called the short title) of the proposed Act.
10. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. A proclamation cannot be made unless the Convention has entered into force in Australia. Article XI of the Convention provides that the Convention enters into force in Australia 6 months after Australia has acceded to the Convention.

### Schedule 1 Amendment of Succession Act 2006 No 80

11. Schedule 1 [2] inserts proposed Part 2.4A into the Succession Act 2006 (the principal Act) to give effect to the Convention.
12. Proposed section 50A defines words and expressions used in the proposed Part.
13. Proposed section 50B provides that the Annex to the Convention, which contains the Uniform Law, has the force of law in New South Wales. This gives effect to Article II of the Convention. Schedule 1 [3] sets out the Annex in full. The Uniform Law contains the formal requirements for an international will to be properly executed. If a will purporting to be an international will does not comply with those formal requirements, it may still be valid as a will in New South Wales.
14. Proposed section 50C provides that Australian legal practitioners and public notaries are authorised to act in connection with international wills. Under the Uniform Law, an authorised person is required to sign a certificate that is attached to an international will confirming that the formalities necessary for an international will have been complied with. The proposed provision also recognises the capacity of an authorised person in another country that is a party to the Convention to act in relation to an international will in that country. The proposed section gives effect to Articles II and III of the Convention.
15. Proposed section 50D provides that the existing provisions in the principal Act that deal with witnesses to wills (such as who can or cannot act as a witness to a will) apply to witnesses to international wills. This provision gives effect to Article V of the Convention.
16. Proposed section 50E confirms that the general provisions of the principal Act (such as those dealing with revocation or the construction of the terms of a will) that apply to wills also apply to international wills.
17. Schedule 1 [1] provides that existing provisions in the principal Act that relate to foreign wills do not limit the operation of the proposed provisions relating to international wills. A will made outside of Australia, which is not in the form of an international will, will continue to be dealt with under those existing provisions (see Part 2.4 of the principal Act).

## ISSUES CONSIDERED BY COMMITTEE

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

*Commencement by proclamation*

18. Section 2(1) states that the Bill commences on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee understands that this Bill gives effect to an international convention that is yet to be ratified by the Commonwealth Government. As ratification is necessary for a convention to have effect, the Committee considers commencement by proclamation to be reasonable in these circumstances.

## Part Two - Regulations

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

# Appendix One – Index of Ministerial Correspondence on Bills

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

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

1. In Digest 9/55, the Committee reported on the Work Health and Safety (Savings and Transitional) Regulation 2011, and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 17 April 2012 which addresses to the Committee's satisfaction the issues raised.
2. In 12/55, the Committee reported on the Water Management (General) Amendment (Water Sharing Plans) Regulation (No 2) 2011 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
3. In 16/55, the Committee reported on the Home Building Amendment (Threshold for Home Warrant Insurance) Regulation 2012 and subsequently wrote to the Minister. The Committee is in receipt of a response from the Minister dated 29 May 2012 which addresses to the Committee's satisfaction the issues raised.
4. In 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 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.