



Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 38/55 – 28 May 2013



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

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2013, 70p 30 cm

Chair: Mr Stephen Bromhead MP

28 May 2013

ISSN 1448-6954

1. Legislation Review Committee – New South Wales

2. Legislation Review Digest No. 38 of 55

I Title.

II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 38 of 55

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

Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
PART ONE - BILLS	1
1. CASINO CONTROL AMENDMENT (SUPERVISORY LEVY) BILL 2013	1
2. CHILD PROTECTION LEGISLATION AMENDMENT (CHILDREN'S GUARDIAN) BILL 2013	3
3. COURTS AND OTHER MISCELLANEOUS LEGISLATION AMENDMENT BILL 2013	10
4. GOVERNMENT SECTOR EMPLOYMENT BILL 2013	12
5. MEMBERS OF PARLIAMENT STAFF BILL 2013	25
6. PETROLEUM (ONSHORE) AMENDMENT BILL 2013	30
7. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2013	39
8. SUCCESSION TO THE CROWN (REQUEST) BILL 2013	42
9. WORK HEALTH AND SAFETY (MINES) BILL 2013	45
PART TWO - REGULATIONS	56
APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	57
APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	58

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	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

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. CASINO CONTROL AMENDMENT (SUPERVISORY LEVY) BILL 2013

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

2. CHILD PROTECTION LEGISLATION AMENDMENT (CHILDREN'S GUARDIAN) BILL 2013

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

Additional reporting requirement for offenders

Given that the object of the reporting requirements placed on offenders under the Child Protection (Offenders Registration) Act 2000 is to protect children from harm, the Committee does not consider the expansion of those reporting requirements to be an undue trespass on an offender's right to privacy in those circumstances.

Security of sensitive personal information

The Committee notes the potential privacy issues associated with allowing the Children's Guardian to authorise 'a person' to carry out an audit on his or her behalf of statutory declarations containing information relating to offences. However, the Committee considers that the proposed provision contains an appropriate safeguard as it also requires the Privacy Commissioner to be satisfied that any authorised person can adequately ensure the security of the information in question.

Disclosure of spent convictions

The Committee notes that spent conviction and similar schemes restrict the circumstances in which a conviction needs to be disclosed if the conviction is for a relatively minor offence that occurred some time ago. However, given that any disclosure will occur in the context of an audit of the accuracy of statutory declarations made in relation to working with children, the Committee does not make any further comments on this issue.

3. COURTS AND OTHER MISCELLANEOUS LEGISLATION AMENDMENT BILL 2013

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

Right to Information

The Committee is concerned that information and records held by the DNA Review Panel that should be accessible to the public, will be shielded from view by the exemption afforded to the Panel for most of its functions. The Committee refers this matter to Parliament for its consideration.

4. GOVERNMENT SECTOR EMPLOYMENT BILL 2013

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

Procedural fairness

The Committee notes that the provisions proposed by clauses 68(1) and 69(3) of the Bill do not specify the processes by which an agency will afford the affected individual procedural fairness. However, the Committee considers that references in the Bill to the concept of procedural fairness are sufficient protections given that the right to respond to allegations and make submissions are key features of affording procedural fairness.

Right to information

The Committee notes that making the Public Service Commissioner's functions to inquire into matters relating to the administration or management of an agency excluded information under the *Government Information (Public Access) Act 2009* will impact on a person's right to access this kind of government information. The Committee considers that it may sometimes be in the public interest to release information relating to the administration or management of government agencies. However, given the objects of the Bill, the Committee makes no further comment on this issue.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Removal of appeal right

The Committee notes that the Premier's Second Reading Speech states that despite removing the right for certain employees to appeal to the Industrial Relations Commission against promotions, agencies will instead be required to have proper review mechanisms to deal with procedural issues. In these circumstances, the Committee makes no further comment on this issue.

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

Matters in Regulation instead of Act

Given the detailed reasons for termination provided for in the Bill, the Committee does not consider it necessary to allow the Regulations to prescribe further reasons for termination. The Committee therefore refers to Parliament for consideration whether it is appropriate to allow grounds for terminating a person's employment to be included in the Regulations rather than the principal legislation.

Commencement by proclamation

Given that the administrative arrangements associated with the Bill may take some time to implement, the Committee does not make any further comment on the commencement of the Bill by proclamation.

5. MEMBERS OF PARLIAMENT STAFF BILL 2013

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

Termination of Employment

The Committee is concerned that provisions that allow a Member of Parliament to dismiss existing staff may trespass on fair employment conditions, including rights against unfair dismissal. The Committee refers this matter to Parliament for its consideration.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s8A(1)(b)(iii) of LRA

Right of Appeal

The Committee is concerned that provisions that deny an employee access to review bodies to have their employment grievance or issue considered may make rights unduly dependent on non-reviewable decisions. The Committee refers this matter to Parliament for its consideration.

Inappropriately delegates legislative powers: s8A(1)(b)(iv) of LRA

Delegation of Power

The Committee notes that the power for the Premier to create staffing positions, and determine the employment conditions for such staff in those positions, may constitute an inappropriate delegation of legislative power.

Commencement by Proclamation

Given that the administrative arrangements associated with the Bill may take some time to implement, the Committee does not make any further comment on the commencement of the Bill by proclamation.

6. PETROLEUM (ONSHORE) AMENDMENT BILL 2013

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

Strict liability offences

The Committee notes that the Bill allows a person accused of a strict liability offence to argue a defence of honest and reasonable mistake of fact if relevant in the circumstances. Nevertheless, given that the maximum penalty for these offences is significant, the Committee refers to Parliament for consideration whether imposing strict liability for offences in these circumstances is appropriate.

Self-incrimination

In the Committee's view, requiring a person to provide information or answer a question even though it may incriminate them and then subsequently using that information against the person in criminal proceedings could unduly trespass on the person's right against self-incrimination. The Committee refers this issue to Parliament for consideration.

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

Commencement by proclamation

Given that the Bill proposes the creation of new offences (including strict liability offences) and changes to existing offences under the *Petroleum (Onshore) Act 1991* and other Acts, the Committee refers to Parliament for consideration whether commencement of the Bill by proclamation is appropriate in the circumstances.

7. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2013

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

8. SUCCESSION TO THE CROWN (REQUEST) BILL 2013

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

9. WORK HEALTH AND SAFETY (MINES) BILL 2013

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

Strict Liability

Notwithstanding the sizeable fines that accompany the strict liability clauses in Part 3 of the Bill in relation to failure to notify regulators and health and safety representatives of notifiable incidents, as well as the strict liability clauses in relation to preserving incident sites, given the importance of health and safety procedures in NSW mines, the Committee makes no further comment on this issue.

Similarly, given the importance of health and safety, the Committee makes no further comment in relation to the strict liability clauses outlined in Parts 5 and 6 of the Bill.

The Committee notes that the offence of failing to comply with a requirement of a government official in Part 4 of the Bill may be mitigated by reasonable excuse. Given this mitigation, and the overall safety objectives of the Bill, the Committee makes no further comment on the strict liability clauses in Part 4 of the Bill.

Right to silence

The Committee notes that whilst clause 58 impacts on the right to silence, a natural person will not be exposed to criminal proceedings if they object at the time to answering the question, or if they were not warned that they could object.

Privacy

With respect to the privacy implications that arise in relation to clause 70, the Committee notes that the publication of information concerning the conviction of a person for an offence against the Work Health Safety laws does not unduly trespass on an individual's right to privacy, as criminal convictions are a matter of public record.

The Committee considers the sharing of information between regulators for the purpose of assisting with the exercise of functions under Work Health Safety laws to be reasonable and makes no further comment on this issue.

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

Commencement by proclamation

Given the new regime that is to be implemented, the Committee makes no further comment on the commencement of this Act by proclamation.

PART TWO - REGULATIONS

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

Part One - Bills

1. Casino Control Amendment (Supervisory Levy) Bill 2013

Date introduced	22 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. George Souris MP
Portfolio	Minister for Tourism, Major Events, Hospitality and Racing.

PURPOSE AND DESCRIPTION

1. The purpose of this Bill is to require the payment of a casino supervisory levy in respect of each casino license issued under the *Casino Control Act 1992*. The amount of the levy is to be fixed by the regulations and is to be paid to the Independent Liquor and Gaming Authority, which is to pay it into the Consolidated Fund.

BACKGROUND

2. One of the key responsibilities of the Independent Liquor and Gaming Authority is to regulate the activities of the Sydney casino. The authority's functions include the licensing of individuals performing sensitive functions at the casino, the approval of new games, auditing of casino revenue and the monitoring of casino operations through an onsite inspectorate. As advised by the Minister in his Second Reading Speech:

Regulatory systems are in place to protect industry integrity and ensure that the operation of the casino is free from criminal influence and exploitation. Regulation also promotes community confidence that the conduct of operations at the casino is fair and the casino is operating in a reasonable manner.

3. Under existing arrangement, much of the cost of maintaining the regulatory regime is borne by taxpayers. This Bill provides for the introduction of a supervisory levy to assist in meeting those costs.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
6. Schedule 1 makes amendments that impose the casino supervisory levy, provide for the fixing of the levy and for the payment of interest on late payment and provide for the making of savings and transitional regulations.

ISSUES CONSIDERED BY COMMITTEE

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

2. Child Protection Legislation Amendment (Children's Guardian) Bill 2013

Date introduced	22 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Pru Goward MP
Portfolio	Minister for Family and Community Services and Minister for Women

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to transfer the functions relating to working with children check clearances (a clearance) required under the *Child Protection (Working with Children) Act 2012* (the Working with Children Act) from the Commission for Children and Young People (the Commission) to the Children's Guardian (the Guardian),
 - (b) to transfer the function of encouraging organisations to develop their capacity to be safe for children from the Commission to the Guardian under the Working with Children Act,
 - (c) to provide that the Parliamentary Joint Committee on Children and Young People is to monitor and review the exercise by the Guardian of functions under the Working with Children Act,
 - (d) to transfer the functions relating to the employment of children under Chapter 13 of the *Children and Young Persons (Care and Protection) Act 1998* (the Care and Protection Act), including the making and revocation of exemptions from the requirement to hold an employer's authority, from the Minister for Family and Community Services (the Minister) and the Director-General of the Department of Family and Community Services to the Guardian,
 - (e) to transfer the functions of the development and administration of voluntary accreditation schemes for programs for, and for persons working with, persons who have committed sexual offences against children from the Commission to the Guardian,
 - (f) to transfer the function of appearing as a party to Administrative Decisions Tribunal proceedings relating to the exemption of a person from compliance with reporting obligations under the *Child Protection (Offenders Registration) Act 2000* from the Commission to the Guardian,
 - (g) to transfer the functions relating to the audit of the accuracy of child-related conduct declarations that are required to accompany the nomination paper of a candidate for

election to the Legislative Assembly or the Legislative Council under the *Parliamentary Electorates and Elections Act 1912* from the Commission to the Guardian,

- (h) to provide that the Guardian may audit, or may authorise a person to audit, the accuracy of a statutory declaration outlining information on whether a worker who is exempt from the requirement to hold a clearance has been convicted of certain offences,
- (i) to provide that the Guardian is to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations,
- (j) to amend the *Child Protection (Offenders Registration) Act 2000* to adopt the definitions of employer and worker, as defined in the *Working with Children Act*, which will extend the reporting requirements under the *Child Protection (Offenders Registration) Act 2000* to volunteering arrangements,
- (k) to make consequential amendments.

BACKGROUND

- 2. The Bill arises out of work undertaken by the Minister for Family and Community Services, the Minister for Citizenship and Communities and the staff of the Commission for Children and Young People in developing a new working with children check system.
- 3. The Bill aims to improve child protection by transferring various functions to the Children's Guardian so that there is a single independent regulator for the child protection system in NSW. The Government has received support from various different organisations and agencies such as the NSW Ombudsman and the National Children's and Youth Law Centre for the administration of child protection systems by a single independent body.
- 4. The provisions in the Bill that incorporate new definitions of *employer* and *worker* into the *Child Protection (Offenders Registration) Act 2000* respond to the Director of Public Prosecution's concerns about a court decision that participation in the Work for the Dole program was not employment that registered offenders needed to report. The proposed amendments will ensure that registered offenders have to report Work for the Dole and other volunteering activities.

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 or 15 June 2013, whichever is the later.

Schedule 1 Amendment of Child Protection (Working with Children) Act 2012 No 51

Transfer of functions

7. The Working with Children Act requires a person engaged in child-related work to have a working with children check clearance (a clearance) and does not permit certain persons to be granted a clearance to engage in child-related work.
8. Schedule 1 [4] transfers the functions provided by that Act from the Commission to the Guardian.
9. Schedule 1 [12] makes it clear that the function of encouraging organisations to develop their capacity to be safe for children is transferred from the Commission to the Guardian and is to be exercised under the Working with Children Act.
10. Schedules 1 [1], [3], [8]–[11] and [14], 3.5 [1] and 3.8 [1] make amendments consequent on the transfer of those functions. Schedules 1 [2] and 3.2 [6] insert a definition of *Children's Guardian*.

Adults who reside at homes where care is provided

11. Schedule 1 [6] and [7] correct incorrect references to education and care services in section 10 of the Act, which was intended by Parliament to require adults who reside in private homes where family day care services and other child care services regulated by State legislation are provided to obtain clearances. Currently, the provision incorrectly refers to bodies that manage the provision of such services rather than the individual providers of the services. Schedule 3.4 makes a consequential amendment.
12. Schedule 1 [5] replaces the requirement for an adult who resides at the home of an approved provider under the *Children (Education and Care Services) National Law (NSW)* to hold a clearance with a requirement for an adult who resides at a home where a home based education and care service or a family day care service is provided to hold such a clearance. The requirement will not apply to an adult who resides at such a home and who is otherwise required to hold a clearance such as a person who is providing the care services at the home.
13. Schedule 1 [2] inserts definitions of *family day care service* and *home based education and care service*.

Audit of statutory declarations of volunteers

14. Schedule 1 [15] inserts proposed section 40A, which provides that the Guardian may audit the accuracy of a statutory declaration made by a worker who is exempted by the regulations from the requirement to hold a clearance. The Guardian may authorise another person to carry out such an audit, if the Guardian is advised, in writing, that the Privacy Commissioner is satisfied that the person is able to adequately provide for the security of any information obtained in the exercise of functions pursuant to the authorisation. The provision applies to a statutory declaration that contains information relating to the offences specified in Schedule 2 to the Act. For the purposes of carrying out such audits, the Commissioner of Police is authorised to disclose information relating to spent convictions and offences. If a person authorised under the proposed section reasonably believes that a statutory declaration is inaccurate, the person must inform the Guardian as soon as practicable and provide any information relevant to that

belief to the Guardian. The provision also specifies the persons and bodies to whom the Guardian may disclose information obtained under the section. The Minister may give the Guardian a written direction on the exercise of functions under the proposed section and the Guardian must comply with the direction.

Children at risk reports

15. Schedule 1 [16] provides that the Guardian may use information obtained in the course of exercising functions under the Working with Children Act for the purposes of making a report to the Director-General of the Department of Family and Community Services under section 24 (Report concerning child or young person at risk of significant harm) or 27 (Mandatory reporting) of the Care and Protection Act. A report referred to in section 29 (Protection of persons who make reports or provide certain information) of that Act may be provided to the Guardian in accordance with a requirement under the Working with Children Act.

Schedule 2 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

16. Schedule 2 [2] substitutes the requirement that, as a condition of an authorised carer's authorisation, the carer notify the designated agency if any person (other than the carer) who is of or above the age of 18 years is residing at the carer's home on a regular basis and has been doing so for a period of at least 3 months. Instead, an authorised carer must notify the designated agency, as soon as practicable, if such a person commences to reside at the carer's home and will continue to do so on a regular basis. The requirement to notify the designated agency also applies when a minor residing at the carer's home attains the age of 18 years.
17. Chapter 10 of the Care and Protection Act provides for the establishment and principal functions of the statutory office of the Guardian. Schedule 2 [3] amends section 181 to include the descriptions of the functions transferred from the Commission to the Guardian, being the exercise of functions relating to persons engaged in child-related work, including clearances, and the development and administration of voluntary accreditation schemes for programs for, and for persons working with, persons who have committed sexual offences against children. It also includes a description of the functions transferred from the Minister to the Guardian, which relate to the employment of children, including the making and revocation of exemptions from the requirement to hold an employer's authority. The proposed amendment also provides that the Guardian is to establish a register for the purpose of the authorisation of individuals as authorised carers, and to maintain that register, in accordance with the regulations.
18. Schedule 2 [4] inserts proposed section 183, which enables the Guardian to appoint such advisory committees as the Guardian considers appropriate in the exercise of the Guardian's functions.
19. Schedule 2 [5] inserts proposed sections 186A and 186B, which specify the organisations to which the Guardian may refer information and provide protection from liability for the Guardian, a member of an advisory committee of the Guardian and any person acting under the direction of the Guardian or such an advisory committee. Under proposed section 186A, the Guardian may refer information relating to a possible criminal offence that is obtained in the course of exercising functions to the

Commissioner of Police, the Ombudsman, the Director-General of the Department of Family and Community Services or any other investigative or government agency that the Guardian considers appropriate.

20. Schedule 2 [6] and [7] transfer functions relating to child-related employment from the Minister to the Guardian. Those functions include the granting, refusal and revocation of employers' authorities, which authorise employers to employ persons under the age of 15 years in prescribed employment and persons under the age of 16 years as models, subject to certain conditions. Schedules 1 [13] and 2 [8], [9], [11] and [12] make consequential amendments.
21. Schedule 2 [10] reduces the period within which the Guardian must determine an application for an employer's authority from 28 days to 14 days.

Schedule 3 Amendment of other Acts

Consequential amendments

22. Schedule 3.1, 3.3, 3.6 and 3.7 make amendments consequent on the repeal of Part 7 of the *Commission for Children and Young People Act 1998*.

Child Protection (Offenders Registration) Act 2000

23. Schedule 3.2 [2] inserts the definitions of *employer* and *worker*, as defined in the Working with Children Act, which will extend the reporting requirements under the *Child Protection (Offenders Registration) Act 2000* to volunteering arrangements.
24. Schedule 3.2 [1] makes a consequential amendment.
25. Schedule 3.2 [3]–[5] transfer the function of appearing as a party to Administrative Decisions Tribunal proceedings relating to the exemption of a person from compliance with reporting obligations under the *Child Protection (Offenders Registration) Act 2000* from the Commission to the Guardian.

Commission for Children and Young People Act 1998

26. Schedule 3.5 [2] updates an obsolete reference.
27. Schedule 3.5 [3] provides that the Parliamentary Joint Committee on Children and Young People is to monitor and review the exercise by the Guardian of functions under the Working with Children Act.
28. Schedule 3.5 [4] provides that the Committee may report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the exercise of the Guardian's functions under the Working with Children Act to which, in the opinion of the Committee, the attention of Parliament should be directed.

Ombudsman Act 1974

29. Schedule 3.8 [2] makes it clear that proposed section 25DA of the *Ombudsman Act 1974* (to be inserted by the Working with Children Act) does not limit the information that the Ombudsman may otherwise disclose to the Guardian under that Act, or any other Act or law. Proposed section 25DA provides that the Ombudsman may disclose certain information to the Guardian for the purpose of the exercise of functions under the Working with Children Act.

Parliamentary Electorates and Elections Act 1912

30. Schedule 3.9 [2]–[6] amend the *Parliamentary Electorates and Elections Act 1912* to transfer the functions of the Commission relating to the audit of child-related conduct declarations that are required to accompany the nomination paper of a candidate for election to the Legislative Assembly or the Legislative Council under that Act to the Guardian.
31. Schedule 3.9 [1] omits the definition of *CYP Commission* and inserts a definition of *Children's Guardian*.

ISSUES CONSIDERED BY COMMITTEE

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

Additional reporting requirement for offenders

32. Schedule 3.2[2] of the Bill inserts the definitions of *employer* and *worker* from the *Child Protection (Working with Children) Act 2012* into the *Child Protection (Offenders Registration) Act 2000*. This will extend the reporting requirements for certain offenders under the *Child Protection (Offenders Registration) Act 2000* to volunteering arrangements.

Given that the object of the reporting requirements placed on offenders under the Child Protection (Offenders Registration) Act 2000 is to protect children from harm, the Committee does not consider the expansion of those reporting requirements to be an undue trespass on an offender's right to privacy in those circumstances.

Security of sensitive personal information

33. Schedule 1[15] of the Bill proposes to insert a new section 40A into the *Child Protection (Working with Children) Act 2012*. That provision will allow the Children's Guardian or a person authorised by the Children's Guardian to audit the accuracy of statutory declarations made by workers who are exempt from the requirement to hold a working with children check clearance.

The Committee notes the potential privacy issues associated with allowing the Children's Guardian to authorise 'a person' to carry out an audit on his or her behalf of statutory declarations containing information relating to offences. However, the Committee considers that the proposed provision contains an appropriate safeguard as it also requires the Privacy Commissioner to be satisfied that any authorised person can adequately ensure the security of the information in question.

Disclosure of spent convictions

34. The Bill proposes to insert a new section 40A(4) into the *Child Protection (Working with Children) Act 2012*. This will authorise the Police to disclose information relating to spent convictions (despite anything to the contrary in the *Criminal Records Act 1991*) for the purposes of the Children's Guardian auditing statutory declarations made by exempt workers. It will also allow the Police to disclose information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1990*.

The Committee notes that spent conviction and similar schemes restrict the circumstances in which a conviction needs to be disclosed if the conviction is for a relatively minor offence that occurred some time ago. However, given that any disclosure will occur in the context of an audit of the accuracy of statutory declarations made in relation to working with children, the Committee does not make any further comments on this issue.

3. Courts and Other Miscellaneous Legislation Amendment Bill 2013

Date introduced	23 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The purpose of this Bill is to amend a series of Acts as follows:
 - (a) to amend the *Anti-Discrimination Act 1977* to clarify that in the case of indirect discrimination there is no need to provide that a ground of discrimination under the Act is a reason for the discriminatory requirement or condition;
 - (b) to amend the *Civil Procedure Act 2005* to update the way in which the maximum total payment under a garnishee order is calculated;
 - (c) to amend the *Dust Diseases Tribunal Act 1989* to enable the President of the Tribunal to delegate to another member of the Tribunal functions relating to managing the proceedings list, namely, fixing the time, place and before whom proceedings are to be held;
 - (d) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to allow accused detainees to appear in the first appearance bail proceedings via an audio or audio visual link during the Christmas/New Year period in each year and the Local Court Annual Conference in any year;
 - (e) to amend the *Fines Act 1996* to allow certain court registrars to authorise employees of the Department of Attorney General and Justice to consider applications for further time to pay a court-imposed fine;
 - (f) to amend the *Government Information (Public Access) Act 2009* to exclude information relating to the functions of the DNA Review, other than its functions relating to reporting and making recommendations to the Minister, from being able to be accessed under that Act;
 - (g) to amend the *Local Court Act 2007* to provide for the appointment of a legally qualified and admitted police prosecutor as a member of the Local Court Rule Committee when the Committee is exercising its functions in respect of matters relating to the Court's criminal jurisdiction;
 - (h) to amend the *Young Offenders Act 1997* to authorise the exchange of information relating to early intervention and diversionary programs administered by the Department of Attorney General and Justice.

BACKGROUND

2. This Bill makes a series of miscellaneous amendments to various Acts in response to recent Court decisions, as well as correcting drafting issues and legislative oversights.

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.
5. Clause 3 makes it clear that the explanatory notes contained in proposed Schedule 1 do not form part of the proposed Act.
6. Schedule 1 makes the amendments described above in the Overview. The amendments are explained in detail in the explanatory note that relates to the Act concerned.

ISSUES CONSIDERED BY COMMITTEE

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

Right to Information

7. Proposed amendments to Schedule 2 of the *Government Information (Public Access) Act 2009* will exclude information relating to the functions of the DNA Review Panel, other than its functions relating to reporting and making recommendations to the Minister, from being able to be accessed under the Act.

The Committee is concerned that information and records held by the DNA Review Panel that should be accessible to the public, will be shielded from view by the exemption afforded to the Panel for most of its functions. The Committee refers this matter to Parliament for its consideration.

4. Government Sector Employment Bill 2013

Date introduced	23 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier and Minister for Western Sydney

PURPOSE AND DESCRIPTION

1. The object of this Bill is to repeal the *Public Sector Employment and Management Act 2002* and replace it with legislation to modernise government sector employment.
2. This Bill is cognate with the *Members of Parliament Staff Bill 2013*.

BACKGROUND

3. The Bill arises from recent reviews of the *Public Sector Employment and Management Act 2002* by the Public Service Commissioner and the NSW Commission of Audit.
4. In February 2013, the Government accepted recommendations of the Public Service Commissioner to rewrite the *Public Sector Employment and Management Act 2002* and to modernise the public service. In particular, the Public Service Commissioner found that departments and agencies are hampered by a poorly designed, outdated and rigid set of workforce arrangements.
5. In January 2012, the NSW Commission of Audit issued a number of recommendations on reforming the public sector workforce. It found that the structure of government employment required significant overhaul. Some of its recommendations included lack of transparent leadership responsibility; need for greater flexibility in staff deployment; overly layered middle management and insufficient responsibility devolved to the highest levels.
6. The reforms are intended to create an outward looking and customer focused public service.

OUTLINE OF PROVISIONS

Part 1 Preliminary

7. Clause 1 sets out the name (also called the short title) of the proposed Act.
8. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
9. Clause 3 defines certain words and expressions used in the proposed Act. These include:
 - (a) *Government sector* comprises the following:

- i the Public Service,
- ii the Teaching Service,
- iii the NSW Police Force,
- iv the NSW Health Service,
- v the Transport Service,
- vi any other service of the Crown (including the service of any NSW government agency),
- vii persons or bodies prescribed by the regulations.

(b) *Public Service agency* means:

- i a Department, or
 - ii a Public Service executive agency related to a Department, or
 - iii a separate Public Service agency.
10. *Public Service employee* means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a Public Service agency.
11. Clause 4 sets out the objects of the proposed Act.
12. Clause 5 specifies persons to whom the proposed Act does not apply. In particular, judicial officers, parliamentary or Ministerial staff and staff of ICAC, the Audit Office and the Judicial Commission.

Part 2 Ethical framework for the government sector

13. This Part reproduces similar provisions in the current Act.
14. Clause 6 sets out the objective of Part 2.
15. Clause 7 sets out the core values for the government sector, being integrity, trust, service and accountability, and the principles that guide their implementation.
16. Clause 8 contains general provisions, including that the Public Service Commissioner has the function of promoting and maintaining the government sector core values.

Part 3 Public Service Commissioner and Advisory Board

17. This Part reproduces provisions (with some modification) enacted in 2011.

Division 1 Public Service Commissioner

18. Clause 9 continues to provide for the appointment of a Public Service Commissioner.
19. Clause 10 outlines the principal objectives of the Commissioner.

20. Clause 11 outlines the general functions of the Commissioner. The Bill contains additional specific functions including the making of government sector employment rules, assigning in certain cases senior executives to roles in the Public Service and reporting on workforce diversity.
21. Clause 12 enables the Commissioner to make government sector employment rules on any matter for which rules are authorised to be made by the proposed Act.
22. Clause 13 enables the Commissioner to give a direction to the head of a government sector agency on a specific matter in relation to the employees of that agency.
23. Clause 14 provides that the Commissioner is to report to the Premier in connection with the exercise of the Commissioner's functions but is not subject to the control and direction of the Premier in the exercise of those functions.
24. Clause 15 requires the Commissioner to provide an annual report to the Premier on the Commissioner's work and activities, and the state of the government sector.
25. Clause 16 enables the Commissioner to require the head of a government sector agency to provide the Commissioner with a report on matters relating to the employees of the agency or its employment policies and practices.
26. Clause 17 makes miscellaneous provisions in relation to the Commissioner, including provisions relating to the staff of the Commissioner, the delegation of the Commissioner's functions and the publication of government sector employment information on the Commissioner's website.

Division 2 Public Service Commission Advisory Board

27. Clause 18 continues the Public Service Commission Advisory Board.
28. Clause 19 outlines the functions of the Advisory Board.

Part 4 The Public Service

29. This Part establishes a new Public Service to replace the existing Government Services that comprises Public Service and Non-Public Service Divisions.

Division 1 General

30. Clause 20 provides that the Public Service of New South Wales consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.
31. Clause 21 enables the Government of New South Wales to employ persons in the Public Service to enable Ministers, statutory bodies or statutory officers to exercise their functions, or for any other purpose.
32. Clause 22 provides that Public Service employees are employed in:
 - (a) Departments (to be listed in Part 1 of Schedule 1 to the proposed Act), or
 - (b) Public Service executive agencies related to a Department (to be listed in Part 2 of Schedule 1), or

(c) separate Public Service agencies (to be listed in Part 3 of Schedule 1).

33. Administrative arrangements orders under proposed Part 7 of the *Constitution Act 1902* can create, abolish or change the name of these Public Services agencies and amend Schedule 1 to the proposed Act accordingly.

Division 2 Secretaries of Departments

34. Clause 23 provides that the head of a Department is the Secretary of the Department. Secretaries are appointed by the Minister administering the proposed Act (or delegate) and are subject to the Public Service senior executive provisions of this Part.
35. Clause 24 provides that the Minister (or delegate) may appoint a Public Service employee to act as the Secretary of a Department if the office of the Secretary is vacant or the Secretary is unavailable.
36. Clause 25 provides that the Secretary of a Department is responsible to the Minister or Ministers to whom the Department is responsible for the general conduct and management of the functions and activities of the Department in accordance with government sector core values.
37. Clause 26 enables the Secretary of a Department to exercise the employer functions of the Government in relation to:
- (a) Public Service senior executives assigned to roles in the Department and other employees of the Department, and
 - (b) certain heads of Public Service executive agencies related to the Department and Public Service senior executives assigned to roles in Public Service executive agencies related to the Department.
38. The employer functions of the Government are all the functions of an employer in respect of employees, including the power to employ persons, assign their roles and terminate their employment.
39. Clause 27 enables the Secretary of a Department to delegate functions to employees of the Department or of other Public Service agencies, or to statutory officers.

Division 3 Heads of other Public Service agencies

40. Clause 28 provides that the head of a Public Service agency (other than a Department) is the holder of the office specified in Part 2 or 3 of Schedule 1 in relation to the agency concerned. Appointments to an office of head are to be made:
- (a) in the case of a Public Service executive agency related to a Department—by the Secretary of the Department, or
 - (b) in the case of a separate Public Service agency—by the Minister administering the proposed Act (or delegate).
41. However, if Schedule 1 provides that some other person exercises employer functions in relation to the head, appointments to the office of the head are to be made by that other person.

42. Clause 29 provides that the person authorised to appoint the head of a Public Service agency (other than a Department) may appoint a Public Service employee to act as the head of the agency if the office of the head is vacant or the head is unavailable.
43. Clause 30 provides that the head of a Public Service agency (other than a Department) is responsible to the Minister or Ministers to whom the agency is responsible for the general conduct and management of the functions and activities of the agency in accordance with government sector core values.
44. Clause 31 enables the head of a Public Service agency (other than a Department) to exercise employer functions in relation to employees of the agency, other than Public Service senior executives of an agency related to a Department (see clause 26).
45. Clause 32 enables the head of a Public Service agency (other than a Department) to delegate certain functions of the head (including functions under the proposed Act and employer functions) to employees of the agency or of other Public Service agencies, or to statutory officers. The clause also enables sub-delegation of the head's functions in certain circumstances.

Division 4 Public Service senior executives

46. Clause 33 provides that Division 4 applies to Public Service senior executives, being the Secretary of a Department, the heads of other Public Service agencies and other Public Service employees who are employed in a Public Service senior executive band. The employer of a Public Service senior executive is the person authorised by the proposed Act to exercise employer functions in relation to the executive that is:
 - (a) for the Secretary of a Department—the Minister (or delegate), and
 - (b) for executives of a Department or a Public Service executive agency related to a Department—the Secretary of the Department, and
 - (c) for executives of separate Public Service agencies—the head of the agency.
47. Clause 34 provides that employment as a Public Service senior executive may be:
 - (d) ongoing employment (being employment that continues until the executive resigns or his or her employment is terminated), or
 - (e) term employment (being employment for a specified period or for the duration of a specified task, unless the executive sooner resigns, or his or her employment is sooner terminated).
48. Clause 35 enables the Minister, with the advice of the Public Service Commissioner, to determine the bands in which Public Service senior executives are to be employed (the senior executive bands determination).
49. Clause 36 provides that the government sector employment rules may deal with any matter relating to the employment of Public Service senior executives, including work level standards for roles in bands in which those executives are employed, methods of job evaluation for the roles of those executives and capabilities for the roles of those executives.

50. Clause 37 provides that a Public Service senior executive is to be employed in a band determined under the senior executive bands determination that the employer of the executive considers appropriate for the role of the executive.
51. Clause 38 provides that a Public Service senior executive may be assigned to a role in any Public Service agency in the band in which the executive is employed and assigned to a different role within that band from time to time. Executives may be assigned to roles by the employer of the executive or by the Public Service Commissioner.
52. Clause 39 provides that a Public Service senior executive is to be employed under a written contract of employment, and sets out the matters with which the contract is to deal.
53. Clause 40 makes provision for the remuneration, employment benefits and allowances for Public Service senior executives (in accordance with the remuneration package for the relevant bands determined by the Statutory and Other Offices Remuneration Tribunal).
54. Clause 41 enables the employer of a Public Service senior executive to terminate the employment of the executive at any time for any or no stated reason and without notice. Such an executive is entitled only to the compensation provided for in his or her employment contract.

Division 5 Public Service employees (other than senior executives)

55. Clause 42 provides that Division 5 applies to Public Service employees other than Secretaries of Departments, heads of certain Public Service agencies and other Public Service senior executives (Public Service non-executive employees).
56. Clause 43 provides that employment as a Public Service non-executive employee may be:
 - (a) ongoing employment (being employment that continues until the employee resigns or his or her employment is terminated), or
 - (b) temporary employment (being employment for a temporary purpose), or
 - (c) casual employment (being employment to carry out irregular, intermittent, short-term, urgent or other work as and when required).
57. Clause 44 allows the engagement of Public Service non-executive employees to be made subject to conditions notified to the employee on engagement (such as probation, health clearances and citizenship or residency requirements).
58. Clause 45 provides that Public Service non-executive employees are to be employed in a Public Service agency in a classification of work determined by the head of the Public Service agency in which the person is employed.
59. Clause 46 enables the head of a Public Service agency to assign Public Service non-executive employees to roles in the agency within the classification of work in which the employees are employed, and enables them to be assigned to different roles from time to time.

60. Clause 47 enables the head of a Public Service agency to terminate the employment of a Public Sector non-executive employee of the agency on certain specified grounds, if the employment is ongoing. If the employment is not ongoing, the head may terminate the employment at any time.
61. Clause 48 provides that the government sector employment rules may deal with any matter relating to the employment of Public Service non-executive employees.

Division 6 Industrial relations employer functions

62. Clause 49 contains provisions relating to the interpretation and application of Division 6.
63. Clause 50 provides that the Industrial Relations Secretary (being currently the Secretary of the Treasury) is, for the purposes of any industrial proceedings relating to Public Service employees, taken to be the employer of those employees.
64. Clause 51 enables the Industrial Relations Secretary to enter into an agreement with any association or organisation representing a group of Public Service employees with respect to industrial matters.
65. Clause 52 enables the Industrial Relations Secretary to make determinations fixing conditions of employment of Public Service employees.
66. Clause 53 contains miscellaneous provisions in relation to the Industrial Relations Secretary, including provisions relating to the functions of the Secretary and the delegation of those functions.

Division 7 Additional Public Service employment provisions

67. Clause 54 provides that Public Service employees have the entitlements to extended and other leave prescribed by the regulations.
68. Clause 55 provides that Public Service employees may resign their employment by written notice of resignation.
69. Clause 56 enables the head of a Public Service agency to retire employees of the agency if they are unfit to perform or incapable of performing their duties.
70. Clause 57 preserves the Crown's right to dispense with the services of any Public Service employee.
71. Clause 58 excludes certain industrial and legal proceedings with respect to the employment of Public Service senior executives and with respect to the decision to engage or not engage any Public Service employee.
72. Clause 59 deals with the construction, in other Acts, instruments and contracts, of references to officers, employees or members of staff of statutory bodies.
73. Clause 60 enables the Minister or Treasurer to give statutory bodies directions requiring payment, by the statutory body, of employer costs for Public Service employees who are employed to enable the body to exercise its functions.
74. Clause 61 deals with civil liability with respect to staff of statutory bodies.

75. Clause 62 provides that a group of Public Service employees employed to enable a statutory body to exercise its functions is taken to be part of the statutory body for the purposes of privacy legislation.

Part 5 Government sector employees

76. This Part deals with Public Service employees and employees in the wider government sector.
77. Clause 63 provides that the head of a government sector agency (including a State owned corporation) is responsible for workplace diversity within the agency. The government sector employment rules may deal with workplace diversity.
78. Clause 64 provides that the government sector employment rules may deal with the transfer of employees between or within government sector and other agencies (by way of secondment or permanent transfer).
79. Clause 65 enables cross-agency employment by allowing a person to be employed by 2 or more government sector agencies.
80. Clause 66 allows for temporary assignments of employees between government sector agencies and between those agencies and other relevant bodies (such as private sector entities, universities and other Australian government agencies).
81. Clause 67 provides that the head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency.
82. Clause 68 provides that the government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance. If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the head of the agency may take certain actions, including terminating the employment of the employee, or reducing the remuneration or the classification or grade of the employee.
83. Clause 69 provides that the head of a Public Service agency or other prescribed government sector agency is responsible for dealing with any misconduct (or any conviction for a serious offence) by employees of the agency. This may include terminating the employment of the employee, imposing a fine on the employee or reducing the remuneration or the classification or grade of the employee, among other actions.
84. Clause 70 enables the head of a government agency to suspend an employee from duty (and withhold remuneration) in connection with any allegation of misconduct, serious criminal charges or corrupt findings or investigations of ICAC.
85. Clause 71 provides that a person employed in any government sector agency who is nominated for election to the Legislative Assembly or Legislative Council is to be granted leave of absence until the result of the election is declared. If the person is elected, the person is required to resign from the government sector agency.

86. Clause 72 provides for the re-employment, in certain circumstances, of employees of government sector agencies who resign to contest Commonwealth elections but fail to be elected.
87. Clause 73 provides that the doctrine of incompatibility of office does not prevent the holder of a position in a government sector agency from being appointed to another position in that or any other government sector agency, or require the holder to surrender or vacate the original position.
88. Clause 74 provides that Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996* (Unfair contracts) does not apply to employment contracts of employees of government sector agencies that are alleged to be unfair for any reason relating to excess employees.

Part 6 Removal of statutory officers

89. This Part reproduces provisions of the existing Act that is being repealed.
90. Clause 75 provides that Part 6 applies to:
 - (a) a person appointed by the Governor or a Minister to a statutory office where the Act concerned provides that the holder of the office holds it for a specified term, and
 - (b) a director or chief executive officer of a statutory State owned corporation.
91. Clause 76 specifies persons to whom Part 6 does not apply (such as Ministers, judicial officers, Public Service senior executives and statutory officers whose removal requires an address of both Houses of Parliament).
92. Clause 77 enables the Governor to remove a person to whom Part 6 applies from office at any time for any or no stated reason and without notice.
93. Clause 78 entitles a person who is removed from office under Part 6 (other than part-time office holders) to compensation for loss of remuneration as determined by the Statutory and Other Offices Remuneration Tribunal.
94. Clause 79 contains provisions relating to the operation of Part 6.

Part 7 Miscellaneous

95. Clause 80 provides that the proposed Act will bind the Crown.
96. Clause 81 enables the Minister to delegate the Minister's functions under the proposed Act to any authorised person.
97. Clause 82 enables the Minister to direct a specific person to conduct a special inquiry into any matter relating to a government sector agency or a NSW government agency.
98. Clause 83 enables the Public Service Commissioner or the Secretary of the Department of Premier and Cabinet (or a person authorised by either) to conduct an inquiry into any matter relating to the administration or management of a government sector agency.

99. Clause 84 provides that nothing in the proposed Act limits a Minister's ordinary and necessary departmental authority with respect to the control and direction of staff and work.
100. Clause 85 preserves the operation of the *Industrial Relations Act 1996* and State superannuation legislation.
101. Clause 86 provides that nothing in the proposed Act prevents the head of a Public Service agency or a Public Service senior executive or employee from also being appointed to a statutory office.
102. Clause 87 provides that proceedings for offences against the regulations may be dealt with summarily before the Local Court.
103. Clause 88 enables the Governor to make regulations for the purposes of the proposed Act. Regulations may be made for any purpose for which government sector employment rules may be made.
104. Clause 89 provides for the review of the proposed Act in 5 years.

Schedule 1 Public Service Agencies

105. The Schedule will list Departments, Executive agencies related to Departments and separate agencies.

Schedule 2 Provisions relating to Public Service Commissioner

106. This Schedule continues existing provisions relating to the Public Service Commissioner.

Schedule 3 Members and procedure of Public Service Commission Advisory Board

107. This Schedule continues existing provisions relating to the members and procedure of the Public Service Commission Advisory Board.

Schedule 4 Savings, transitional and other provisions

108. This Schedule contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule:
 - (a) continues the employment of existing staff of the Government Service as employees in the Public Service, and
 - (b) continues in office the existing Public Service Commissioner and departmental heads, and
 - (c) provides for the staged implementation of the new senior executive employment arrangements, and
 - (d) preserves existing conditions of employment.

Schedule 5 Repeal of existing Act and Regulation

109. This Schedule repeals the *Public Sector Employment and Management Act 2002* and the *Public Sector Employment and Management Regulation 2009*.

Schedule 6 Amendment of other Acts

110. This Schedule contains amendments to the following Acts:

6.1 Anti-Discrimination Act 1977

111. Part 9A of that Act relating to Equal Opportunity in Public Employment is omitted as a result of the transfer of provisions relating to workforce diversity to section 63 of the proposed Act.

6.2 Constitution Act 1902

112. The amendments transfer to the *Constitution Act 1902* provisions of the existing *Public Sector Employment and Management Act 2002* relating to administrative changes orders. In addition to maintaining existing powers to establish, abolish or change the name of existing Public Service Departments and other agencies, to transfer affected staff and construe legislative references as a result of administrative changes, the new provisions give statutory recognition to the allocation to Ministers of the administration of Acts and other portfolio responsibilities. The new orders will be known as administrative arrangements orders.

6.3 Government Information (Public Access) Act 2009

113. The amendment enables the exclusion of access to information held by the Public Service Commissioner in relation to inquiries under the proposed Act.

6.4 Industrial Relations Act 1996

114. The amendments abolish promotion appeals in the public sector and make consequential changes.

6.5 Interpretation Act 1987

115. The amendments make consequential changes.

6.6 Police Act 1990

116. The amendments make consequential changes.

6.7 Public Sector Employment and Management Act 2002

117. The Act is amended before its repeal to enable the transfer of provisions relating to government procurement of goods and services to the *Public Works Act 1912*.

6.8 Public Works Act 1912

118. The Act is consequentially amended and renamed the *Public Works and Procurement Act 1912*.

6.9 Statutory and Other Offices Remuneration Act 1975

119. The amendments authorise the Statutory and Other Offices Remuneration Tribunal to determine the appropriate remuneration package for Secretaries of Departments and other bands of Public Service senior executives.

6.10 Transport Administration Act 1988

120. The amendments transfer the employment of the heads of Roads and Maritime Services, the State Transit Authority and RailCorp from the Government Service to the Transport Service.

6.11 Transport Legislation Amendment Act 2011

121. The amendment makes a consequential repeal.

6.12 Workers Compensation Act 1987

122. The amendment transfers a provision relating to workers compensation liability from the *Public Sector Employment and Management Act 2002* to the Act.

ISSUES CONSIDERED BY COMMITTEE

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

Procedural fairness

123. Clauses 68(1) and 69(3) of the Bill state that the new Government Sector Employment Rules may specify the procedural requirements for dealing with unsatisfactory performance and allegations of misconduct consistently with procedural fairness.
124. The Committee notes that Part 2.7 of the *Public Sector Employment and Management Act 2002* currently sets out some of the processes for dealing with unsatisfactory performance and allegations of misconduct. Unlike the provisions proposed by the Bill, these provisions specify in more detail various rights of affected persons, including the opportunity to respond to the allegation and make a submission.

The Committee notes that the provisions proposed by clauses 68(1) and 69(3) of the Bill do not specify the processes by which an agency will afford the affected individual procedural fairness. However, the Committee considers that references in the Bill to the concept of procedural fairness are sufficient protections given that the right to respond to allegations and make submissions are key features of affording procedural fairness.

Right to information

125. Schedule 6.3 of the Bill proposes to make the Public Service Commissioner's functions to inquire into matters relating to the administration or management of a government sector agency excluded information under the *Government Information (Public Access) Act 2009*. This means that a person, organisation or agency will not be able to make a formal access application for this kind of information.

The Committee notes that making the Public Service Commissioner's functions to inquire into matters relating to the administration or management of an agency excluded information under the *Government Information (Public Access) Act 2009* will impact on a person's right to access this kind of government information. The Committee considers that it may sometimes be in the public interest to release information relating to the administration or management of government agencies. However, given the objects of the Bill, the Committee makes no further comment on this issue.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Removal of appeal right

126. Schedule 6.4[9] of the Bill removes Part 7, Division 2 of Chapter 2 from the *Industrial Relations Act 1996*. These provisions give certain public sector employees the right to appeal against an agency's decision to appoint a different person to a role that the public sector employee had also applied for. The Bill proposes various other consequential amendments to effect this change.

The Committee notes that the Premier's Second Reading Speech states that despite removing the right for certain employees to appeal to the Industrial Relations Commission against promotions, agencies will instead be required to have proper review mechanisms to deal with procedural issues. In these circumstances, the Committee makes no further comment on this issue.

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

Matters in Regulation instead of Act

127. Clause 47 of the Bill contains a detailed list of reasons for terminating the employment of a non-executive employee who has ongoing employment in the public service. Clause 47 also allows the Regulations to prescribe other grounds for which an employee may be terminated.

Given the detailed reasons for termination provided for in the Bill, the Committee does not consider it necessary to allow the Regulations to prescribe further reasons for termination. The Committee therefore refers to Parliament for consideration whether it is appropriate to allow grounds for terminating a person's employment to be included in the Regulations rather than the principal legislation.

Commencement by proclamation

128. Clause 2 of the Bill provides for the Act to commence on a day or days to be appointed by proclamation.

Given that the administrative arrangements associated with the Bill may take some time to implement, the Committee does not make any further comment on the commencement of the Bill by proclamation.

5. Members of Parliament Staff Bill 2013

Date introduced	23 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to provide for new arrangements under which the staff of political office holders (which includes Ministers and the Leader of the Opposition in the Legislative Assembly) may be employed, as well as the staff who assist Members of Parliament in their electorate and Parliamentary duties.

BACKGROUND

2. At present, the staff of political office holders are employed as special temporary employees under the *Public Sector Employment and Management Act 2002* in the Department of Premier and Cabinet and the staff who assist Members of Parliament in their electorate and Parliamentary duties are employed by the relevant Presiding Officers pursuant to a long standing delegation of the Governor's employment powers under the *Constitution Act 1902*. Under the new arrangements, political office holders will be authorised to employ their own staff and Members of Parliament will be authorised to employ staff to assist those Members in their electorate and Parliamentary duties.
3. This Bill is cognate with the *Government Sector Employment Bill 2013*.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 defines certain words and expressions used in the proposed Act. A political office holder means a Minister, the Leader of the Opposition in the Legislative Assembly or the holder of a Parliamentary office determined by the Premier (see proposed section 4). The relevant Presiding Officer means, in relation to persons employed by a member of the Legislative Council, the President of the Legislative Council or, in relation to persons employed by a member of the Legislative Assembly, the Speaker of the Legislative Assembly.
7. Clause 4 enables the Premier to determine that, having regard to the duties associated with a Parliamentary office held by a member of Parliament, the holder of that office is entitled to employ staff in the member's capacity as a political office holder.

8. Clause 5 authorises a political office holder to employ a person as a member of the office holder's staff. The power to employ staff under the proposed Part is subject to arrangements approved by, and to the conditions determined by, the Premier (including the number of staff that a political office holder may employ).
9. Clause 6 provides that the written agreement by which a person is employed under the proposed Part is to be in the terms of the model agreement that has been approved by the Premier.
10. Clause 7 enables the Premier to make determinations fixing the conditions of employment of persons employed under the proposed Part.
11. Clause 8 specifies the circumstances in which the employment of a person under the proposed Part terminates. The services of a person employed by a political office holder may be dispensed with at any time by that office holder.
12. Clause 9 enables the staff employed by a political office holder to be temporarily assigned to carry out work for another political office holder.
13. Clause 10 provides for the provision of administrative and other support services for political office holders and their staff.
14. Clause 11 enables the Premier to delegate any of the Premier's functions under the proposed Part.
15. Clause 12 enables a political office holder to delegate his or her power to employ staff to a member of the office holder's staff.
16. Clause 13 provides that the committing or incurring of money appropriated out of the Consolidated Fund for the purposes of the employment of staff under the proposed Part may be delegated to a member of staff of a political office holder.
17. Clause 14 authorises a member of Parliament to employ staff to assist the member in exercising his or her functions as a member of Parliament. A member of Parliament who is a political office holder may also employ staff under the proposed section to assist the member in his or her function as a member of Parliament.
18. Clause 15 provides that a member of Parliament who holds an office specified in Schedule 1 to the proposed Act (a special office holder) may, in addition to the entitlement to employ staff under proposed section 14, employ staff to assist the member in exercising the functions of that special office. A political office holder is not authorised to employ staff under the proposed section.
19. Clause 16 provides that the power to employ staff under the proposed Part is subject to arrangements approved by, and to the conditions determined by, the relevant Presiding Officer.
20. Clause 17 provides that the written agreement by which a person is employed under the proposed Part is to be in the terms of the model agreement that has been approved by the relevant Presiding Officer.

21. Clause 18 provides that the number of staff that a member of Parliament is entitled to employ under proposed section 14, and that a special office holder (other than the President or Deputy President of the Legislative Council or the Speaker or Deputy Speaker of the Legislative Assembly) is entitled to employ under proposed section 15, is to be determined by the Parliamentary Remuneration Tribunal.
22. Clause 19 enables the relevant Presiding Officers to make determinations fixing the conditions of employment of persons employed under the proposed Part.
23. Clause 20 specifies the circumstances in which the employment of a person under the proposed Part terminates. The services of a person employed by a member of Parliament may be dispensed with at any time by that member.
24. Clause 21 provides for the provision of administrative and other support services in relation to staff employed by members of Parliament.
25. Clause 22 enables the relevant Presiding Officers to delegate their functions under the proposed Part.
26. Clause 23 makes it clear that political office holders may also employ staff under proposed Part 3 in their capacity as members of Parliament except in certain circumstances.
27. Clause 24 deals with vicarious liability in respect of torts committed by members of Parliament in relation to staff employed under the proposed Part.
28. Clause 25 deals with the liability of members of Parliament as employers of staff.
29. Clause 26 provides that industrial proceedings may not be taken in relation to the employment of staff under the proposed Act.
30. Clause 27 enables the Governor to make regulations for the purposes of the proposed Act.
31. Schedule 1 specifies certain Parliamentary offices as special offices for the purposes of Part 3 of the proposed Act. A person who holds one of these offices is entitled to employ additional staff to assist the person in exercising the functions of that office.
32. Clause 1 enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.
33. Clause 2 provides that existing staff employed under Part 2.5 of the Public Sector Employment and Management Act 2002 as special temporary employees in the office of a Minister or the Leader of the Opposition are taken to be employed under Part 2 of the proposed Act.
34. Clause 3 provides that existing staff of members of Parliament (other than those employed under Part 2.5 of the Public Sector Employment and Management Act 2002) are taken to be employed under Part 3 of the proposed Act.

35. Clause 4 provides that existing staff members retain their accrued leave but are not entitled to severance pay or to cash out their leave because of the new employment arrangements.
36. Clause 5 ensures that the annual appropriation in respect of the Department of Premier and Cabinet for the year in which the proposed Act commences includes an appropriation for the employment of staff by political office holders under Part 2 of the proposed Act.
37. Clause 6 provides that the Order made under section 47 of the Constitution Act 1902 which gave the relevant Presiding Officers power to appoint staff to the service of both Houses of Parliament will no longer apply in relation to the employment of staff under Part 3 of the proposed Act.
38. Clauses 7 and 8 deal with the retention and transfer of records of information created or received by political office holders and their staff.
39. Schedule 3 amends the Acts specified in the Schedule. The amendments are mostly consequential on the change of status of the staff of political office holders and other members of Parliament (as the staff will no longer be employed in the service of the Crown or as part of a Department of the Public Service but by the particular political office holder or member of Parliament on behalf of the State).

ISSUES CONSIDERED BY COMMITTEE

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

Termination of Employment

40. Sections 20(3) and (4) of the Bill provide that a Member of Parliament may at any time dispense with the services of a person employed by the Member of Parliament. These provisions further provide that this power has effect despite anything in the written agreement of employment of the person concerned.
41. The Committee notes that the effect of this provision would have on existing employees, would be to allow for the unilateral, and possibly arbitrary, dismissal of Members' staff.

The Committee is concerned that provisions that allow a Member of Parliament to dismiss existing staff may trespass on fair employment conditions, including rights against unfair dismissal. The Committee refers this matter to Parliament for its consideration.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s8A(1)(b)(iii) of LRA

Right of Appeal

42. Sections 26(2) and (3) of the Bill provides that the employment of a staff member of a Member of Parliament, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996* and that certain Parts of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a staff member. These Parts refer to unfair dismissals, unfair contracts, and public sector promotion and disciplinary proceedings.

43. The Committee notes that the effect of this provision would be to deny existing staffers under current arrangement who have a grievance or issue with their employment conditions or unfair dismissal to have recourse through relevant review bodies to have their grievance or issue considered. The Committee is also mindful that this may trespass on fair employment conditions.

The Committee is concerned that provisions that deny an employee access to review bodies to have their employment grievance or issue considered may make rights unduly dependent on non-reviewable decisions. The Committee refers this matter to Parliament for its consideration.

Inappropriately delegates legislative powers: s8A(1)(b)(iv) of LRA

Delegation of Power

44. Section 4, 6, and 7 of the Bill provide that the Premier may make determinations to create staffing positions for political office holders (generally Ministers), may approve a model agreement for the employment of such staff in those positions, and may periodically determine the conditions of that employment.
45. Given that other provisions of this Bill curtail the remit of the *Industrial Relations Act 1996*, and remove the authority of the *Public Sector Employment and Management Act 2002*, the Committee notes that this may make employment positions and conditions unduly dependent on the unilateral direction of the Premier.

The Committee notes that the power for the Premier to create staffing positions, and determine the employment conditions for such staff in those positions, may constitute an inappropriate delegation of legislative power.

Commencement by Proclamation

46. Clause 2 of the Bill provides for the Act to commence on a day or days to be appointed by proclamation.

Given that the administrative arrangements associated with the Bill may take some time to implement, the Committee does not make any further comment on the commencement of the Bill by proclamation.

6. Petroleum (Onshore) Amendment Bill 2013

Date introduced	22 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher
Portfolio	Minister for Resources and Energy, Special Minister of State and Minister for the Central Coast

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Petroleum (Onshore) Act 1991* (the Petroleum Act), the *Mining Act 1992* (the Mining Act) and other Acts as follows:
 - (a) to increase penalties for offences relating to mining for petroleum without authority and certain other offences and to revise other offences so that corresponding offences relating to petroleum mining and other mining are in similar terms,
 - (b) to enable directions relating to compliance with conditions of petroleum titles and addressing adverse environmental impacts of mining for petroleum to be given and to provide for enforcement of such conditions and appeals against directions,
 - (c) to provide for audits of prospecting or mining for petroleum,
 - (d) to extend the legal costs that the holders of mining authorities or petroleum titles must pay for landholders relating to arrangements for access to land and to make other provision with respect to access to land by holders of petroleum titles and to make other provision with respect to arrangements for access to land,
 - (e) to make it an offence for the holder of a petroleum title to fail to pay royalty,
 - (f) to enable the publication of certain environmental information,
 - (g) to provide for the appointment of, and to confer inspection and other investigation powers equivalent to those conferred under the Mining Act on, inspectors under the Petroleum Act and to provide for permits for entry onto land the subject of a petroleum title in other circumstances,
 - (h) to insert various offences relating to enforcement of the Petroleum Act and the enforcement of rights under, and conditions of, petroleum titles,
 - (i) to make existing and new offences relating to the provision of false or misleading information under the Petroleum Act and the Mining Act offences of strict liability,
 - (j) to insert other provisions relating to offences under the Petroleum Act, consistent with the Mining Act, including provisions about continuing offences, proceedings for

offences, enabling orders to be made requiring offenders to make monetary payments and also enabling restraining orders to be made against the property of offenders against whom payment orders are sought,

- (k) to provide for the ongoing effect of notices given under the Petroleum Act and the Mining Act and of conditions of petroleum titles, authorisations and permits,
- (l) to make other amendments to the Mining Act, consistent with amendments to the Petroleum Act, including the removal of the power to suspend a mining authorisation for contravention of an access arrangement,
- (m) to validate certain appointments,
- (n) to make other minor and consequential amendments and enact savings and transitional provisions consequent on the enactment of the proposed Act.

BACKGROUND

- 2. The amendments proposed by the Bill are part of broader work that the Government is undertaking to build community confidence in the petroleum industry and to provide certainty for the industry. It also responds to the gas supply issues that NSW will soon face by ensuring that exploration and production of petroleum products (as an alternative form of energy) is carried out in a way that ensures the health and safety of the community and the protection of the environment.
- 3. In particular, the Bill aims to strengthen and clarify the compliance and enforcement framework of the *Petroleum (Onshore) Act 1991*. Members of the community have also expressed a particular need for more environmental information so that they can better understand the significance of any proposed or ongoing activity. The Bill therefore establishes an expanded framework for the release of such information. The Bill also makes a number of other changes such as increasing penalties in the *Petroleum (Onshore) Act 1991* in line with the *Mining Act 1992* and providing inspectors with increased powers to carry out their work effectively.

OUTLINE OF PROVISIONS

- 4. Clause 1 sets out the name (also called the short title) of the proposed Act.
- 5. Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Schedule 1 Amendment of Petroleum (Onshore) Act 1991 No 84

Penalty increases and changes

- 6. Schedule 1 [2] imposes a daily penalty of \$110,000 (for a corporation) and \$22,000 (for a natural person) for the offence of mining petroleum other than in accordance with a petroleum title.

Suspension of petroleum titles

- 7. Schedule 1 [3] enables the Minister to suspend operations under a petroleum title if there is a contravention of a direction, a condition of the title or an agreement or

assessment relating to the payment of compensation and replaces existing provisions relating to suspension.

8. Schedule 1 [4] enables the Minister to extend the 6-month maximum period for the suspension of conditions of petroleum titles in particular cases.

Access arrangements

9. Schedule 1 [5] makes a consequential amendment.
10. Schedule 1 [6] requires an access arrangement to require the holder of a prospecting title to pay a specified amount for the reasonable legal costs of the landholder for negotiating and making the arrangement and until the arrangement is executed (other than any arbitration costs). The Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the Director-General) may specify the maximum amount of legal costs payable by order published in the Gazette with the concurrence of the NSW Farmers Association and the Australian Petroleum Production and Exploration Association Limited. A greater amount for legal costs may be included in the access arrangement. Currently, only legal costs of initial advice about an arrangement may be recovered and provision for legal costs is not required to be included in the access arrangement unless the landowner requests it.
11. The amendment also enables regulations to be made prescribing an access code relating to access to land by the holder of a prospecting title and the carrying out of activities on that land by the holder. If the code designates provisions as mandatory provisions, those provisions prevail over any inconsistent provisions of an access arrangement, except where the arrangement imposes more stringent obligations on the holder. An access arrangement may expressly exclude or vary the mandatory provisions.
12. Schedule 1 [7] enables holders of petroleum titles to carry out seismic surveys on public roads without having to obtain the consent of adjoining land owners.

Environmental and other directions to holders or former holders of petroleum titles

13. Schedule 1 [8] inserts proposed Division 3 of Part 6. The proposed Division contains provisions based on Division 3 of Part 11 of the Mining Act. The provisions of the proposed Division do the following:
 - (a) confer power on the Director-General or an inspector to direct a holder or former holder of a petroleum title to carry out conditions of the title or to take various actions relating to addressing the environmental impact of activities under the title, including land or water rehabilitation. A direction may be revoked or varied and an administrative fee is payable by a person given a direction,
 - (b) make it an offence to fail to comply with a direction and provide that a direction does not affect any other liability,
 - (c) empower the Minister to give effect to a direction that is not complied with and to recover the costs of giving effect to that direction from the person subject to the direction,
 - (d) provide that prior notice is not required to be given to any affected person before a direction is given,

- (e) provide for an appeal against a direction to the Land and Environment Court.

Audits of petroleum prospecting or mining

- 14. Schedule 1 [9] inserts proposed Division 5 of Part 6. The proposed Division contains provisions based on Division 6 of Part 11 of the Mining Act. The provisions of the proposed Division do the following:
 - (a) describe the nature of an audit and provide for regulations to be made with respect to the accreditation of auditors and the carrying out of audits,
 - (b) enable the Director-General to impose mandatory audit conditions on petroleum titles,
 - (c) provide for certification of an audit report,
 - (d) make it an offence (of strict liability) to provide false or misleading information to an auditor or in an audit report and also make it an offence for an auditor not to include in an audit information that is materially relevant,
 - (e) require information to be supplied for audit purposes even if it may incriminate the person concerned and authorise the use of information contained in an audit for the purposes of planning and environment protection legislation,
 - (f) provide for voluntary audits, including the protection of documents prepared for the purposes of a voluntary audit.

Payment of royalty

- 15. Schedule 1 [10] makes it an offence to fail to pay royalty as required under the Petroleum Act and enables the Minister to charge interest on the amount of an unpaid royalty.

Powers of inspectors

- 16. Schedule 1 [11] replaces the provisions relating to inspectors with a new Part based on Part 12 of the Mining Act. The proposed Part sets out powers that may be used by inspectors for compliance and general administrative purposes, including the following:
 - (a) powers to issue notices to require information or records relating to the administration of the Petroleum Act,
 - (b) powers to enter premises where prospecting or mining for petroleum is being carried out,
 - (c) powers that may be exercised at premises entered by inspectors,
 - (d) powers to use other persons for assistance and to require assistance to be given,
 - (e) powers to require answers to questions and attendance for that purpose and a power to require persons to provide their name and address,
 - (f) powers to inspect and test articles.

17. The proposed Part also provides for the issue of permits by the Minister to other persons to enter land for other purposes, including to carry out rehabilitation works and environmental works, remove petroleum plant, do surveys, take samples and examine possible encroachments on roads or railways.
18. The proposed Part also makes it an offence to neglect or fail to comply with a requirement of an inspector, to wilfully delay or obstruct an inspector or to impersonate an inspector.
19. Schedule 1 [13] enables the Director-General to appoint inspectors for the purposes of the Petroleum Act and provides for the issue and use of identification cards by inspectors.

Environmental information

20. Schedule 1 [14] inserts proposed Division 1 of Part 13. The proposed Division enables the Director-General to publish environmental information about the impact of petroleum prospecting and mining activities obtained by the Director-General, except where the Director-General is notified by the person who provides the information that publication is likely to cause the person a substantial commercial disadvantage. Despite this, the Director-General may publish information the subject of a notification if satisfied that it is in the public interest to do so.
21. Schedule 1 [15] makes a consequential amendment.

Offences and enforcement

22. Schedule 1 [16] inserts proposed Part 13A. The proposed Part contains provisions based on Part 17A of the Mining Act. The provisions of the proposed Part do the following:
 - (a) make it an offence, without reasonable excuse, to obstruct, hinder or resist inspectors and other specified persons in the exercise of a function under the Petroleum Act or to obstruct the holder of a petroleum title in doing an act authorised under the Petroleum Act,
 - (b) make it an offence (of strict liability) to provide false or misleading information in connection with an application or when furnishing information in response to other requirements under the Petroleum Act,
 - (c) make each holder of a petroleum title guilty of an offence if a condition of the title is contravened and provide for defences, including a defence for a holder who was not associated with the person who contravened the condition and took all reasonable steps to prevent the contravention,
 - (d) provide for the circumstances where the directors of a corporation will be liable for an offence when a corporation that is a holder of a petroleum title contravenes a direction by the Director-General or a condition of a petroleum title held by a corporation is contravened,
 - (e) provide for the operation of continuing offences,

- (f) provide for proceedings for offences to be instituted in the Local Court or the Land and Environment Court (for certain specified offences) and limit the penalty that may be imposed for an offence if proceedings are taken in the Local Court,
- (g) provide for a 3 year period within which proceedings for an offence may be taken,
- (h) enable penalty notices to be issued for offences prescribed by the regulations,
- (i) enable a restraining order to be made that prevents the property of a person from being disposed of if, as a result of proceedings for an offence commenced against the person, the person may be liable to pay an amount for costs for expenses or compensation. If an order is made, a charge will be created over property subject to the order and the costs of registering a charge or lodging a caveat are recoverable from the affected person. It will be an offence to knowingly contravene a restraining order,
- (j) enable a court to make additional orders where an offence against the Petroleum Act or regulations under that Act is found to be proved, including orders requiring payment of costs and expenses of the Crown or a public authority in connection with remedying or preventing environmental harm caused by the commission of the offence,
- (k) provide for prima facie evidence of certain matters under the Petroleum Act to be provided in court proceedings by certificate of the Director-General.

Miscellaneous

- 23. Schedule 1 [1] inserts definitions.
- 24. Schedule 1 [12] inserts a note about the obligation to pay compensation under the Petroleum Act.
- 25. Schedule 1 [17] updates the offence prohibiting persons who hold office in an official capacity for the purposes of the Petroleum Act from holding directly or indirectly a beneficial interest in a petroleum title. The provision does not prevent the Director-General from being the holder of an exploration licence on behalf of the Crown.
- 26. Schedule 1 [18] makes a consequential amendment. The amendment also provides for notices given and conditions imposed on petroleum titles under the Petroleum Act to have continuing effect during any period in which they are not complied with and have not been revoked (whether or not any specified period for compliance has expired).
- 27. Schedule 1 [19] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 Coal Mine Health and Safety Act 2002 No 129

- 28. Schedule 2.1 validates the appointment of certain persons.

Schedule 2.2 Fines Act 1996 No 99

- 29. Schedule 2.2 updates a reference to the penalty notice provision of the Petroleum Act.

Schedule 2.3 Mining Act 1992 No 29

30. Schedule 2.3 [1] enables holders of exploration licences to carry out seismic surveys on public roads without having to obtain the consent of adjoining land owners.
31. Schedule 2.3 [2] enables holders of assessment leases to carry out seismic surveys on public roads without having to obtain the consent of adjoining land owners.
32. Schedule 2.3 [4] requires an access arrangement to require the holder of a prospecting title to pay a specified amount for the reasonable legal costs of the landholder for negotiating and making the arrangement and until the arrangement is executed (other than any arbitration costs). The Director-General may specify the maximum amount of legal costs payable by order published in the Gazette with the concurrence of the NSW Farmers Association and the NSW Minerals Council. A greater amount for legal costs may be included in the access arrangement. Currently, only legal costs of initial advice about an agreement may be recovered and provision for legal costs is not required to be included in the access arrangement unless the landowner requests it. Schedule 2.3 [3] makes a consequential amendment.
33. Schedule 2.3 [5] removes the power of the Director-General to suspend operations under an authorisation on the ground that there has been a contravention of an access arrangement.
34. Schedule 2.3 [6] corrects an incorrect reference.
35. Schedule 2.3 [7] provides for an appeal to the Land and Environment Court against an environmental or rehabilitation direction given by the Director-General or an inspector to the holder of an authorisation.
36. Schedule 2.3 [8] makes it clear that prior notice is not required to be given of an environmental or rehabilitation direction given to the holder of an authorisation.
37. Schedule 2.3 [9] updates references to provisions of the *Environmental Planning and Assessment Act 1979* that relate to the effect of approvals under the Petroleum Act.
38. Schedule 2.3 [10]–[12] make the offence relating to the provision of false or misleading information to an auditor in connection with a mandatory audit, and the offence by an auditor of providing false or misleading information in an audit report, strict liability offences. The defence of honest and reasonable mistake will apply to the offences.
39. Schedule 2.3 [13]–[15] extend powers of inspectors to require answers, to record questions and answers and to request a person to supply the person's name and address to all the situations in which other powers of inspectors under the Mining Act may be used. The provision inserting the uncommenced provision that limits the use of such powers is to be repealed by Schedule 2.4.
40. Schedule 2.3 [16] omits a provision conferring broad powers of entry on inspectors.
41. Schedule 2.3 [17] requires the classes of persons who may be appointed as inspectors and conditions and restrictions on the powers of inspectors to be published in the Gazette.

42. Schedule 2.3 [18] updates the offence prohibiting persons who hold office in an official capacity for the purposes of the Mining Act from holding directly or indirectly a beneficial interest in an authority, a mineral claim or an opal prospecting licence.
43. Schedule 2.3 [19] restricts the offence of obstructing a person in the exercise of a function under the Mining Act to obstruction of inspectors, authorised officers, auditors undertaking mandatory audits and other persons prescribed by the regulations.
44. Schedule 2.3 [20] makes it an offence for a person, without reasonable excuse, to obstruct or hinder another person authorised by the holder of an authorisation from doing an act authorised under the Mining Act.
45. Schedule 2.3 [21]–[23] amend the existing offence of furnishing false or misleading information in connection with an application or a requirement under the Mining Act so that it will be a strict liability offence. A further strict liability offence of furnishing false or misleading information in compliance with a requirement by an inspector to provide information or records is also inserted. The defence of honest and reasonable mistake of fact will apply to the offences.
46. Schedule 2.3 [24] extends to all offences under the Act a period for commencement of proceedings of 3 years, commencing on the later of the date of the alleged offence or when evidence of the alleged offence first came to the attention of an inspector or the Director-General. Schedule 2.3 [25], [26] and [30] make consequential amendments.
47. Schedule 2.3 [27] inserts proposed Division 1 of Part 18. The proposed Division enables the Director-General to publish environmental information about the impact of prospecting and mining activities obtained by the Director-General, except where the Director-General is notified by the person who provides the information that publication is likely to cause the person a substantial commercial disadvantage. Despite this, the Director-General may publish information the subject of a notification if satisfied that it is in the public interest to do so. The amendment also provides for notices given and conditions imposed on authorisations under the Mining Act to have continuing effect during any period in which they are not complied with and have not been revoked (whether or not any specified period for compliance has expired).
48. Schedule 2.3 [28] validates delegations made by the Minister of functions under the *Environmental Planning and Assessment Act 1979* if the delegations could have been made under the Mining Act after the amendment of its delegation provisions by the *Mining Amendment Act 2008*.
49. Schedule 2.3 [29] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2.4 Mining Amendment Act 2008 No 19

50. Schedule 2.4 [1] and [2] omit uncommenced amendments to the Mining Act.

Schedule 2.5 Land and Environment Court Act 1979 No 204

51. Schedule 2.5 confers jurisdiction, in Class 1 of its jurisdiction, on the Land and Environment Court for appeals against environmental and rehabilitation directions given under the Petroleum Act and the Mining Act.

Schedule 2.6 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

52. Schedule 2.6 applies provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to the issue of search warrants to search warrants issued under the new section relating to search warrants inserted in the Petroleum Act by the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Strict liability offences

53. The Bill proposes amendments to the *Petroleum (Onshore) Act 1991* and the *Mining Act 1992* that create a number of strict liability offences applying to individuals. Most of these offences relate to the provision of false and misleading information in compliance with the relevant legislation. However, one offence relates to circumstances where an auditor does not include materially relevant information in an audit under the *Petroleum (Onshore) Act 1991*. These offences carry a maximum penalty for an individual of 500 penalty units or \$55,000.

The Committee notes that the Bill allows a person accused of a strict liability offence to argue a defence of honest and reasonable mistake of fact if relevant in the circumstances. Nevertheless, given that the maximum penalty for these offences is significant, the Committee refers to Parliament for consideration whether imposing strict liability for offences in these circumstances is appropriate.

Self-incrimination

54. The Bill proposes to insert a new Part 9 into the *Petroleum (Onshore) Act 1991* dealing with powers of entry and inspection. Proposed section 104M requires a person to furnish records or information or answer a question even if it might incriminate the person. Information provided for this purpose will be admissible against the person in criminal proceedings. Any information provided for this purpose is not inadmissible in evidence in criminal proceedings on the ground that it might incriminate the person.

In the Committee's view, requiring a person to provide information or answer a question even though it may incriminate them and then subsequently using that information against the person in criminal proceedings could unduly trespass on the person's right against self-incrimination. The Committee refers this issue to Parliament for consideration.

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

Commencement by proclamation

55. Clause 2 of the Bill provides for the Act to commence on a day or days to be appointed by proclamation.

Given that the Bill proposes the creation of new offences (including strict liability offences) and changes to existing offences under the *Petroleum (Onshore) Act 1991* and other Acts, the Committee refers to Parliament for consideration whether commencement of the Bill by proclamation is appropriate in the circumstances.

7. Statute Law (Miscellaneous Provisions) Bill 2013

Date introduced	22 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to make minor amendments to various Acts and a Regulation (Schedule 1); and
 - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2); and
 - (c) to repeal certain Acts and an instrument and provisions of instruments (Schedule 3); and
 - (d) to make other provisions of a consequential or ancillary nature (Schedule 4).

BACKGROUND

2. State Law (Miscellaneous Provisions) Bills are regularly introduced into the Parliament for the purpose of making minor policy changes and repealing redundant legislation.

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.
5. Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedule 1

Minor amendments

6. Schedule 1 makes amendments to the following Acts and Regulation:
 - *Aboriginal Land Rights Act 1983 No 42*
 - *Aboriginal Land Rights Regulation 2002*
 - *Anatomy Act 1977 No 126*
 - *Biofuels Act 2007 No 23*

LEGISLATION REVIEW COMMITTEE
STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2013

- *Building Professionals Act 2005 No 115*
- *Charles Sturt University Act 1989 No 76*
- *Community Land Management Act 1989 No 202*
- *Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2*
- *Conveyancers Licensing Act 2003 No 3*
- *Conveyancing Act 1919 No 6*
- *Electricity Supply Act 1995 No 94*
- *Energy and Utilities Administration Act 1987 No 103*
- *Health Administration Act 1982 No 135*
- *Home Care Service Act 1988 No 6*
- *Human Tissue Act 1983 No 164*
- *Impounding Act 1993 No 31*
- *Interpretation Act 1987 No 15*
- *Local Government Act 1993 No 30*
- *Macquarie University Act 1989 No 126*
- *Plumbing and Drainage Act 2011 No 59*
- *Property, Stock and Business Agents Act 2002 No 66*
- *Public Finance and Audit Act 1983 No 152*
- *Radiation Control Act 1990 No 13*
- *Radiation Control Amendment Act 2010 No 91*
- *Real Property Act 1900 No 25*
- *Residential Tenancies Act 2010 No 42*
- *Retirement Villages Act 1999 No 81*
- *Southern Cross University Act 1993 No 69*
- *Strata Schemes Management Act 1996 No 138*
- *Subordinate Legislation Act 1989 No 146*
- *Sydney Cricket and Sports Ground Act 1978 No 72*

- *Sydney Water Catchment Management Act 1998 No 171*
- *Tattoo Parlours Act 2012 No 32*
- *Travel Agents Act 1986 No 5*
- *University of New England Act 1993 No 68*
- *University of New South Wales Act 1989 No 125*
- *University of Newcastle Act 1989 No 68*
- *University of Sydney Act 1989 No 124*
- *University of Technology, Sydney, Act 1989 No 69*
- *University of Western Sydney Act 1997 No 116*
- *University of Wollongong Act 1989 No 127*
- *Water Efficiency Labelling and Standards (New South Wales) Act 2005 No 12*

Schedule 2 Amendments by way of statute law revision

7. Schedule 2 amends certain Acts and instruments for the purpose of effecting statute law revision.
8. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

Schedule 3 Repeals

9. Schedule 3 repeals 2 Acts, an instrument and 2 provisions of instruments.
10. Clause 1 repeals 2 redundant Acts and a redundant provision of an instrument.
11. Clause 2 repeals an instrument that contains only commenced amendments to another instrument.
12. Clause 3 repeals an un-commenced provision of an instrument that cannot be commenced because it amends an instrument that has since been repealed.

Schedule 4

General savings, transitional and other provisions

13. Schedule 4 contains savings, transitional and other provisions of a more general effect than those set out in Schedule 1.
14. The purpose of each provision is explained in detail in the explanatory note set out in Schedule 4 that relates to the provision concerned.

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 to the Crown (Request) Bill 2013

Date introduced	23 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to facilitate the law relating to the effect of gender and marriage on royal succession being changed uniformly across Australia and consistently with changes made to that law in the United Kingdom, so that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom. In Australia, all States have agreed to request the Parliament of the Commonwealth of Australia to enact legislation (the *proposed Commonwealth Act*) to give effect to the proposed changes in Australia under section 51 (xxviii) of the Constitution of the Commonwealth.
2. The proposed changes are as follows:
 - (a) to provide that royal succession is not dependent on gender, and so allow an older daughter to precede a younger son in the line of succession (for all Royal births occurring after midnight on 28 October 2011, being the date that the 16 Realms of which Her Majesty is Sovereign agreed to the change),
 - (b) to remove statutory restrictions under which anyone who marries a Roman Catholic loses their place in the line of succession,
 - (c) to repeal the *Royal Marriages Act 1772* of the United Kingdom which (with some exceptions) makes void the marriages of any descendants of King George II who fail to obtain the Monarch's permission prior to marriage (and to provide instead that the first 6 people in the line of succession require the permission of the Monarch to marry and that they and their descendants are removed from their place in the line of succession if they marry without that permission).

BACKGROUND

3. On 28 October 2011, representatives of nations of which Her Majesty is the Sovereign agreed that the rules on succession to, and possession of, the Crown should be changed so as to make succession not depend on gender and to end the disqualification arising from marrying a Roman Catholic.
4. This Bill implements that agreement with respect to the law in NSW.

OUTLINE OF PROVISIONS

Part 1 Preliminary

5. Clause 1 sets out the name (also called the short title) of the proposed NSW Act.
6. Clause 2 provides for the commencement of the proposed NSW Act (except sections 6 and 7) on the date of assent. Sections 6 and 7 commence at the time the relevant corresponding provisions of the proposed Commonwealth Act commence.
7. Clause 3 sets out the object of the proposed NSW Act.
8. Clause 4 provides that it is not the intention of the proposed NSW Act to affect the relationship between the Sovereign and the State as existing immediately before the enactment of the proposed NSW Act, or that that relationship be affected by the enactment of the proposed Commonwealth Act.

Part 2 Request for Commonwealth legislation

9. Clause 5 requests the Parliament of the Commonwealth to enact the proposed Commonwealth Act.

Part 3 General

10. Clause 6 makes consequential amendments to the NSW Imperial Acts Application Act 1969.
11. Clause 7 provides that references to the Bill of Rights or the Act of Settlement relating to the succession to, or possession of, the Crown are to be read as including references to the proposed NSW Act and the proposed Commonwealth Act.

Appendix Succession to the Crown Act 2013 of the Commonwealth

12. The proposed Commonwealth Act is contained in the Appendix. The proposed Commonwealth Act makes the following provisions:

Succession to the Crown not to depend on gender

13. Clause 6 provides that, in determining the succession to the Crown, the gender of a person born after 28 October 2011 (United Kingdom time) does not give that person, or that person's descendants, precedence over any other person (whenever born). This change allows an older daughter to precede a younger son in the line of succession for all Royal births occurring after that date (being the date of the CHOGM meeting in Western Australia where the 16 Realms of which Her Majesty is the Sovereign agreed to the change).

Marriage and succession to the Crown—removal of disqualification arising from marriage to a Roman Catholic

14. Clause 7 removes the disqualification from succeeding to or possessing the Crown as a result of marrying a person of the Roman Catholic faith. The removal of the disqualification applies in relation to marriages occurring before the commencement of the clause if the person concerned is alive at that commencement.

15. Part 1 of Schedule 1 makes amendments to the Act of Settlement and the Bill of Rights (so far as they are part of the law of the Commonwealth, a State or a Territory) consequent on the removal of this disqualification.

Marriage and succession to the Crown—consent of Sovereign required for certain Royal marriages

16. Clause 8 disqualifies a person from succeeding to the Crown if they are disqualified from succeeding to the Crown under section 3 of the Succession to the Crown Act 2013 of the United Kingdom. That section provides that the first 6 people in the line of succession must obtain the consent of the Sovereign before marrying. The effect of failing to obtain that consent is that the person and their descendants from the marriage are disqualified from succeeding to the Crown.

Further provisions relating to marriage and succession to the Crown

17. Part 2 of Schedule 1 repeals the Royal Marriages Act 1772 of Great Britain (so far as that Act is part of the law of the Commonwealth, a State or a Territory). That Act (with some exceptions) made void the marriages of any descendants of King George II who failed to obtain the Monarch's permission prior to marriage.
18. Part 2 also validates certain marriages that were voided by the Royal Marriages Act 1772 (including where neither party to the marriage was one of the first 6 people in the line of succession, it was reasonable for the person concerned not to have been aware at the time of the marriage that that Act applied to it and no person acted on the basis that the marriage was void before the commencement of the relevant the basis that the marriage was void before t provision in the proposed Commonwealth 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.

9. Work Health and Safety (Mines) Bill 2013

Date introduced	23 May 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill is to assist in securing and promoting the health and safety of persons who work at mines and related places. This Bill, amongst other things:
 - (a) provides that the proposed Act is to be read as if it formed part of the *Work Health and Safety Act 2011* (the WHS Act), and
 - (b) establishes a notification scheme for serious incidents at mines, and
 - (c) provides for oversight of mines and mining operations by appointed government officials, and
 - (d) provides for safety and health representatives at coal mines, and
 - (e) extends the circumstances in which improvement notices and prohibition notices may be given under the WHS Act in relation to mines, and
 - (f) provides for stop work orders to prevent serious risks to health and safety, and
 - (g) provides for the establishment of Boards of Inquiry, and
 - (h) establishes the Mine Safety Advisory Council, and
 - (i) constitutes the Mining Competence Board.

BACKGROUND

2. The unique requirements of the mining industry in the context of Work Health and Safety laws have been discussed by the industry, and form the basis for this Bill. This Bill works in concert with the *Work Health and Safety Act 2011*.

OUTLINE OF PROVISIONS

Part 1 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 a day or days to be appointed by proclamation.

5. Clause 3 sets out the objects of the proposed Act, which includes the object of assisting in securing the objects of the WHS Act at mines and the object of protecting workers at mines and other persons against harm to their health and safety.
6. Clause 4 specifies that the proposed Act is to be construed with, and as if it formed part of, the WHS Act.
7. Clause 5 defines certain words and expressions used in the proposed Act.
8. Clause 6 sets out a definition of mine for the purposes of the proposed Act. A mine is defined as a place that is a workplace at which mining operations are carried out or a place that is a tourist mine (being a workplace used only for tourism purposes but at which mining operations were formerly carried out and in which there is a hazard).
9. Clause 7 sets out a definition of mining operations for the purposes of the proposed Act. Mining operations are activities carried out for the purposes of exploring for minerals, extracting minerals from, or injecting minerals into, the ground. Mining operations also include other activities carried out in connection with, and in the vicinity of, those activities (such as storing or processing extracted materials).
10. Clause 8 provides for the proposed Act to apply to and in respect of geothermal energy as if geothermal energy were a mineral.
11. Clause 9 provides that an example or note at the foot of a provision forms part of the proposed Act.

Part 2 Application of Act

12. Clause 10 provides that the proposed Act applies to all workplaces that are mines but does not apply to any mine or place prescribed by the regulations or specified by the Minister for Resources and Energy (the Minister) in a notice published in the Gazette.
13. Clause 11 provides that the proposed Act does not apply to certain activities including fossicking, activities carried out in relation to the extraction of minerals on private land for the private and non-commercial use of the owner of the land and activities where the extraction of minerals is incidental to the activity (such as tunnelling to create a road).
14. Clause 12 permits the Minister to make a determination as to whether a particular place is or is not a place to which the proposed Act applies. The determination is conclusive for the purposes of deciding a jurisdictional question such as whether functions of a government official under the proposed Act or of an inspector under the WHS Act were or can be validly exercised.
15. Clause 13 provides that the proposed Act binds the Crown and that the Crown is liable for an offence against the proposed Act.

Part 3 Incident notification

16. Clause 14 sets out a definition of notifiable incident, which means the death of a person or a serious injury or illness of a person, or a dangerous incident that is prescribed by the regulations.

17. Clause 15 requires the mine operator of a mine (being the person having control over the right or entitlement to carry out mining operations at the mine or a person appointed as mine operator by that person) to ensure that the head of the Department of Trade and Investment, Regional Infrastructure and Services (the regulator) is notified immediately after the mine operator becomes aware that a notifiable incident arising out of the conduct of any business or undertaking at the mine has occurred. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate. A similar requirement applies to the person conducting the business or undertaking from which the notifiable incident arose. Notice must be given by the fastest means possible and if the notice is initially given by phone it must be followed within 48 hours by a written notice.
18. Clause 16 provides for an additional notification requirement in the case of a notifiable incident occurring at a coal mine. In such a case, each person who is required to ensure that the regulator is notified must ensure that an industry safety and health representative (appointed under Part 5 of the proposed Act) is also given notice of the incident. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.
19. Clause 17 creates a duty on certain persons to ensure that the site where a notifiable incident has occurred is not disturbed until an inspector arrives or such earlier time that an inspector directs. The duty is on any person who is required to ensure that the regulator is notified of the notifiable incident and each person with management or control of the workplace (or part of the workplace) at which the notifiable incident has occurred. Failure to comply with the duty is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

Part 4 Oversight of mines by government officials

Division 1 Appointment of government officials

20. Clause 18 permits the regulator to appoint government officials being inspectors, mine safety officers or investigators.
21. Clause 19 provides that a person may be appointed as an inspector only if the regulator is satisfied that the person has appropriate knowledge, skills and experience and has any qualifications that may be prescribed by the regulations (or qualifications equivalent to those prescribed qualifications).
22. Clause 20 requires a government official to notify the regulator of interests that may conflict with the proper performance of his or her functions. The regulator must direct a government official not to deal with a matter if the regulator becomes aware of a potential conflict of interest and the regulator considers that the government official should not deal with the matter.
23. Clause 21 provides for the regulator to issue identity cards to government officials (section 157 of the WHS Act requires a government official to produce his or her identity card on request when exercising compliance powers).

Division 2 Functions of government officials

24. Clause 22 sets out the functions of a government official, which are any functions conferred on the government official by the proposed Act or the regulations.

25. Clause 23 requires a government official (other than an investigator) to give written notice to a mine operator if the government official becomes aware of any matter that the government official considers to be relevant to the continued safe operation of the mine or the health and safety of workers at the mine.
26. Clause 24 requires the regulator to consider (and if necessary, investigate) any complaint made concerning the health and safety of workers at a coal mine if the complaint is made by a safety and health representative (appointed or elected under Part 5 of the proposed Act).
27. Clause 25 creates an offence if a person refuses or fails to comply with a requirement made by a government official in accordance with the proposed Act. The maximum penalty is \$6,000 for an individual or \$36,000 for a body corporate.
28. Clause 26 provides that a government official is subject to the regulator's directions in the exercise of the government official's compliance functions.

Part 5 Safety and health representatives for coal mines

Division 1 Preliminary

29. Clause 27 provides that the proposed Part applies only to coal mines.

Division 2 Industry safety and health representatives

30. Clause 28 requires the Minister to appoint an eligible person as an industry safety and health representative if the person is nominated by the Construction, Forestry, Mining and Energy Union (Mining and Energy Division) and there are less than 4 persons currently appointed as industry safety and health representatives. A person is an eligible person if the person is a WHS entry permit holder and has the qualifications (if any) prescribed by the regulations.
31. Clause 29 sets out the functions of an industry safety and health representative. An industry safety and health representative has the functions of a health and safety representative under the WHS Act for a work group, as if the work group comprised all workers at all coal mines. In addition, an industry safety and health representative may review the content and implementation of a safety management system in respect of a coal mine, may participate in the investigation of an event, an occurrence or a notifiable incident at a coal mine and may assist in the training of site safety and health representatives and electrical safety and health representatives. An industry safety and health representative may enter and inspect a workplace at a coal mine and may accompany a government official during an inspection of a coal mine by the government official.
32. Clause 30 permits an industry safety and health representative to give a direction to the mining operator of a coal mine to suspend mining operations at the coal mine if the representative is of the opinion that there has been a failure to comply with the *WHS laws* (being the proposed Act, the WHS Act and the regulations under those Acts) or with the safety management system and because of that failure there is a danger to the health or safety of workers at the coal mine. Failure to comply with such a direction is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate. An industry safety and health representative is required to take all reasonable steps to notify the regulator that the representative proposes to give a direction under

the proposed section. A direction ceases to have effect if an inspector attends and assesses the matters to which the direction relates or if the direction is withdrawn by the industry safety and health representative.

33. Clause 31 provides that an industry safety and health representative cannot issue a provisional improvement notice in relation to a matter if the regulator has already issued (or decided not to issue) a stop work order in relation to the same matter. An industry safety and health representative is required, as soon as practicable after issuing a provisional improvement notice, to give a copy of the notice to the regulator.
34. Clause 32 permits an industry safety and health representative to delegate his or her function of suspending operations to a site safety and health representative. However, a site safety and health representative may only exercise that function if he or she has received training prescribed by the regulations and the industry safety and health representative is not available or it is not practicable for him or her to attend at short notice.
35. Clause 33 requires an industry safety and health representative to be issued with an identity card by the Minister.
36. Clause 34 creates an offence if a person intentionally hinders or obstructs an industry safety and health representative in exercising his or her functions, or induces or attempts to induce any other person to do so. The maximum penalty is \$10,000 for an individual or \$50,000 for a body corporate.
37. Clause 35 creates an offence if a person who is not an industry safety and health representative holds himself or herself out to be an industry safety and health representative. The maximum penalty is \$10,000.
38. Clause 36 creates an offence if a person assaults, threatens or intimidates, or attempts to assault, threaten or intimidate, an industry safety and health representative or a person assisting an industry safety and health representative. The maximum penalty is \$50,000 or imprisonment for 2 years or both for an individual or \$250,000 for a body corporate.

Division 3 Mine safety and health representatives

39. Clause 37 sets out a definition of *mine safety and health representative* for the purposes of the proposed Division, which means a site safety and health representative or an electrical safety and health representative.
40. Clause 38 provides for the election of individuals as mine safety and health representatives for coal mines. A mine operator is required to ensure that workers at the mine are notified of the results of any such election. Failure to do so is an offence with a maximum penalty of \$3,600 for an individual or \$18,000 for a body corporate.
41. Clause 39 provides for an election to be conducted in accordance with the regulations.

42. Clause 40 provides that the term of office for a mine safety and health representative is 3 years and sets out the circumstances in which a person may cease to hold office before that 3 year period has expired.
43. Clause 41 permits the regulator or a person adversely affected to make an application to the Industrial Relations Commission to disqualify a mine safety and health representative on the ground that the representative has exercised a function, or used or disclosed information, for an improper purpose. The Industrial Relations Commission may disqualify the mine safety and health representative for a specified period or indefinitely.
44. Clause 42 sets out the functions of a mine safety and health representative. A mine safety and health representative for a coal mine has the functions of a health and safety representative under the WHS Act for a work group as if the work group comprised all workers at the coal mine. In addition, a mine safety and health representative may observe any formal investigation carried out by the mine operator of an event or other occurrence at the coal mine that must be notified to the regulator. The functions of an electrical safety and health representative for a coal mine may be exercised only in relation to electrical installations and electrical equipment and any issues and risks arising from their use.
45. Clause 43 provides that a health and safety representative under the WHS Act cannot issue a provisional improvement notice under the WHS Act in relation to a coal mine while there is a mine safety and health representative for the mine. Before issuing a provisional improvement notice, a mine safety and health representative must take reasonable steps to consult with any health and safety representative under the WHS Act for workers affected by the notice. A mine safety and health representative cannot issue a provisional improvement notice if the regulator or an industry safety and health representative has already issued (or decided not to issue) a stop work order or provisional improvement notice in relation to the same matter. A mine safety and health representative also cannot issue a provisional improvement notice unless he or she has completed the relevant training. A mine safety and health representative must give a copy of any notice issued to the regulator.
46. Clause 44 provides for a government official who proposes to inspect a coal mine to consult with a mine safety and health representative regarding the inspection and to permit the representative to accompany the government official on the inspection.
47. Clause 45 requires a mine safety and health representative to undertake a course of training. A mine operator must ensure that any newly elected mine safety and health representative receives training as soon as practicable (and is permitted to take any time off for the training without loss of remuneration or entitlements). Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.
48. Clause 46 requires a mine safety and health representative to give a mine operator a report of any inspection that the representative makes of the mine. Failure to do so is an offence with a maximum penalty of \$500. The mine operator must keep the report for at least 12 months. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

49. Clause 47 provides that a mine safety and health representative who finds certain dangers during an inspection of a coal mine must record any such finding. The mine operator is then required give a copy of the record to the regulator. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.
50. Clause 48 provides that a person is not required to exercise any function because the person is a mine safety and health representative.

Part 6 Enforcement measures

Division 1 Improvement and prohibition notices

51. Clause 49 permits a government official to give an improvement notice under section 191 of the WHS Act if the government official reasonably believes that a person is likely to contravene a provision of the WHS laws.
52. Clause 50 permits a government official to give a direction under section 195 of the WHS Act if the government official believes that activities at a workplace involve or could involve a serious risk to the health or safety of a person or contravene a prescribed provision of the WHS laws.

Division 2 Stop work orders

53. Clause 51 permits the regulator to make an order (a *stop work order*) requiring a person conducting a business or undertaking at a mine to stop any activity at any place specified in the order. The order may also require the person to carry out associated activities in order to make the place safe. A stop work order may be made if the regulator believes it to be necessary to prevent a serious risk to the health or safety of any person. A stop work order remains in force for up to 28 days although more than one stop work order may be made in relation to the same person and same activity even if the orders together have effect for a period of more than 28 days.
54. Clause 52 provides that certain notices under the WHS Act and other approvals, notices, orders or instruments under other Acts are inoperative to the extent, and during any period, that they are inconsistent with a stop work order.
55. Clause 53 permits the regulator to cause work to be carried out for the purposes of carrying out the requirements of a stop work order if a person fails to comply with the order and provides that any reasonable cost of carrying out the work is recoverable from the person.
56. Clause 54 provides for persons to enter land for the purposes of complying with a stop work order.
57. Clause 55 creates an offence of failing to comply with a stop work order with a maximum penalty of \$100,000 for an individual (and a further \$10,000 for each day the offence continues) or \$500,000 for a body corporate (and a further \$50,000 for each day the offence continues).

Part 7 Inquiries

58. Clause 56 permits the Minister to constitute a person as a Board of Inquiry to conduct an inquiry into a notifiable incident at a mine, any other event, occurrence,

practice or matter that may affect the health and safety of workers or other persons at a mine or anything prescribed by the regulations. A Board of Inquiry is not bound to act in a formal manner or to follow the rules of evidence and may determine its own procedures.

59. Clause 57 provides that a Board of Inquiry is to sit with one or more assessors appointed by the Minister.
60. Clause 58 provides that a Board of Inquiry may require persons to appear at an inquiry and may require persons to answer questions and produce documents. Failure to comply with a requirement is an offence with a maximum penalty of \$25,000 for an individual or \$50,000 for a body corporate.
61. Clause 59 provides that a Board of Inquiry must prepare and provide to the Minister a report as to its findings in accordance with its terms of reference. The Minister is to table the report in each House of Parliament unless the Board of Inquiry has recommended that the report should not be made public.

Part 8 Statutory bodies

Division 1 Mine Safety Advisory Council

62. Clause 60 requires the Minister to establish a Mine Safety Advisory Council that includes representation from peak mine operator and mine worker organisations.
63. Clause 61 sets out the functions of the Mine Safety Advisory Council, which are to provide advice to the Minister on any policy matter relating to work health and safety in mines and other advisory functions that are prescribed by the regulations.
64. Clause 62 provides for the regulations to make provision for or with respect to the constitution, members and procedure of the Mine Safety Advisory Council.

Division 2 Mining Competence Board

65. Clause 63 constitutes the Mining Competence Board.
66. Clause 64 provides that the Board is subject to the control and direction of the Minister.
67. Clause 65 provides for the membership of the Board.
68. Clause 66 provides for the procedure of the Board.
69. Clause 67 sets out the functions of the Board, which are to oversee the development of competence standards for persons exercising functions at a mine that may impact on the health and safety of any person and to undertake initial and ongoing assessments of the competence of persons exercising any such functions. The Board also has the function of advising the Minister on matters related to the competence required of persons to exercise any such function.
70. Clause 68 provides that the Board must, within 6 months after the end of June each year, make an annual report of its activities during the preceding year to the Minister.

Part 9 Miscellaneous

71. Clause 69 provides for the service of documents under the proposed Act.
72. Clause 70 permits the regulator to publish information concerning the conviction of a person, any investigation conducted under the WHS laws, action taken by the regulator under the WHS laws, any incident or other matter that may be of relevance to certain persons at mines and any matter prescribed by the regulations.
73. Clause 71 provides for the sharing of information with a corresponding regulator (being a public official or a public authority responsible for administering a corresponding WHS law in another Australian jurisdiction).
74. Clause 72 provides that the reference to the Minister in section 274 (Approved codes of practice) of the WHS Act is taken to include a reference to the Minister administering the proposed Act if the code of practice is to be made in respect of mines or mining operations. The requirement in section 274 of the WHS Act that each Australian jurisdiction be consulted before a code of practice is made is modified so that a code relating to a particular class of mine or mining operations does not require consultation with a jurisdiction in which the class of mine does not exist, or the class of mining operations does not take place.
75. Clause 73 makes it clear that certain persons under the proposed Act are protected from personal liability when acting in good faith for the purpose of executing the WHS laws.
76. Clause 74 provides that the regulator has the additional function of advising and making recommendations to the Minister and reporting on the operation and effectiveness of the WHS laws.
77. Clause 75 permits the Minister to delegate functions under the proposed Act to the head of the Department of Trade and Investment, Regional Infrastructure and Services.
78. Clause 76 permits the Governor to make regulations for the purposes of the proposed Act or the WHS Act.
79. Clause 77 provides for a 5-year review of the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the proposed Act remain appropriate for securing those objectives.
80. Clause 78 repeals a number of Acts and regulations.

Schedule 1 Savings, transitional and other provisions

81. Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Regulation-making powers

82. Schedule 2 provides for matters for or in relation to which regulations may be made.

Schedule 3 Amendments of Acts

83. Schedule 3 amends the Acts specified in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Strict Liability

84. Part 3 of the Bill provides for fines of up to \$10,000 for individuals and \$50,000 for body corporates in relation to a failure to acquit a duty to notify the regulator and the health and safety representative of a notifiable incident and the duty to preserve an incident site.
85. Part 4 of the Bill provides for fines of up to \$6,000 for individuals and \$36,000 for body corporates in relation to a refusal or failure to comply with a requirement made by a government official in accordance with the Act.
86. Part 5 of the Bill provides for fines of up to \$10,000 for individuals and \$50,000 for body corporates in relation to mine operators who do not immediately follow a direction of a safety and health representative. Part 5 applies the same fine regime to individuals who intentionally hinder or obstruct an industry safety and health representative in the exercise of his or functions. Furthermore, Part 5 outlines that it is an offence to assault, threaten or intimidate a safety and health representative, providing for fines of up to \$50,000 for individuals and imprisonment for two years or both, or fines of up to \$250,000 for body corporates.
87. Part 6 of the Bill provides for fines of up to \$100,000 for individuals and \$500,000 for body corporates for failures to comply with stop work orders. Stop work orders may be issued under Part 6 if the work being undertaken involves serious risk to the workers.

Notwithstanding the sizeable fines that accompany the strict liability clauses in Part 3 of the Bill in relation to failure to notify regulators and health and safety representatives of notifiable incidents, as well as the strict liability clauses in relation to preserving incident sites, given the importance of health and safety procedures in NSW mines, the Committee makes no further comment on this issue.

Similarly, given the importance of health and safety, the Committee makes no further comment in relation to the strict liability clauses outlined in Parts 5 and 6 of the Bill.

The Committee notes that the offence of failing to comply with a requirement of a government official in Part 4 of the Bill may be mitigated by reasonable excuse. Given this mitigation, and the overall safety objectives of the Bill, the Committee makes no further comment on the strict liability clauses in Part 4 of the Bill.

Right to silence

88. Subclauses 58(5)-(7) provide that a person who is a witness before a Board of Inquiry under the Act is not excused from giving evidence and producing documents on the ground that the answer might incriminate them and make them liable to a penalty.

However, any answer given by a natural person in compliance with the requirements of clause 58 is not admissible in evidence against the person in criminal proceedings if the person objected at the time to answering the question or the person was not warned that they may object to answering on the ground that the answer might incriminate them.

The Committee notes that whilst clause 58 impacts on the right to silence, a natural person will not be exposed to criminal proceedings if they object at the time to answering the question, or if they were not warned that they could object.

Privacy

89. Clause 70 of the Bill provides that a regulator may publish any information concerning the conviction of a person for an offence against the Work Health Safety laws.
90. Clause 71 provides for the sharing of information between regulators for the purpose of assisting with the exercise of functions under Work Health Safety laws.

With respect to the privacy implications that arise in relation to clause 70, the Committee notes that the publication of information concerning the conviction of a person for an offence against the Work Health Safety laws does not unduly trespass on an individual's right to privacy, as criminal convictions are a matter of public record.

The Committee considers the sharing of information between regulators for the purpose of assisting with the exercise of functions under Work Health Safety laws to be reasonable and makes no further comment on this issue.

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

Commencement by proclamation

91. The Bill commences on a day or days to be appointed by proclamation.

Given the new regime that is to be implemented, the Committee makes no further comment on the commencement of this Act by proclamation.

Part Two - Regulations

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

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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