



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- 1 The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - i trespasses unduly on personal rights and liberties, or
 - ii makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - iii makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - iv inappropriately delegates legislative powers, or
 - v insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- 2 A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations

- 1 The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - i that the regulation trespasses unduly on personal rights and liberties,
 - ii that the regulation may have an adverse impact on the business community,
 - iii that the regulation may not have been within the general objects of the legislation under which it was made,
 - iv that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- v that the objective of the regulation could have been achieved by alternative and more effective means,
 - vi that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - vii that the form or intention of the regulation calls for elucidation, or
 - viii that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- 2 Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

Guide to the Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

Ministerial Correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

COMMENT ON REGULATIONS

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the Digest. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the Digest drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations are set out in s 9 of the *Legislation Review Act 1987*.

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the Digest contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Bill and correspondence appear.

**APPENDIX 2: INDEX OF CORRESPONDENCE ON REGULATIONS
REPORTED ON**

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the Digests in which reports on the Regulation and correspondence appear.

Conclusions

PART ONE – BILLS

1. ALCOHOLIC BEVERAGES ADVERTISING PROHIBITION BILL 2012*

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

Onus of proof

The Committee will always be concerned when legislation seeks to reverse the onus of proof. However, given the practicalities of a prosecutor proving a direct or indirect benefit and that the clause contains explicit criteria, the Committee makes no adverse comments.

The Committee will always be concerned when legislation seeks to reverse the onus of proof. However, given that the offence relates only to officers of a body corporate and these officers have agreed to be bound by such obligations in relation to corporate offences the Committee makes no adverse comments.

Right to property

The Committee notes that the forced forfeiture of personal property, which is an otherwise legal item, may trespass on personal property rights. The Committee refers to Parliament the question as to whether the Bill trespasses on personal and property rights.

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

Ill and wide-defined power

The Committee refers to Parliament whether the conditions that allows the Minister to provide exemptions from the prohibition on certain advertising or promotion of alcohol constitutes an ill and wide-defined power.

Rights dependant on non-elected persons

The Committee is concerned that providing a Director-General, or a person authorised by the Director-General, with the power to decide whether to prosecute an offence may constitute an inappropriate delegation of power.

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

Henry VIII clause

The Committee refers to Parliament whether allowing the regulations to amend the operation of an Act constitutes an inappropriate delegation of legislative power.

The Committee is of the view that any functions outlined in legislation concerning the powers of the Executive should be clearly articulated and be scrutinised by the Parliament. Therefore, the Committee considers that Part 13, Clause 16(3) may constitute an inappropriate delegation of legislative power and refers it to Parliament.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Including matters in regulation that may be more appropriately included in legislation

The Committee notes that enabling offences to be created in the Regulations rather than legislation may constitute insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

2. CRIMES AMENDMENT (CHEATING AT GAMBLING) BILL 2012

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

3. EMERGENCY LEGISLATION AMENDMENT BILL 2012

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

Search and Enter Powers

While there has been an extension of police powers with respect to entering into premises without owner or occupier consent following a bushfire, the Committee does not consider the proposed provision to be unreasonable in the circumstances provided.

4. RETAIL LEASES AMENDMENT (MEDIATION) BILL 2012*

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

Access to justice

The Committee considers that providing an obligation on truly unwilling parties to refer their disputes to mediation may impose an unacceptable obstruction on their right of access to courts. Whilst the Committee notes the policy concerns that relate to the expense imposed on retail tenants when responding legal action, the Committee refers to Parliament whether providing an obstacle to pursuing a matter in courts constitutes a trespass on the right of access to justice.

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

Commencement by proclamation

The Committee seeks to comment on the commencement of proposed legislation by proclamation. However, as this Bill provides for commencement on a set date – with commencement by proclamation only possible earlier than that date – the Committee makes no further comment on this issue.

5. SMALL BUSINESS COMMISSIONER AND SMALL BUSINESS PROTECTION BILL 2012*

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

Strict liability

The Committee refers to Parliament the question as to whether the strict liability offences contained in this Bill trespass on personal rights.

PART TWO – REGULATIONS

1. JAMES HARDIE FORMER SUBSIDIARIES (WINDING UP AND ADMINISTRATION) AMENDMENT (STATUTORY RECOVERY CLAIMS) REGULATION 2012

The Committee is in receipt of a response from the Attorney General dated 10 August 2012 which addresses to the Committee's satisfaction the issues raised by the Committee in its correspondence of 8 May 2012.

Part One – Bills

1. Alcoholic Beverages Advertising Prohibition Bill 2012*

Date introduced	23 August 2012
House introduced	Legislative Council
Member with carriage	The Hon. Fred Nile MLC
	*Private Members Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to encourage a healthier lifestyle:
 - (a) by prohibiting advertising and other promotional activities aimed at assisting the sale of alcoholic beverages and consequently reducing the incentive for people to consume alcohol, and
 - (b) by providing for the declaration of local option areas within which the purchase, sale or delivery, or the consumption in a public place, of alcoholic beverages will be an offence.
2. The Bill also establishes the Alcohol Advertising Prohibition Committee, which will be required to prepare a timetable for the removal of advertisements promoting alcoholic beverages and the termination of sponsorships related to the promotion of any such beverages.

BACKGROUND

3. The Hon. Rev. Fred Nile MLC stated in the second reading speech that the object of the Bill: "is to establish the *Alcoholic Beverages Advertising Prohibition Act 2012* to limit the social and personal impacts of alcohol abuse in New South Wales".
4. Reverend Nile, also in the second reading speech, stated that a national ban on the advertising of alcohol would result in a 25 per cent reduction in alcohol consumption, a 30 per cent reduction in road fatalities, and reduce the social costs of alcohol abuse by \$3.86 billion.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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

7. Clause 3 provides that the proposed Act will bind the Crown.
8. Clause 4 states the purposes of the proposed Act as the following:
 - (a) the discouragement of alcohol consumption by:
 - (i) persuading young people not to drink and not to abuse alcoholic beverages,
 - (ii) limiting exposure of young people and children to persuasion to drink alcoholic beverages,
 - (iii) encouraging drinkers of other beverages not to start drinking alcoholic beverages,
 - (iv) assisting those who wish to limit or give up alcohol consumption,
 - (b) the reduction of alcohol-related:
 - (i) domestic violence,
 - (ii) deaths,
 - (iii) road accidents,
 - (iv) crimes and other violence,
 - (c) the prevention of alcohol-related illness (such as cirrhosis of the liver),
 - (d) the reduction of the harmful impact of alcohol in the home and in workplaces and industry generally.
9. Clause 5 defines certain terms used in the proposed Act.

Part 2 Offences relating to promotion of alcoholic beverages

10. Clause 6 prohibits the commercial advertising of alcoholic beverages:
 - (a) where the advertisement can be seen or heard from a public place, or
 - (b) on radio or television, if there is a material benefit to the owner of the radio or television station, or
 - (c) on unsolicited things distributed to the public, or
 - (d) by means of articles (such as newspapers or books) sold, hired or supplied for some benefit,but does not prohibit any such advertising that is done within 5 years after the introduction of this Bill into Parliament (or within such shorter period as may be fixed by a regulation) if it is done in accordance with a contract or arrangement made before the introduction of this Bill into Parliament, or any such advertising that is:
 - (e) in a newspaper or book printed or published outside the State, if incidental to the main purpose of the newspaper or book, or

- (f) in or on a package or carton containing an alcoholic beverage, or
 - (g) in a shop or similar retail outlet where alcoholic beverages are offered or exposed for sale, or
 - (h) on documents used in the ordinary course of business, or
 - (i) otherwise exempted under the proposed Act.
11. The maximum penalty for a first offence, if committed by an individual, is 50 penalty units (currently \$5,500) and for subsequent offences is 100 penalty units (currently \$11,000).
 12. The maximum penalty for a first offence, if committed by a body corporate, is 200 penalty units (currently \$22,000) and for subsequent offences is 400 penalty units (currently \$44,000).
 13. An additional daily penalty of up to 50 penalty units (for an individual) or 200 penalty units (for a body corporate) may be imposed in the case of a continuing offence.
 14. Clause 7 prohibits promotional “competitions” and other prescribed schemes designed to promote the sale, or generally to promote the drinking of, alcoholic beverages.
 15. The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 6.
 16. Clause 8 prohibits the offering, giving or distributing of free samples of alcoholic beverages to promote the sale of such products, except to manufacturers, distributors or retailers of alcoholic beverages or their employees or at wineries, vineyards or breweries.
 17. The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 6.
 18. Clause 9 prohibits the promotion of, or agreements to promote, alcoholic beverages or their trademark or brand name in return for a sponsorship of some activity and also prohibits the provision of a sponsorship on those terms, subject to certain exceptions and exemptions.
 19. The maximum penalties for offences committed by individuals or corporations are the same as under proposed section 6.
 20. Clause 10 allows the Minister to grant exemptions from the requirements of proposed section 6 or 9 in limited circumstances. No exemption will be effective after the fifth anniversary of the date of introduction of this Bill into Parliament.

Part 3 Reintroduction of local option

21. Clause 11 allows a request for the declaration of a local option area to be made to the Minister, but only if it is supported by a petition signed by at least 10% of the enfranchised residents of the proposed area or, if the proposed area is part of a ward, of the whole of the ward.

22. Clause 12 empowers the Minister to declare a local option area, but only with the agreement of the local council that there exists a particular alcohol-related problem in the proposed area.
23. Clause 13 empowers the Minister to rescind a declaration of a local option area, but only with the consent of the local council and after it has been in force for at least 6 months.
24. Clause 14 requires notice of the declaration of a local option area, and of any rescission of such a declaration, to be published in the Gazette before it is effective.
25. Clause 15 provides that a local option area will be effective for the period of not less than 3 nor more than 5 years specified in the declaration of the area, unless sooner rescinded.
26. Clause 16 creates an offence if, in a declared local option area and while the relevant declaration is in force, anyone buys, sells or (for a material benefit) delivers, an alcoholic beverage or consumes any such drink in a public place. Any drink the subject of such an offence, and any bottle or other container in which it is contained, is forfeited to the Crown. A licensee under the Liquor Act 2007 will lose the licence if prohibited sales are made from the licensed premises.
27. The regulations may create specific exemptions from such an offence.

Part 4 Alcohol Advertising Prohibition Committee

28. Clause 17 establishes the Alcohol Advertising Prohibition Committee which will consist of 5 members appointed by the Minister.
29. Clause 18 requires the Committee to provide the Minister with a timetable for the progressive withdrawal of advertising and promotional activities relating to alcoholic beverages.
30. Clause 19 requires the Minister to promote regulations providing for the progressive withdrawal of such advertising and promotional activities.
31. Clause 20 provides for the Director-General of the Ministry of Health to provide the Committee with the resources necessary for it to exercise its functions.

Part 5 Enforcement

32. Clause 21 allows the Local Court to order the removal of an advertisement for an alcoholic beverage that is displayed in contravention of the proposed Act, or that was originally lawfully displayed but is required to be removed under the scheme for removal of such advertisements provided by the proposed Act.
33. Clause 22 empowers the entry of premises (unless used for a dwelling) to remove advertisements under such an order.
34. Clause 23 creates an offence if an authorised officer who is required by such an order to remove an advertisement is intimidated or obstructed in giving effect to the order.
35. Clause 24 requires the consent of the Director-General of the Ministry of Health to proceedings for an offence against the proposed Act.

36. Clause 25 fixes maximum penalties for certain of the offences against the proposed Act.
37. Clause 26 provides that those offences may be dealt with summarily before the Local Court or on indictment.
38. Clause 27 allows prosecution of the persons involved in the management of a body corporate for offences committed by the body corporate.

Part 6 General

39. Clause 28 bars civil proceedings against a person for doing, or omitting to do, anything which is done or omitted to be done in compliance with the proposed Act.
40. Clause 29 empowers the Governor to make regulations for the purposes of the proposed Act.
41. Clause 30 requires health warnings to be displayed on packaging for alcoholic beverages in accordance with the regulations.
42. Clause 31 provides that, before 4 years expire after assent to the proposed Act, the Minister is to have its operation, and the continuing need for it, investigated and a report made. The report is to be tabled in Parliament.

Schedule 1 Provisions relating to Alcohol Advertising Prohibition Committee

43. Clause 1 requires nominations for membership of the Committee to be sought by the Minister.
44. Clause 2 allows a member a term of office of not more than 4 years, fixed by the Minister.
45. Clause 3 fixes a quorum of 3 members for a meeting of the Committee.
46. Clause 4 requires the Chairperson of the Committee to preside over its meetings.
47. Clause 5 states how decisions of the Committee are made.
48. Clause 6 requires the Minister to call the first meeting of the Committee.
49. Clause 7 allows the Committee to fix the procedure for its meetings.

ISSUES CONSIDERED BY COMMITTEE

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

Onus of proof

50. Part 2, Clause 6(7) states that in proceedings for an offence under s6(1) (receiving benefit for displaying alcohol advertising), if an advertisement contains an alcohol manufacturer's or distributor's name, trademark or brand name then it is presumed that the person who displayed the advertisement received a direct or indirect benefit, unless the contrary is proved.

The Committee will always be concerned when legislation seeks to reverse the onus of proof. However, given the practicalities of a prosecutor proving a direct

or indirect benefit and that the clause contains explicit criteria, the Committee makes no adverse comments.

51. Part 5, Clause 27 states that when a body corporate commits an offence under this Act or the Regulations, every officer of that body corporate commits the offence, unless an officer can prove that the offence was committed without their consent and that the officer exercised due diligence, to the extent as expected of an officer of their capacity, to prevent such offence.

The Committee will always be concerned when legislation seeks to reverse the onus of proof. However, given that the offence relates only to officers of a body corporate and these officers have agreed to be bound by such obligations in relation to corporate offences the Committee makes no adverse comments.

Right to property

52. Part 3, Clause 16 (3) states that a person who is convicted of offences in relation to the buying, selling or delivering a quantity of an alcoholic beverage, forfeits that beverage and its container.

The Committee notes that the forced forfeiture of personal property, which is an otherwise legal item, may trespass on personal property rights. The Committee refers to Parliament the question as to whether the Bill trespasses on personal and property rights.

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

Ill and wide-defined power

53. Part 2, Clause 10(2) prescribes that the Minister may grant an exemptions for certain persons to s6 or s9 of the Bill, subject to certain conditions (if any).

The Committee refers to Parliament whether the conditions that allows the Minister to provide exemptions from the prohibition on certain advertising or promotion of alcohol constitutes an ill and wide-defined power.

Rights dependant on non-elected persons

54. Part 5, Clause 24 states that no proceedings for an offence against this Act are to be commenced without the written consent of the Director-General of the Minister of Health or a person authorised by him or her.

The Committee is concerned that providing a Director-General, or a person authorised by the Director-General, with the power to decide whether to prosecute an offence may constitute an inappropriate delegation of power.

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

Henry VIII clause

55. Part 6, Clause 29 (1) (e) permits the regulations to exempt persons from requirements of s16 of the Act.

The Committee refers to Parliament whether allowing the regulations to amend the operation of an Act constitutes an inappropriate delegation of legislative power.

56. Part 3, Clause 16 (3) enables the regulations to provide for the making, keeping and inspection of records of sale of alcoholic beverages to ensure that licenced premises within areas declared a local option area adhere to alcohol volume sale restrictions.

The Committee is of the view that any functions outlined in legislation concerning the powers of the Executive should be clearly articulated and be scrutinised by the Parliament. Therefore, the Committee considers that Part 13, Clause 16(3) may constitute an inappropriate delegation of legislative power and refers it to Parliament.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Including matters in regulation that may be more appropriately included in legislation

57. Part 6, Clause 29 (1) (f) authorises the creation of offences in Regulations and prescribes penalties for breaches of such offences in connection with the failure to comply with the Act.

The Committee notes that enabling offences to be created in the Regulations rather than legislation may constitute insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

2. Crimes Amendment (Cheating at Gambling) Bill 2012

Date introduced	22 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 Crimes Act 1900 to prohibit certain conduct that can corrupt the betting outcomes of events on which it is lawful to place bets.
2. The Bill prohibits:
 - (a) engaging in conduct that corrupts a betting outcome of an event with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with betting on the event, and
 - (b) facilitating conduct that corrupts a betting outcome of an event with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with betting on the event, and
 - (c) encouraging another person to conceal conduct, or an agreement about conduct, that corrupts a betting outcome of an event with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with betting on the event, and
 - (d) using corrupt conduct information or inside information about an event for betting purposes.
3. Conduct corrupts a betting outcome of an event if the conduct:
 - (a) affects or, if engaged in, would be likely to affect the outcome of any type of betting on the event, and
 - (b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.
4. The accused must engage in the conduct, or facilitate the conduct, knowing or being reckless as to whether the conduct corrupts a betting outcome of the event.
5. The Bill also makes a related amendment to the Criminal Procedure Act 1986.

BACKGROUND

6. In response to heightened public awareness of cheating at gambling following several high-profile incidents of match fixing, the former Government made a reference to the

Law Reform Commission requesting that the Commission review existing criminal legislation in relation to cheating at gambling. In March 2011, the Commission released a consultation paper, *Cheating at Gambling* (CP12), which identified the inadequacy of existing criminal laws to deal with cheating at gambling.

7. As a follow-up, in August 2011 the Commission released *Cheating at gambling* (Report No.130). In this report, the Commission stated that in light of such incidents and the growth of the online sports gambling market the Commission concluded that it is imperative that a safe and lawful market for sports betting be preserved. In order to achieve this, the Commission considered it appropriate that specific criminal offences be available to prosecute those who seek to fix a betting outcome, to profit from such a fix or to use inside information.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Crimes Act 1900 No 40

10. Schedule 1 [1] inserts a new Part 4ACA into the Crimes Act 1900 that provides for the new offences.
11. Division 1 of proposed Part 4ACA defines expressions used in the proposed Part, including what it means to corrupt a betting outcome of an event (as described in the Overview).
12. Betting is defined to include both placing and withdrawing bets, and accepting bets.
13. An event is any event (whether or not taking place in this State) on which it is lawful to place bets under an Australian law. Betting on an event includes any betting on any contingencies connected with an event.
14. The provisions also define what it means to obtain a financial advantage, or cause a financial disadvantage, in a manner similar to existing fraud offences.
15. To prove an intention to obtain a financial advantage, or cause a financial disadvantage, it is necessary to prove that the accused:
 - (a) meant to obtain a financial advantage, or cause a financial disadvantage, in connection with betting on the event, or
 - (b) was aware that another person meant to obtain a financial advantage, or cause a financial disadvantage, in connection with betting on the event, as a result of the conduct the subject of the charge.
16. The provisions also broadly define what it means to encourage another person to do something.
17. Division 2 of proposed Part 4ACA sets out the new offences described in the Overview.

18. The offence relating to engaging in conduct that corrupts a betting outcome of an event carries a maximum penalty of imprisonment for 10 years.
19. The offence relating to facilitating conduct that corrupts a betting outcome of an event carries a maximum penalty of imprisonment for 10 years. Facilitating conduct that corrupts a betting outcome of an event means offering to engage in, encouraging another person to engage in or entering into an agreement about, conduct that corrupts a betting outcome of an event.
20. The offence relating to concealing conduct that corrupts a betting outcome of an event carries a maximum penalty of imprisonment for 10 years.
21. The offence of using corrupt conduct information about an event for betting purposes carries a maximum penalty of imprisonment for 10 years. Corrupt conduct information is any information about conduct or proposed conduct that corrupts a betting outcome of the relevant event.
22. The offence of using inside information for betting purposes carries a maximum penalty of imprisonment for 2 years. Inside information is any information that is not generally available and which, if it were generally available, would or would be likely to influence persons who commonly bet on the relevant event in deciding whether or not to bet on the event or making any other betting decision.
23. Schedule 1 [2] provides for the review of the operation of the new Part at the end of the period of 3 years after the commencement of the new Part.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

24. Schedule 2 requires the new offences to be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment.

ISSUES CONSIDERED BY COMMITTEE

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

3. Emergency Legislation Amendment Bill 2012

Date introduced	22 August 2012
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Police

PURPOSE AND DESCRIPTION

1. To amend the *Fire Brigades Act 1989* to make provision for the Commission of Fire and Rescue NSW to enter and inspect land to investigate the cause or origin of a fire for the purpose of assisting in the prevention of fires.
2. To enable *Rural Fires Act 1997* to enable police officers to enter and inspect land for the purpose of determining whether the cause or origin of a fire should be the subject of a criminal investigation, and to enable an authorised officer to require any person to whom the officer intends to issue a penalty notice under that Act to state the person's full name and residential address.
3. To amend the *State Emergency and Rescue Management Act 1989* with respect to arrangements for emergency management committees, to ensure employment protection provisions apply within the ordinary meaning of employment law, to clarify the operational responsibilities of the three agencies tasked with extinguishing and investigating fires, and other miscellaneous amendments.

BACKGROUND

4. This Bill comprises miscellaneous amendments to various Acts responsible for fire extinguishment, control and criminal investigation 'so as to enhance and strengthen the operation of this legislation'.¹

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Schedule 1 [2] makes the amendment referred to in paragraph (a) of the Overview.
8. Schedule 1 [1] makes a consequential amendment.

¹ The Hon. Michael Gallacher MLC, Second Reading Speech, *Emergency Legislation Amendment Bill 2012*, 22 August 2012 at p1.

9. Schedule 1 [3] enables the Governor to make savings and transitional regulations that are consequential on the enactment of Schedule 1 to the proposed Act or any other Act that amends the *Fire Brigades Act 1989*.
10. Schedule 2 [4] makes the amendment referred to in paragraph (b) (i) of the Overview.
11. Schedule 2 [6] makes the amendment referred to in paragraph (b) (ii) of the Overview.
12. Schedule 2 [7] and [8] make consequential amendments.
13. Schedule 2 [2] and [10] make amendments that are consequential on the renaming of Displan as the State Emergency Management Plan by Schedule 3 [10] and proposed clause 17 of Schedule 4 to the SERM Act (as inserted by Schedule 3 [41]).
14. Schedule 2 [1] updates the note to section 4 of the *Rural Fires Act 1997*, including as a consequence of those amendments.
15. Schedule 2 [3] and [5] update references to the body now called Fire and Rescue NSW.
16. Schedule 2 [9] enables the Governor to make savings and transitional regulations that are consequential on the enactment of Schedule 2 to the proposed Act or any other Act that amends the *Rural Fires Act 1997*.
17. Schedule 3 [15] makes the amendment referred to in paragraph (c) (i) of the Overview.
18. Schedule 3 [6] makes a consequential amendment.
19. Schedule 3 [7] makes the amendment referred to in paragraph (c) (ii) of the Overview.
20. Schedule 3 [14] substitutes section 14 (3) of the SERM Act to provide that the Minister for Police and Emergency Services (*the Minister*), rather than the State Disasters Council, is to nominate representatives from non-government agencies who are to serve on the State Emergency Management Committee. It also re-enacts the current requirement for any representative of a government agency to be nominated by the Minister responsible for that agency.

Section 22 (2) of the SERM Act provides that each District Emergency Management Committee (to be renamed as a Regional Emergency Management Committee by the proposed Act) is to include a representative of the organisations providing services in each functional area in the relevant district. Schedule 3 [18] amends section 22 (2) to clarify that the Minister is to determine the particular organisations to be represented on the Committee.
21. Schedule 3 [19] makes an amendment to section 22 of the SERM Act by way of statute law revision. Schedule 3 [26] makes a similar amendment in relation to Local Emergency Management Committees as the amendment made to section 22 (2) of the SERM Act by Schedule 3 [18].
22. Schedule 3 [25] makes an amendment to section 28 of the SERM Act to require the Chairperson of a Local Emergency Management Committee to be the General Manger of the council of the local government area in respect of which the Committee is

constituted, rather than a senior representative of the council who is nominated by that council (as at present). Schedule 3 [27] makes a consequential amendment.

23. Schedule 3 [20], [21], [28] and [29] make the amendments referred to in paragraph (c) (iv) of the Overview.
24. Schedule 3 [22] and [30] make the amendments referred to in paragraph (c) (v) of the Overview.
25. Schedule 3 [37] makes the amendment referred to in paragraph (c) (vi) of the Overview. Schedule 3 [36] and [38] make consequential amendments. Schedule 3 [39] makes the amendment referred to in paragraph (c) (vii) of the Overview.
26. Schedule 3 [10] and proposed clause 17 of Schedule 4 to the SERM Act (inserted by Schedule 3 [41]) make the amendments referred to in paragraph (c) (viii) of the Overview. Schedule 3 [2], [3], [8], [9] and [11] make consequential amendments. Schedule 3 [17] and proposed clause 18 of Schedule 4 to the SERM Act (inserted by Schedule 3 [39]) make the amendments referred to in paragraph (c) (ix) of the Overview. Schedule 3 [3], [4], [8], [11], [12], [16], [17] and [23] make consequential amendments.
27. Schedule 3 [24] and [31] make the amendments referred to in paragraph (c) (x) of the Overview. Schedule 3 [5] and [32]–[35] update references to the names of various bodies, including Fire and Rescue NSW and the Ambulance Service of NSW. Schedule 3 [1] and [13] update references to the person who currently holds office as the Chief Executive of the Ministry for Police and Emergency Services.
28. Schedule 3 [40] enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act or any other Act that amends the *State Emergency and Rescue Management Act 1989*.
29. Schedule 3 [41] makes amendments of a savings or transitional nature consequent on the enactment of Schedule 3 to the proposed Act.
30. Schedule 4 [1] and [3] update references to the bodies now called Fire and Rescue NSW and the Ambulance Service of NSW.
31. Schedule 4 [2] makes an amendment that is consequential on the renaming of Displan as the State Emergency Management Plan by Schedule 3 [10] and proposed clause 17 of Schedule 4 to the SERM Act (as inserted by Schedule 3 [41]). Schedule 4 [4] makes an amendment that is consequential on the renaming of districts under the SERM Act as regions by Schedule 3 [17] and proposed clause 18 of Schedule 4 to the SERM Act (as inserted by Schedule 3 [41]).

ISSUES CONSIDERED BY COMMITTEE

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

Search and Enter Powers

32. The key provisions of the Bill are to amend two parts of the *Rural Fires Act 1997*. First, to give police officers the same powers as NSW Rural Fire Service and Rescue NSW personnel to enter land for the purpose of investigation into the cause or origin of a bushfire. Second, to provide for a power for authorised officers to request a person's

full name and address in the context of issuing a penalty notice for an offence against the Act or associated Regulation.

33. On the first proposed amendment, the Committee notes that the provision would enable police to enter onto land with or without the consent of the owner or occupier. Ordinarily, the Committee would raise concerns about the scope of police power to enter onto private premises in such circumstances as an undue trespass on personal property.
34. However, the Committee also notes that these powers are time limited, for only 24 hours after the extinguishment of a fire. The Committee also notes that the requirement for a police officer to obtain a search warrant is also provided for under section 33C of the *Rural Fires Act 1997*. Lastly, the Committee notes that these new proposed powers align closely with existing powers already afforded to other emergency services personnel responsible for bushfire control and investigation. In these circumstances, the Committee does not consider there to be a trespass on individual rights and liberties.

While there has been an extension of police powers with respect to entering into premises without owner or occupier consent following a bushfire, the Committee does not consider the proposed provision to be unreasonable in the circumstances provided.

4. Retail Leases Amendment (Mediation) Bill 2012*

Date introduced	23 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 section 68 (1) of the *Retail Leases Act 1994* to make it clear that proceedings may not be commenced in any court in relation to a retail tenancy dispute, or in relation to certain other disputes or matters arising under that Act, unless the Registrar of Retail Tenancy Disputes has certified in writing that mediation has failed to resolve the dispute or matter.

BACKGROUND

2. Currently, section 68 of the *Retail Leases Act 1994* outlines that a retail tenancy dispute may not be the subject of proceedings before any court unless and until the registrar has certified in writing that mediation under this part has failed to resolve the dispute or matter or the court is otherwise satisfied that mediation under this part is unlikely to resolve the dispute or matter.
3. In the matter of *Kim-Po Sor v Fordham Laboratories Pty Ltd* the Court of Appeal indicated that mediation was not necessary in circumstances where the court was satisfied that mediation was unlikely to resolve the dispute or matter.
4. Mr Lynch has indicated that the object of this Bill is to legislate to implement the commonly understood position that recourse could not be had to the courts or a tribunal with respect to a retail tenancy dispute until mediation had been attempted or the failure of mediation had been certified.

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.
7. Clause 3 amends the *Retail Leases Act 1994* to give effect to the object of the Bill as described in the Background above.

ISSUES CONSIDERED BY COMMITTEE

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

Access to justice

8. Clause 3 of the Bill outlines that proceeding may not be commenced in any court unless the Registrar has certified in writing that mediation under this Party has failed to resolve the dispute or matter.

The Committee considers that providing an obligation on truly unwilling parties to refer their disputes to mediation may impose an unacceptable obstruction on their right of access to courts. Whilst the Committee notes the policy concerns that relate to the expense imposed on retail tenants when responding legal action, the Committee refers to Parliament whether providing an obstacle to pursuing a matter in courts constitutes a trespass on the right of access to justice.

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

Commencement by proclamation

9. Clause 2 outlines that the Act commenced three months after the date of assent to this Act unless commenced sooner by proclamation.

The Committee seeks to comment on the commencement of proposed legislation by proclamation. However, as this Bill provides for commencement on a set date – with commencement by proclamation only possible earlier than that date – the Committee makes no further comment on this issue.

5. Small Business Commissioner and Small Business Protection Bill 2012*

Date introduced	23 August 2012
House introduced	Legislative Council
Member responsible	The Hon Adam Searle MLC
	*Private Members Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to create the position of Small Business Commissioner as an independent statutory office and to confer functions on the Commissioner in relation to small businesses,
 - (b) to ensure that small businesses are treated fairly in their commercial dealings with other businesses and their dealings with government agencies through enforceable codes of practice,
 - (c) to enable small businesses to obtain relief under the *Contracts Review Act 1980* in respect of unjust contracts.

BACKGROUND

2. In the Second Reading Speech, the Hon Adam Searle MLC commented that research indicates that existing protections or rights for small business are not adequate or not readily available to small businesses.² To address this, the Bill provides for:
 - the Small Business Commissioner to be an independent statutory officer with a number of functions including to advocate for small business, receive and investigate complaints by or on behalf of small businesses and administer codes of practice;
 - enforceable codes of practice for fair treatment of small businesses;
 - the ability of small business operators to apply to the Consumer, Trader and Tenancy Tribunal for relief under the *Contracts Review Act 1980* in relation to contracts that may be harsh, oppressive, unconscionable or unjust.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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

² New South Wales, Legislative Council, *Parliamentary Debates (Hansard)*, Thursday 23 August 2012.

4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 defines certain words and expressions used in the proposed Act. A small business is defined as a business enterprise with no more than 20 full-time equivalent employees or with an annual income or expenditure of between \$10,000 and \$5 million.

Part 2 Small Business Commissioner

6. Clause 4 creates the statutory office of Small Business Commissioner.
7. Clause 5 specifies the functions of the Commissioner. These include assisting small businesses in their dealings with government agencies.
8. Clause 6 enables the Commissioner to require information to be provided from persons about their commercial dealings with small businesses.
9. Clause 7 enables the Commissioner to share information with government agencies and certain other persons and bodies.
10. Clause 8 requires the Commissioner to report annually to Parliament on the Commissioner's work and activities and on the regulatory burden on small businesses.
11. Clause 9 enables the Commissioner to delegate his or her functions.
12. Clause 10 provides for the staff of the Commissioner.

Part 3 Protection of small businesses

13. Clause 11 enables the regulations under the proposed Act to prescribe codes of practice with respect to the fair treatment of small businesses in their commercial dealings with other businesses and their dealings with government agencies. The Commissioner will be required to consult with representatives of industries or businesses likely to be affected by a code of practice before any such code of practice is made.
14. Clause 12 makes it an offence to contravene a code of practice.
15. Clause 13 provides that the Supreme Court may, on application by the Commissioner, grant an injunction in relation to contravention of a code of practice and also to prevent a person from interfering with an investigation by the Commissioner.
16. Clause 14 confers on the Consumer, Trader and Tenancy Tribunal (the CTTT) jurisdiction under the *Contracts Review Act 1980* (the CR Act) with respect to unfair contracts to which a small business is a party. Under the proposed section, the operator of a small business will be able to apply to the CTTT for relief under the CR Act in relation to contracts the operator considers to be harsh, oppressive, unconscionable or unjust. The proposed provision does not affect the jurisdiction of the Supreme Court under the CR Act in relation to such contracts.

Part 4 Miscellaneous

17. Clause 15 provides that the proposed Act binds the Crown.

18. Clause 16 excludes the Commissioner, members of staff and persons acting under the direction of the Commissioner from personal liability.
19. Clause 17 provides for the manner in which proceedings for offences are to be dealt with.
20. Clause 18 enables the Governor to make regulations for the purposes of the proposed Act.
21. Clause 19 repeals the *Small Business Development Corporation Act 1984*.

Schedule 1 Provisions relating to Small Business Commissioner

22. Schedule 1 contains provisions relating to the Commissioner, including term of office. The Commissioner may be removed from office by the Governor but only on the address of both Houses of Parliament.

Schedule 2 Amendment of Acts

23. Schedule 2.1 amends the *Contracts Review Act 1980* to extend the operation of that Act to contracts to which small businesses are a party. The Supreme Court or the CTTT will be able to provide relief to small businesses in respect of a contract that was unjust (which includes unconscionable, harsh or oppressive) at the time it was made or that has become unjust since it was made. The Commissioner will also be able to bring proceedings for relief on behalf of small businesses or intervene in proceedings on their behalf.
24. Schedule 2.2 amends the *Government Information (Public Access) Act 2009* to prohibit applications being made under that Act for access to information of the office of the Small Business Commissioner.
25. Schedule 2.3 amends the *Statutory and Other Offices Remuneration Act 1975* to add the Small Business Commissioner to the list of public offices to which that Act applies.
26. Schedule 3 Savings, transitional and other provisions
27. Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. These include the power to make regulations of a savings or transitional nature consequential on the enactment of the proposed Act.
28. The proposed Schedule also abolishes the Small Business Development Corporation and provides that the proposed Act (including the amendments to the *Contracts Review Act 1980*) extends to contracts in force immediately before the commencement of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Strict liability

29. Clause 6 of the Bill requires a person to provide information that relates to the person's commercial dealings with small businesses. This requirement also relates to information

that is commercial-in-confidence. Clause 6 makes it an offence of strict liability to fail to comply with such a requirement. The offence carries a penalty of 50 penalty units.

30. Clause 12 of the Bill makes it an offence of strict liability to contravene the code of practice. The offence carries a maximum penalty of 1000 penalty units for a corporation or 200 penalty units for an individual.

The Committee refers to Parliament the question as to whether the strict liability offences contained in this Bill trespass on personal rights.

Part Two – Regulations

1. James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012

BACKGROUND

1. On 8 May 2012, the Committee wrote to the Attorney in relation to the James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012. A copy of that letter is attached to this report. The Attorney General responded in a letter dated 10 August 2012. A copy of that letter is also attached to this report.

CONCLUSION

The Committee is in receipt of a response from the Attorney General dated 10 August 2012 which addresses to the Committee's satisfaction the issues raised by the Committee in its correspondence of 8 May 2012.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

8 May 2012

The Hon. Greg Smith MP
Attorney General
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Our Ref: LAC12/033

Dear Attorney,

**James Hardie Former Subsidiaries (Winding up and Administration) Amendment
(Statutory Recovery Claims) Regulation 2012**

Pursuant to its obligations under section 9 of the *Legislation Review Act 1987* the Committee has considered the abovementioned Regulation. The Committee has reported its consideration of the Regulation in its *Legislation Review Digest 16/55 – 8 May 2012*.

At the deliberative meeting held on 8 May 2012, the Committee also resolved to write to you seeking clarification as to whether you envisaged any detrimental effect as a result of amending the Regulation with the effect of ranking compensation claims, which may have an unfair consequence on those claimants with existing claims.

The Committee looks forward to your advice in relation to this matter.

Should you have any questions, please do not hesitate to contact Emma Matthews, Inquiry Manager, on 9230 3050.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S. Bromhead'.

Mr Stephen Bromhead MP
Chair



The Hon. Greg Smith SC MP
Attorney General
Minister for Justice

DPC11/00820
2012-114727

Mr Stephen Bromhead MP
Chair
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

Dear Mr Bromhead

Thank you for your letter, on behalf of the Legislation Review Committee, of 8 May 2012 regarding the *James Hardie Former Subsidiaries (Winding up and Administration) Amendment (Statutory Recovery Claims) Regulation 2012* (Regulation).

I confirm that the Regulation does not have any adverse effect on any asbestos victims.

When the Dust Diseases Board of NSW (DDB) pays compensation to asbestos victims, it would ordinarily be entitled under legislation to recover some of that compensation from liable entities.

In the case of James Hardie and the Asbestos Injuries Compensation Fund (AICF), however, the Amended and Restated Final Funding Agreement (AFFA) provides that statutory recovery claims are only to be paid up to an annual cap and an aggregate cap. The reason for this is that the funding under the AFFA is primarily intended to be available to meet claims against the former James Hardie subsidiaries by victims of asbestos injuries directly.

Accordingly, section 32 of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* provides that statutory recovery claims against the former James Hardie subsidiaries may only be paid if the annual cap is sufficient to cover all claims within the year concerned. If the annual cap will not be sufficient to cover all statutory recovery claims within the year concerned, the Act provides that claims may only be paid in accordance with the regulations.

The Regulation makes rationing provisions for the payment of statutory recovery claims during financial years in which the available funding is not sufficient to pay all of the claims in full.

Currently under the Act, the DDB is the only body that may be paid statutory recovery claims by the AICF on behalf of the former James Hardie subsidiaries.

This means that the Regulation merely provides an administrative mechanism for rationing individual claims, all of which are made by the DDB. The rationing of these

claims does not affect the payment of compensation by the DDB to asbestos victims. That is, because the aggregate claims by the DDB against the former James Hardie subsidiaries exceed the annual cap, the Regulation merely specifies how payments to the DDB (equal in total to that annual cap) will be rationed against each of the DDB's individual claims. Given these claims by the DDB are made only after it has made a payment to a victim and given that victims' entitlements to payments from the DDB are not conditional in any way on the DDB's ability to subsequently recover some or all of that compensation from AICF or other liable entities, the rationing arrangements do not affect victims in any way.

The DDB was consulted before the Regulation was made and supported the making of the Regulation.

I trust this information is of assistance to the Committee.

Yours sincerely


Greg Smith 10/8/12

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