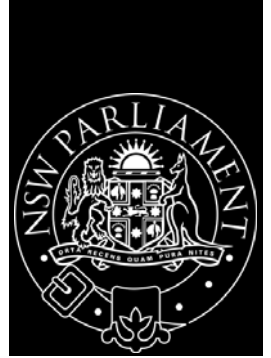


PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

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No 14 of 2010

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\* Denotes Private Member's Bill

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## FUNCTIONS OF THE LEGISLATION REVIEW 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.
- (3) 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 *LEGISLATION REVIEW DIGEST*

### Part One – Bills

#### Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page iii).

#### Section B: 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.

### Part Two – 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 is set out in s 9 of the *Legislation Review Act 1987* (see page iii).

#### 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 Bills Reported on in 2010

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

## Appendix 2: 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 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

This table specifies the action the Committee has taken with respect to Bills that received comment in 2010 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

## Appendix 4: 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.

## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. Courts and Crimes Legislation Amendment Bill 2010

13. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

#### 2. Health Legislation Further Amendment Bill 2010

##### Issue: Wide Delegation of Power

18. While the Committee appreciates the need for tight regulation in relation to the use and disclosure of healthcare identifiers, especially in circumstances where the identifiers may contain or imply sensitive information of a medical nature, the Committee is concerned with the way this provision has been structured.
19. Specifically, the Committee is concerned that conferring onto the relevant Minister the ability to set the elements of an offence in regulations, the penalties for which are already provided for in the principal Act, would constitute a wide and inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

#### 3. Health Services Amendment (Local Health Networks) Bill 2010

##### Issue: Proposed section 29 – Schedule 1.1 [10] – Amendment to *Health Services Act 1997* – Removal of members of local health network governing council and appointment of administrator - III Defined And Wide Powers:

32. The Committee takes into consideration that the proposed section 29 (2) requires the Minister to provide a statement in Parliament (as soon as is reasonably practicable) concerning the basis for the appointment of the administrator, as well as the potential necessity in extreme cases to intervene urgently. The Committee also has regard to similar provisions already in place with respect to board-governed statutory health corporations. Therefore, the Committee is of the view that proposed section 29 (1) does not appear to make individual rights or obligations unduly dependent on insufficiently defined administrative powers.

##### Issue: Clause 2 (1) - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

35. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.



#### **4. Nature Conservation Trust Amendment Bill 2010**

11. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

#### **5. Occupational Licensing (Adoption Of National Law) Bill 2010**

Issue: Clause 2 (1) – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.

21. Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.

#### **6. Parliamentary Budget Officer Bill 2010**

9. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

#### **7. Surrogacy Bill 2010**

Issue: Commencement by Proclamation

19. The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. As the Committee has not identified any other concerns with this Bill that may trespass on the rights and liberties of individuals, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

#### **8. University of Technology (Kuring-gai Campus) Bill 2010\***

Issue: Property Rights – Clause 5

10. The Committee considers that any revocation of planning approval granted to CRI Australia Pty Ltd on behalf of UTS in relation to the land takes away a fundamental property right to develop the land. As such, the Committee considers this a trespass upon rights and liberties.

Issue: Acquisition of land not on just terms – Clause 6

13. The Committee is concerned that the right to, and interests in, property are inadequately safeguarded by the Bill. It is uncertain whether the circumstances justify exclusion of the *Land Acquisition (Just Terms Compensation) Act 1991*. Accordingly, the Committee is concerned that the Bill may trespass unduly on personal rights and liberties.

- 14. The Committee considers that personal rights and liberties are unduly trespassed by the Bill as it allows the compulsory acquisition of land and interests in the land without compensation.**

## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2010

Date Introduced:	20 October 2010
House Introduced:	Legislative Council
Minister Responsible:	The Hon. John Hatzistergos MLC
Portfolio:	Attorney General

### Purpose and Description

1. This Bill amends numerous Acts related to criminal procedure. The bulk of the amendments are of a minor or technical nature.
2. Firstly, the Bill amends the *Child Protection (Offenders Registration) Act 2000* to make new Commonwealth offences relating to child sex tourism registrable offences under that Act (Schedule 1).
3. Secondly, the Bill amends the *Criminal Procedure Act 1986* to extend the circumstances in which an alleged victim of an offence involving violence is not required to attend committal hearings (Schedule 2).
4. Thirdly, the Bill amends the *District Court Act 1973* so that a person who is or has been an associate Judge of the Supreme Court of New South Wales may be appointed as an Acting Judge of the District Court, even if that person has reached the age of 72 years but only if he or she has not yet reached the age of 75 years (Schedule 3).
5. Fourthly, the Bill amends the *Solicitor General Act 1969* to ensure that the Attorney General may delegate his or her power to intervene in proceedings to the Solicitor General, regardless of whether the power is conferred on the Attorney General in his or her capacity as Attorney General or as a Minister administering a particular Act (Schedule 4).
6. Lastly, the Bill amends the *Trustee Act 1925* to allow the regulations made under that Act to prescribe a class of insurers that may insure the repayment of a loan to a trustee for the purposes of that Act (Schedule 5).

### Background

7. Schedule 1 to the Bill contains consequential amendments to the *Child Protection (Offenders Registration) Act 2000* as a result of the commencement of the Commonwealth *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* on 15 April 2010. Amongst other reforms, the Commonwealth Act repealed

Part IIIA of the Commonwealth *Crimes Act 1914* that related to child sex offences committed outside Australia and transferred these provisions to the Commonwealth *Criminal Code 1995* to reflect these changes.

8. With respect to Schedule 2 to the Bill, the Office of the Director of Public Prosecutions wrote to the Attorney General requesting that offences falling under section 112(2) of the *Crimes Act 1900* – aggravated breaking and entering and committing a serious indictable offence – be included in the definition of 'offence involving violence' under section 94 of the *Criminal Procedure Act 1986*. The practical effect of offences being included in the definition is that it allows magistrates the discretion not to direct the attendance of alleged victims at committal hearings unless there are special reasons. The extension of this definition will ensure that victims of these crimes will not be afforded less protection in relation to attending to give oral evidence at committals than other victims of violence.
9. At present, Section 18(4) of the *District Court Act 1973* confines judicial appointments of a person aged between 72 and 75 to retired judges. This precludes a person who is a current or retired associate judge of the Supreme Court from being appointed as an acting judge of the District Court. Although associate judges are qualified judicial officers, by definition under the *Supreme Court Act 1970*, an associate judge is not a judge. As there are very few acting judges available to sit in the District Court, Schedule 3 to the Bill will expand the pool of possible candidates that the District Court can draw upon for appointment to act on the District Court bench.
10. With respect to Schedule 4 to the Bill, the Solicitor General advised the Government that the power of the Attorney General to delegate his or her powers and functions to the Solicitor General is limited to the delegation of powers and functions that the Attorney General has in his or her capacity as Attorney General. It does not, therefore, include the power to intervene in proceedings before a court or tribunal where an Act simply confers this power on the Minister responsible for that particular Act, and the Attorney General is the Minister responsible for that Act. Schedule 4 to the Bill corrects this oversight and ensures that the Attorney General has the power to delegate in all circumstances where he or she is the Minister responsible for a particular Act.
11. Schedule 5 to the Bill amends the *Trustee Act 1925* to clarify that it is not necessary to prescribe an individual insurer for the purposes of a prescribed insurer in that Act and that, rather, a class of insurers can be prescribed. Under the *Trustee Act 1925*, a trustee is not chargeable with breach of trust arising from loans made on the security of property provided the requirements of section 18 are complied with. One of those requirements is that the amount of the loan must not exceed two-thirds of the value of the property unless repayment of the loan is insured by a prescribed insurer, in which case the amount of the loan is not to exceed 95 per cent of the value of the property.

## The Bill

### 12. **Outline of Provisions**

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

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1 Amendment of *Child Protection (Offenders Registration) Act 2000 No 42***

**Schedule 1 [1] and [2]** amend the definitions of ***Class 1 offence*** and ***Class 2 offence*** to reflect the transferral of provisions relating to offences involving child sex tourism from the *Crimes Act 1914* of the Commonwealth to the *Criminal Code* of the Commonwealth. The amendments also insert new sex offences dealt with by the *Criminal Code*. As a consequence of the amendments, the reporting obligations provided for by the Act will apply to a person sentenced in respect of such an offence.

**Schedule 1 [3]** inserts a regulation-making power for matters of a savings and transitional nature. **Schedule 1 [4]** makes a transitional provision which ensures that the amendments extend to offences in respect of which a sentence was imposed before the amendments commence. The provision also makes adjustments to the reporting obligations of persons who were sentenced in respect of such offences before the amendments take effect.

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

**Schedule 2 [1]** extends the definition of ***offence involving violence*** so that it includes an offence the elements of which include the commission of, or intention to commit, any offence that is already defined as an offence involving violence. Consequently, an alleged victim of such an offence will not be required to attend a committal hearing unless the court is satisfied that there are special reasons why the alleged victim should attend to give oral evidence.

**Schedule 2 [2]** ensures that the amendment to the definition of ***offence involving violence*** only applies in committal proceedings that a Magistrate first starts to hear after the commencement of the amendment.

### **Schedule 3 Amendment of *District Court Act 1973 No 9***

**Schedule 3** extends the kind of qualified person who may be appointed as an Acting Judge of the District Court from a retired Judge to include a person who is or has been an associate Judge of the Supreme Court of New South Wales. Such a person may be appointed as an acting judge even though that person has reached the age of 72 years (or will have reached that age before their appointment as acting judge expires). However, a qualified person cannot be appointed as an acting judge for any period that extends beyond the day on which that person reaches the age of 75 years.

### **Schedule 4 Amendment of *Solicitor General Act 1969 No 80***

**Schedule 4** allows any power, authority, duty or function of the Attorney General to intervene in proceedings (whether personally or by agent) to be delegated by the Attorney General, whether the power, authority, duty or function to be delegated is conferred on the Attorney General in his or her capacity as Attorney General or in his or her capacity as the Minister administering an Act.

### **Schedule 5 Amendment of *Trustee Act 1925 No 14***

**Schedule 5 [1]** clarifies that it is not necessary to prescribe an individual insurer for the purposes of a definition of ***prescribed insurer*** in the *Trustee Act 1925*. Rather, a class of insurers can be prescribed. A prescribed insurer is an insurer who can insure a loan repayment to a trustee under the provisions of the Act that specify the maximum ratio of the amount of the loan to the value of the property that secures the loan.

**Schedule 5 [2]** saves the existing regulation.

## **Issues Considered by the Committee**

<p>13. <b>The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</b></p>
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*The Committee makes no further comment on this Bill.*

## 2. HEALTH LEGISLATION FURTHER AMENDMENT BILL 2010

Date Introduced:	20 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon. Carmel Tebbutt MP
Portfolio:	Health

### Purpose and Description

1. The object of this bill is to make miscellaneous amendments to various Acts that relate to health and associated matters.
2. Specifically, the Bill seeks to amend the *Mental Health Act 2007* with respect to the review of involuntary patients, the classification of involuntary patients as voluntary patients, the making of community treatment orders with respect to forensic patients, the service of notices on persons who breach community treatment orders, the circumstances in which electro convulsive therapy may be used and the composition of the Mental Health Review Board.
3. The Bill will also amend the *Mental Health (Forensic Provisions) Act 1990* with respect to the making of community treatment orders in relation to forensic patients.
4. Lastly, the Bill will amend the *Health Records and Information Privacy Act 2002* to provide that a healthcare identifier within the meaning of the *Healthcare Identifiers Act 2010* of the Commonwealth is health information and to permit regulations to be made with respect to healthcare identifiers.

### Background

5. The establishment of the healthcare identifier service was agreed to by the Council of Australian Governments, which also agreed that the Commonwealth provisions would apply to the States and Territories on an interim basis until the States and Territories enacted appropriate laws to regulate the use and disclosure of healthcare identifiers.
6. As such, the Commonwealth *Healthcare Identifier Act 2010* enables the Commonwealth Minister to declare that specified provisions of the Commonwealth Act do not apply to the public bodies of a specified State or Territory provided that the Commonwealth Minister is satisfied that there are appropriate laws, as determined by the ministerial council, in force in the State or Territory.
7. According to the Agreement in Principle Speech, it is the intention of the NSW Government to seek a declaration from the Commonwealth Minister that the Commonwealth *Healthcare Identifier Act 2010* does not apply to the NSW public sector and to apply NSW law instead. If such a declaration is made, the use and disclosure of healthcare identifiers by the New South Wales public sector will be regulated by one law, the NSW *Health Records and Information Privacy Act 2002*,

and the NSW Privacy Commissioner will have the power to investigate complaints against the misuse of healthcare identifiers by the New South Wales public sector, as is currently the case with all health information.

8. The Bill also makes consequential amendments to the operation of the *Mental Health Act 2007* and *Mental Health (Forensic Provisions) Act 1990* as a result of consultation with the Mental Health Review Tribunal and other interested parties.

## The Bill

### 9. Outline of Provisions

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

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

#### **Schedule 1 Amendment of *Mental Health Act 2007* No 8**

**Schedule 1 [1]** permits the Mental Health Review Tribunal (*the Tribunal*) to review the case of an involuntary patient at any time. It also requires an authorised medical officer to cause an involuntary patient to be brought before the Tribunal at such times as may be required by the Tribunal for the purposes of any such review.

**Schedule 1 [2]** permits the Tribunal to classify an involuntary patient as a voluntary patient when conducting a review of the patient. **Schedule 1 [3]** makes a consequential amendment.

**Schedule 1 [4]** provides that the Tribunal, when determining whether to make a community treatment order in respect of a forensic patient, is not required to consider if the person has a previous history of refusing to accept appropriate treatment. Instead, it must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.

**Schedule 1 [5]** clarifies the steps that must be taken when notifying a person that he or she is in breach of a community treatment order and provides for notification to be given by post in circumstances where it is not reasonably practicable to hand the notice directly to the person. **Schedule 1 [9]** includes a transitional provision that enables the proposed notification requirements to be used in respect of a breach of a community treatment order that occurs before the proposed amendment commences.

**Schedule 1 [6]** corrects a typographical error in the formulation of a test to be applied by the Tribunal in making an electro convulsive therapy determination so that it is consistent with the formulation of the test in related provisions of the *Mental Health Act 2007* and in the corresponding provisions of the former *Mental Health Act 1990*.

**Schedule 1 [7]** removes a prohibition on the President of the Tribunal, when constituting the Tribunal, nominating members (other than psychiatrists) who are Australian lawyers. The President may now nominate a member whom the Governor considers to have suitable qualifications or experience.



**Schedule 1 [8]** enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

### **Schedule 2 Amendment of *Mental Health (Forensic Provisions) Act 1990 No 10***

**Schedule 2 [1]** provides that the Tribunal may make community treatment orders in relation to all forensic patients rather than certain classes of forensic patients as is the case at present.

**Schedule 2 [2]** enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

### **Schedule 3 Amendment of *Health Records and Information Privacy Act 2002 No 71***

**Schedule 3 [1] and [2]** provide that a healthcare identifier within the meaning of the *Healthcare Identifiers Act 2010* of the Commonwealth is health information for the purposes of the *Health Records and Information Privacy Act 2002*.

**Schedule 3 [3]** provides that regulations may be made in relation to healthcare identifiers and may specify the circumstances in which a person may or may not use or disclose a healthcare identifier. A person who uses or discloses a healthcare identifier in contravention of any such regulation commits an offence (maximum penalty \$66,000 in the case of a corporation, or imprisonment for 2 years or \$13,200, or both, in any other case).

**Schedule 3 [4]** enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Issues Considered by the Committee**

### **Delegation of legislative powers [s 8A(1)(b)(iv) LRA]**

#### **Issue: Wide Delegation of Power**

10. Clause 3 of Schedule 3 to the Bill proposes to insert a new provision in the *Health Records and Information Privacy Act 2002* to deal with regulations in relation to healthcare identifiers. A healthcare identifier is defined by section 9 of the Commonwealth *Healthcare Identifiers Act 2010* and can either be identifiers that are assigned to individual healthcare providers, healthcare provider organisations or healthcare recipients.
11. Clause 3 provides that the proposed regulations may specify the circumstances in which a person may or may not use or disclose a healthcare identifier. As such, the regulations will be able to set the privacy parameters of healthcare identifiers and related information.
12. Clause 3 further proposes to amend the *Health Records and Information Privacy Act 2002* to make it an offence for a person who uses or discloses a healthcare identifier in contravention of the regulation. The proposed maximum penalty of this offence would be 120 penalty units or two years imprisonment or both.

13. While the Committee appreciates the need for tight regulation in relation to the use and disclosure of healthcare identifiers, especially in circumstances where the identifiers may contain or imply sensitive information of a medical nature, the Committee is concerned with the way this provision has been structured.
14. Specifically, the provision seeks to set the penalty for an offence in the principal Act while providing for the elements of the offence to be set in the regulations. This will confer a wide delegation of power onto the relevant Minister.
15. The Committee understands that the regulations have not yet been made as they are still subject to NSW Health consulting with the Commonwealth and the other States and Territories. It is understood that this is to ensure that the ministerial council established under the Commonwealth *Healthcare Identifier Act 2010* is satisfied that the proposed regulations provide appropriate directives regarding the use and disclosure of healthcare identifiers.
16. However, the Committee also understands that the Senate Standing Committee for the Scrutiny of Bills, in its Alert Digest of 24 February 2010, raised similar concerns about the wide delegation of power conferred onto the relevant Commonwealth Minister in the equivalent provision of the Commonwealth *Healthcare Identifier Act 2010*. The Committee also added that, generally, the elements of an offence should be coupled alongside the penalty provision in the principal Act and not in another legislative instrument.
17. In these circumstances, the Committee is concerned that conferring onto the Minister the ability to set the elements of an offence in regulations, the penalties for which are already provided for in the principal Act, would constitute a wide and inappropriate delegation of legislative power.

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| <ol style="list-style-type: none"><li>18. <b>While the Committee appreciates the need for tight regulation in relation to the use and disclosure of healthcare identifiers, especially in circumstances where the identifiers may contain or imply sensitive information of a medical nature, the Committee is concerned with the way this provision has been structured.</b></li><li>19. <b>Specifically, the Committee is concerned that conferring onto the relevant Minister the ability to set the elements of an offence in regulations, the penalties for which are already provided for in the principal Act, would constitute a wide and inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</b></li></ol> |
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***The Committee makes no further comment on this Bill.***

### 3. HEALTH SERVICES AMENDMENT (LOCAL HEALTH NETWORKS) BILL 2010

Date Introduced:	21 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Carmel Tebbutt MP
Portfolio:	Health

#### Purpose and Description

1. This Bill amends the *Health Services Act 1997* to implement a health network system for the purposes of the National Health and Hospitals Network Agreement; to make consequential amendments to certain other Acts and statutory rules; and for other purposes.
2. It provides for the establishment of 18 Local Health Networks by abolishing the current eight area health services. It enables the establishment of network governed health corporations to support the Sydney children's hospitals network and the forensic network. It also contains provisions to enable affiliated health organisations to be treated as networks under the National Health and Hospitals Network Agreement (NHHN).
3. The new Local Health Networks are a key component of the National Health and Hospitals Network Agreement (NHHN).
4. Items [1] to [3] of the Bill propose amendments to the objects of the Act to reflect these changes to the structure of the New South Wales public health system. Like the current area health services, Local Health Networks will provide services on a geographic basis. Under section 17 of the *Health Services Act*, the new Local Health Networks will be established as statutory corporations that do not represent the Crown in right of New South Wales, and which are separate legal entities from the Department of Health. The National Health and Hospitals Network Agreement (NHHN) contains requirements relating to the governance of local health networks. The Bill proposes amendments to the Act to reflect these requirements.
5. The Bill will amend section 26 of the Act to establish Local Health Network Governing Councils in place of the current area health advisory councils. Section 26 (1) of the *Health Services Act* already provides for the Minister to appoint the members of the council. This is in line with clause A11 of the National Health and Hospitals Network Agreement and will be retained. The new section 26 subsections (2) and (3) set out the skills and expertise that will be required of members of governing councils which will be consistent with the requirements of the National Health and Hospitals Network Agreement (NHHN).
6. A new clause 26 (3A) provides that a Local Health Network Governing Council will be required to have at least one member who has expertise, knowledge or experience in relation to Aboriginal health, in keeping with the current advisory council provisions.

The amendments to section 26 also provide that membership of each governing council will be limited to a minimum of six members and a maximum of thirteen.

7. This Bill addresses the governance issues in several ways. First, the current powers in section 25 of the Act have been revised. Currently, section 25 (b) provides that the chief executive is, in the exercise of his or her functions, subject to the control and direction of the Director General of the New South Wales Department of Health. This provision will be removed. Instead, the chief executive will, in the exercise of his or her functions, be accountable to the governing council—the terms of this change reflect the wording of clause A11 of the NHHN agreement. Second, a new section 28 has been added, setting out the functions of governing councils.
8. The Bill includes a power to add additional governing council functions by way of regulation. Given the different role and functions of governing councils compared with area health advisory councils, the Bill also proposes deleting a number of current provisions relating to area health advisory councils that are unnecessary or inapplicable to governing councils. Such provisions include section 27, that sets out the role of area health advisory councils; section 29, which allows the Minister to establish a charter for area health advisory councils; and section 29A, which requires area health advisory councils to provide an annual report relating to the council's performance.
9. The new amendments, instead, will include, the council having the function of endorsing the Local Health Network's annual report. As with members of area health advisory councils currently, under section 26 (4) of the Act, governing council members shall be appointed for a period of no more than four years, such period to be specified in the instrument of appointment.
10. The introduction of a new section 29 will provide the Minister with the power to remove governing council members, and, where appropriate, replace them with an administrator. Similar provisions to this proposed section are in place with respect to board-governed statutory health corporations.
11. Section 122 of the Act already recognises some of the systemic oversight roles for the Director General of the Department of Health. To ensure that the State can effectively undertake these functions, the Bill amends section 122 of the Act to provide the Director General with additional functions of providing governance, oversight and control of the public health system and the statutory health organisations within it; as well as issuing lawful directions to statutory health organisations.
12. Under section 126B, the Director General already has functions to provide support services to public health organisations. The Bill proposes to amend section 126B of the Act to allow the Director General to provide services, not only in support of public health organisations and the public hospitals but also to enable the coordinated provision of health services involving more than one public health organisation on a statewide basis.

## Background

13. In April 2010, the New South Wales Government reached agreement with the Commonwealth and seven States and Territories to implement national health reform

through the National Health and Hospitals Network [NHHN] Agreement. The NHHN Agreement will result in major funding and structural changes to the New South Wales health system.

14. On 29 September 2010, after extensive consultations, including close to 400 submissions, the New South Wales Government announced 18 Local Health Networks in New South Wales, comprising eight geographically based local health networks covering the Sydney metropolitan region, seven geographically based local health networks covering rural and regional areas, and three specialty networks covering children's health, forensic mental health and services delivered by St Vincent's Health.
15. As a result of the feedback received during the consultation process, a set of ministerial directions for each local health network will be issued. For example, ministerial directions will recognise distinct sectors and distinct budgets for Blacktown-Mount Druitt Hospital, Dubbo Base Hospital and the Orana region and at the St George-Sutherland hospitals.
16. The State Government will enter into a statement of intent with the Local Government and Shires Associations to facilitate the reform process, particularly in relation to rural and regional Local Health Networks. This will lead to formal arrangements between the new Local Health Networks and local government around issues such as improvements to health facilities and workforce development. In the new, localised health structure, the Government will appoint three regional coordinators of clinical governance to report directly to the Clinical Excellence Commission.
17. The State Government is developing cross-border health agreements with the Australian Capital Territory, Victoria, Queensland and South Australia through discussions. A range of joint planning activities will be undertaken.
18. The Government has issued a statewide expression of interest for membership of the governing councils. The Department of Health will be consulting with key professional groups, including the New South Wales branch of the Australian Medical Association [AMA], the Australian Salaried Medical Officers' Federation [ASMOF], the New South Wales Nurses Association and the Health Services Union to develop provisions for the Local health network model by-laws so that pathways for local nurses, doctors and allied health professionals may be established and put forward for the consideration of the Minister for appointment.
19. According to the Agreement in Principle speech:

The functions of governing councils will include ensuring that effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by the network and to approve those frameworks; approving systems to support the efficient and economic operation of the network, to ensure that the network manages its budget performance to meet performance targets and that resources are applied equitably to meet the needs of the community served by the network; and ensuring that strategic plans to guide the delivery of services are developed for the local health network and to approve those plans, providing strategic oversight of and monitoring the network's financial and operational performance. This will ensure that the council maintains a proper strategic oversight and monitoring role in relation to the network's activities...The chief executive will, under the terms of section 24, continue to be responsible for the day-to-day

management of the affairs of the local health network. The governing council will confer with the chief executive in connection with the operational performance targets and performance measures to be negotiated in the service agreement for the network under the NHHN Agreement and approve the service agreement for the network under the NHHN Agreement. The governing council will also have specific obligations in respect of the Chief Executive of the Local Health Network. While the chief executive will, consistent with New South Wales public sector employment arrangements, be an employee of the State Crown through the Director General of the Department of Health, the council will have the role of making recommendations for the appointment of the chief executive of the network and, where it considers it appropriate to do so, make recommendations for the removal of the chief executive. This ensures that the council will have a key role in appointment decisions consistent with the NHHN Agreement.

20. The Agreement in Principle speech also explained that:

I draw the attention of members to amendments to introduce a new section 29 to provide for the Minister to remove governing council members, and, where appropriate, replace them with an administrator. Similar provisions to this proposed section are already in place in respect of board-governed statutory health corporations. This is an important provision. The council and the chief executive will have substantial obligations in relation to the effective and efficient operation of the local health network, and for ensuring appropriate standards of care for their patients. It is critical that where there are failings governments can intervene, and intervene urgently in the most serious cases. A power to remove, urgently and without reason, is currently available in respect of chief executives in the case of area health services and chief executive governed statutory health corporations and boards in the case of board-governed statutory health corporations. Historically, such action has only been taken rarely and in the most extreme cases. I anticipate that this will continue to be the case. Clearly, however, there needs to be transparency in the event of such a decision...In recognition of this, section 29 will also provide that where the Minister for Health exercises the power to remove a council and appoint an administrator, the Minister must make a statement to Parliament that sets out the basis for making the decision to appoint an administrator.

21. In order to provide for health corporations that comply with the requirements of the NHHN agreement, a new division will be created in chapter 4 of the Act allowing the establishment of network-governed health corporations. The amendments create a statutory framework to enable the Sydney Children's Hospitals Network and the new Forensic Mental Health Network to be established as network-governed health corporations and to be recognised and funded under the NHHN agreement.
22. The Government has also announced the recognition of a new St Vincent's Network, comprising St Vincent's Hospital and Sacred Heart Hospice in Darlinghurst and St Joseph's Hospital at Auburn. Non-government sector providers of public health services are dealt with under chapter 5 of the Act. This chapter enables private benevolent bodies to be recognised as affiliated health organisations in respect of their establishments or services where public health or hospital services are provided.
23. A new section 62B will be inserted into the Act to enable the Minister to make an order declaring that one or more affiliated health organisations are, in respect of some or all of their recognised establishments or recognised services, to be treated as a network the purposes of the NHHN agreement. Such an order can only be made with the concurrence of the affected affiliated health organisation.

24. A separate legislation will be introduced to establish a National Health and Hospitals Network Funding Authority in New South Wales as required by the NHHN agreement. Under the agreement, all activity based funding from both Commonwealth and State governments is to be paid to the proposed funding authority, which make payments to local health networks in accordance with agreed local health network service agreements.
25. The Bill also contains transitional and machinery provisions to facilitate the transfer of assets, rights and liabilities of area health services upon their dissolution. Accordingly, the Agreement in Principle speech stated that:
- Given the reforms involve the disaggregation of area health services into local health networks, amendments are proposed to enable this to occur smoothly and without risk of disruption to service provision.

## The Bill

26. In April 2010, the State entered into the National Health and Hospitals Network Agreement (the NHHN Agreement) with the Commonwealth, certain other States and the Territories. The objects of this Bill are:
- (a) to amend the *Health Services Act 1997*:
- (i) to establish a system of local health networks for the purposes of the NHHN Agreement for the whole of the State, and
- (ii) to provide for certain statutory health corporations to be constituted and governed on a network basis so as to enable them to be recognised as health networks for the purposes of the NHHN Agreement, and
- (iii) to enable certain affiliated health organisations to be recognised as networks for the purposes of funding under the NHHN Agreement, and
- (iv) to make other related amendments and amendments in the nature of statute law revision, and
- (v) to enact provisions of a savings or transitional nature, and
- (b) to make consequential amendments to certain other Acts and statutory rules.

## 27. Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act.

### **Schedule 1 Amendments to *Health Services Act 1997 No 154***

#### **1.1 Principal amendments**

##### **Establishment of local health networks**

The proposed Act makes amendments to the *Health Services Act 1997* (the Act) to replace the current system of area health services with a system of local health networks for the purposes of the NHHN Agreement.

**Schedule 1.1 [34]** replaces Schedule 1 to the Act, which currently lists the names and areas of area health services, with a new Schedule that lists the names and areas of the new local health networks.

**Schedule 1.1 [5]** amends section 10 of the Act to include an additional function for local health networks, namely, to co-operate with other local health networks and the Director-General of the Department of Health (the Director-General) in relation to the provision of services involving more than one public health organisation or on a State-wide basis.

**Schedule 1.1 [6]** amends section 25 of the Act to provide that the chief executive of a local health network is accountable to the local health network governing council constituted for the network.

**Schedule 1.1 [7]** amends section 26 of the Act to provide for a local health network governing council for each local health network. The governing councils (which will consist of 6 to 13 persons) will be appointed by the Minister having regard to certain criteria set out in the NHHN Agreement.

**Schedule 1.1 [9]** substitutes section 28 of the Act to specify the functions of local health network governing councils.

**Schedule 1.1 [10]** substitutes section 29 of the Act to enable the Minister to remove the members of a local health network governing council and appoint an administrator for the local health network.

**Schedule 1.1 [11]** amends section 32 of the Act to provide for directions under that section to be given to the local health network. Currently, directions under that section are given to the chief executive of an area health service.

### **Establishment of network governed health corporations**

The proposed Act makes amendments to the Act to enable statutory health corporations to be constituted to provide health services on a network basis for the purposes of the NHHN Agreement. These statutory health corporations will be called network governed health corporations. Network governed health corporations will have similar corporate governance structures to a local health network, but will not have a specified area of operation like a local health network.

**Schedule 1.1 [12]** amends section 41 of the Act to provide that a statutory health corporation may be constituted as a network governed health corporation. Alternative forms of corporate governance will be chief executive governance or board governance. **Schedule 1.1 [13] and [14]** make consequential amendments.

**Schedule 1.1 [16]** inserts proposed Division 3 in Part 2 of Chapter 4 of the Act. The new Division provides for the corporate governance of network governed health corporations. Each network governed health corporation will, like the local health networks, have a chief executive officer who manages the affairs of the corporation and is accountable to the governing council for the corporation.



**Schedule 1.1 [17]–[21]** make amendments to the Act to recognise that the exercise of certain functions by a network governed health corporation is subject to the direction of the Director-General.

**Schedule 1.1 [35]** amends Schedule 2 to the Act to change the corporate governance of The Sydney Children’s Hospitals Network from chief executive governance to network governance.

**Schedule 1.1 [36]** amends Schedule 2 to the Act to constitute a new statutory health corporation with the corporate name “Forensic Mental Health Network” as a network governed health corporation.

### **Recognition of networked affiliated health organisations**

**Schedule 1.1 [22]** inserts proposed section 62B in the Act to enable the Minister to recognise that one or more affiliated health organisations are to be treated as networks for the purposes of the NHHN Agreement.

### **Other amendments**

**Schedule 1.1 [1] and [2]** amend section 4 of the Act to update the objects of the Act to reflect the amendments to be made by the proposed Act.

**Schedule 1.1 [4], [8], [10], [29], [30], [33], [44] and [47]** make amendments to the Act to omit certain provisions that will become redundant with the establishment of the health network system or make amendments in the nature of statute law revision.

**Schedule 1.1 [15]** substitutes section 52C of the Act to remove a provision that provides for the chief executive of a statutory health corporation that is a chief executive governed health corporation to be subject to the control and direction of the Director-General.

**Schedule 1.1 [23]** amends section 122 of the Act to confer an additional function on the Director-General in relation to the provision of governance, oversight and control of the public health system and the statutory health organisations within it. A statutory health organisation is either a local health network or statutory health corporation. **Schedule 1.1 [24]** also amends section 122 to confer a direction function on the Director-General in relation to statutory health organisations.

**Schedule 1.1 [25]** amends section 126 of the Act to enable performance agreements entered into with a public health organisation under that section to include the provisions of a service agreement (within the meaning of the NHHN Agreement) and require the provision of data and other information to the State for the purposes of the State’s performance reporting obligations under that Agreement.

**Schedule 1.1 [26]** amends section 126B of the Act to provide that the Director-General may provide certain services in connection with the public health system and public health organisations.

**Schedule 1.1 [3], [27] and [28]** make amendments to the Act that are consequential on the amendment made by **Schedule 1.1 [26]**.

**Schedule 1.1 [31]** inserts proposed section 133B in the Act to limit the personal liability of the members of board or governing councils of statutory health corporations in relation to matters or things done or omitted to be done in good faith in the exercise of their functions. The proposed section replaces a similar provision in Schedule 5 to the Act, which is to be repealed by **Schedule 1.1 [43]**.

**Schedule 1.1 [32], [37], [38], [39] and [41]** make amendments to the Act that are consequential on the establishment of governing councils for local health networks and network governed health corporations.

**Schedule 1.1 [40] and [50]** make amendments to the Act to reflect current drafting practice in relation to provisions for the transfer of assets, rights and liabilities.

**Schedule 1.1 [42]** amends Schedule 4 to the Act to enable the regulations to make provision for or with respect to the legal consequences of the differential transfer under the Act of rights, obligations or other liabilities under the same contract or other agreement to more than one transferee.

**Schedule 1.1 [49]** omits certain definitions from the Dictionary of the Act that will become redundant and inserts certain new definitions of terms used by the amendments made by the proposed Act.

### **Savings and transitional provisions**

**Schedule 1.1 [45]** amends Schedule 7 to the Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 1.1 [46]** amends Schedule 7 to the Act to confirm that any such regulations may have effect despite any provision of the Act (including a provision of Schedule 7).

**Schedule 1.1 [48]** inserts proposed Part 7 in Schedule 7 to the Act, which contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

### **1.2 General amendments updating references to local health networks and local health network governing councils and minor amendments**

**Schedule 1.2** makes general amendments to the Act so as to update provisions by replacing references to area health services and area health advisory councils with references to local health networks and local health network governing councils, respectively. **Schedule 1.2** also makes some other minor amendments to the Act.

### **Schedule 2 Consequential amendment of other Acts and statutory rules**

**Schedule 2** makes consequential amendments to various other Acts and statutory rules.

## Issues Considered by the Committee

### Insufficiently defined administrative powers [s 8A(1)(b)(ii) LRA]

**Issue: Proposed section 29 – Schedule 1.1 [10] – Amendment to *Health Services Act 1997* – Removal of members of local health network governing council and appointment of administrator - III Defined And Wide Powers:**

28. Proposed section 29 substitutes section 29 of the *Health Services Act 1997* to enable the Minister to remove the members of a local health network governing council and appoint an administrator for the local health network. Proposed section 29 (1) reads: The Minister may at any time, for any reason or no reason and without notice, by order published in the Gazette:
- (a) remove any member or all members of a local health network governing council from office, or
  - (b) remove all members of a local health network governing council from office and appoint, as administrator of the local health network concerned, the chief executive of the network or any other person specified in the order for such period as may be specified in the order.
29. The Committee notes the broad nature of the power and scope for the Minister to remove any or all members of a local health network governing council from office at any time, for any reason or no reason and without notice, which may have a significant impact on individuals.
30. However, the Committee is aware that similar provisions are in place with respect to board-governed statutory health corporations including similar powers to urgently remove (without reason) with regard to chief executives in area health services and also concerning chief executives in governed statutory health corporations and boards in board-governed statutory health corporations. The Agreement in Principle speech recognises that historically, such an action has only been taken rarely and in the most extreme case.
31. The Committee also notes the proposed section 29 (2) provides that: If the Minister appoints an administrator of a local health network under this section, the Minister is (as soon as is reasonably practicable after the appointment is made) to make a statement in Parliament concerning the basis for the appointment of the administrator.
32. **The Committee takes into consideration that the proposed section 29 (2) requires the Minister to provide a statement in Parliament (as soon as is reasonably practicable) concerning the basis for the appointment of the administrator, as well as the potential necessity in extreme cases to intervene urgently. The Committee also has regard to similar provisions already in place with respect to board-governed statutory health corporations. Therefore, the Committee is of the view that proposed section 29 (1) does not appear to make individual rights or obligations unduly dependent on insufficiently defined administrative powers.**

**Delegation of legislative powers [s 8A(1)(b)(iv) LRA]**

**Issue: Clause 2 (1) - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.**

33. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation, except as provided by subsection (2) where schedule 1.1 [40], [42], [44]-[48] and [50] will commence on the date of assent. Clause 2 (1) may delegate to the government the power to commence the proposed Act on whatever day it chooses or not at all.
34. However, the Committee notes that the Agreement in Speech explains that the amendments involve the transfer of assets, rights and liabilities of area health services upon their dissolution and accordingly: "Given the reforms involve the disaggregation of area health services into local health networks, amendments are proposed to enable this to occur smoothly and without risk of disruption to service provision".
35. **Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.**

***The Committee makes no further comment on this Bill.***

## 4. NATURE CONSERVATION TRUST AMENDMENT BILL 2010

Date Introduced:	20 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Frank Sartor MP
Portfolio:	Climate Change and the Environment

### Purpose and Description

1. This Bill amends the *Nature Conservation Trust Act 2001* to make further provision for the object, functions and membership of the Nature Conservation Trust of New South Wales, and to amend the *National Parks and Wildlife Act 1974* in relation to conservation agreements.
2. A statutory review of the *Nature Conservation Trust Act* was undertaken in 2006, which highlighted constraints on the trust's operations, and recommended legislative amendment. This Bill aims to insert model clauses required for the trust to achieve tax-deductible status. It aims to make the Nature Conservation Trust more attractive to potential donors by removing the current obstacles to gaining tax deductibility in its own right. These changes will reduce the administrative burden on the trust.
3. The Bill will give the trust the power to buy and trade water allocations associated with trust properties. This is a right that other private landholders currently enjoy, but is not provided for under the *Nature Conservation Trust Act*.
4. This Bill will not allow the trust to purchase or trade in water for any other purpose, such as a means of revenue raising.
5. It will permit the trust to sell land unsuitable for nature conservation without a covenant. It will allow the trust to sell, without constraints, those parcels of land with little or no conservation value. This Bill provides that a trust agreement can restrict or prohibit the subdivision of land with high conservation value. It clarifies a trust agreement can restrict subdivision.
6. Although the Act currently refers to certain capabilities required of board members, the Bill codifies the specific skills and experience required of board members.

### Background

7. The Nature Conservation Trust operates a revolving fund program. The Agreement in Principle speech explained that:

It buys properties of high conservation value, places a conservation covenant over the land, and resells to a supportive new owner. The proceeds of the sale are returned to the fund and are used for further purchases. Since 2003 the trust has increased the quantum of its revolving fund program from \$2 million to \$25.1 million at June 2010. The trust has purchased 16 properties, six of which have been on-sold with

conservation covenants. The trust has protected 21,581 hectares across 58 properties. This includes 87 different regional ecosystems, 47 of which are under-represented in the formal New South Wales reserve system; three nationally threatened ecological communities; and 10 ecological communities threatened in New South Wales.

8. However, over the past nine years, certain aspects of the *Nature Conservation Trust Act 2001* are limiting the trust's efforts in two key areas: attracting donations and sponsorship, and holding and trading in water entitlements for the purpose of managing conservation values on land subject to a trust agreement.

## The Bill

9. The object of this Bill is to amend the *Nature Conservation Trust Act 2001*:

(a) to require the Nature Conservation Trust of New South Wales (the Trust) to establish and maintain a public fund, so that donations to the Trust for its principal purpose are eligible for tax deductible status under Commonwealth taxation law, and

(b) to clarify that the Trust has similar functions with respect to water as its functions with respect to land, including by authorising the Trust to deal in water access licences and similar entitlements, and

(c) to authorise the Trust to sell, without imposing a covenant, any part of land that it acquires that is unsuitable for conservation purposes, and

(d) to expressly permit Trust agreements to impose restrictions on the subdivision and other development of land, and

(e) to make further provision for the skills and experience required of non-government members of the Board of the Trust, and

(f) to provide for a further review of the Act in 5 years' time.

The Bill also amends the *National Parks and Wildlife Act 1974* to make it clear that conservation agreements may make provision for the protection, conservation and management of waters (as well as land).

## 10. Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on 1 February 2011.

### **Schedule 1 Amendment of *Nature Conservation Trust Act 2001* No 10**

#### **Establishment of public fund**

The amendments require the Trust to establish and maintain a public fund for the principal purpose of the Trust. The public fund is to be called the Nature Conservation Trust of New South Wales Public Fund (the Public Fund).

The amendments make it clear that the Trust has a single object, which is to protect and enhance natural heritage (including any cultural heritage associated with natural heritage).

The object of the Trust is also its principal purpose. The purpose of the amendments is to ensure that donations made to the Trust, for its principal purpose, are tax deductible under the *Income Tax Assessment Act 1997* of the *Commonwealth (the Commonwealth Income Tax Assessment Act)*. For donations to the Public Fund to have tax deductible status under the *Commonwealth Income Tax Assessment Act*, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment.

The amendments include a number of other provisions the object of which is to ensure that donations to the Trust for its principal purpose meet the requirements for tax deductible status. These include:

- (a) a provision that makes it clear that the affairs of the Trust are to be conducted on a not-for-profit basis and that the Public Fund is not-for-profit, and
- (b) a requirement that all gifts of money or property made to the Public Fund for the principal purpose of the Trust, or other contributions made in relation to fundraising events for that principal purpose, be held in the Public Fund and are used only for that principal purpose, and
- (c) a requirement that the Trust not agree to any condition imposed on a gift to the Public Fund (so that a gift can be used only for the principal purpose of the Trust, rather than on the basis of donor preferences), and
- (d) a requirement that the Trust comply with any other requirements made of it under the *Commonwealth Income Tax Assessment Act*, including by complying with rules made under that Act and by providing statistical information about gifts or contributions made to the Public Fund, and
- (e) a requirement that, on a winding up of the Trust, all outstanding property held in the Public Fund is to be transferred to another fund with tax deductible status and a similar principal purpose.

The principal amendments described above are contained in **Schedule 1 [2], [6], [12], [17] and [22]**. **Schedule 1 [7]** makes changes to the functions of the Trust that are consequential on the new provisions relating to the Public Fund. **Schedule 1 [1]** inserts definitions used in the provisions. **Schedule 1 [11]** and **[12]** also replace the term “gift, devise or bequest” with the more general term “gift”, so that the new provision that prevents the Trust agreeing to a condition of a gift of money or property that is to be made to or held in the Public Fund will also apply to a devise or bequest, if the devise or bequest is a gift of money or property that must be held in the Public Fund under the *Commonwealth Income Tax Assessment Act*. **Schedule 1 [21]** removes a provision made redundant by the amendments. **Schedule 1 [5]** and **[9]** are consequential amendments.

As the Trust already maintains trust accounts, it is necessary to distinguish these accounts from the Public Fund. The amendment in **Schedule 1 [18]** renames the existing trust accounts as operating accounts and makes it clear that these accounts are to be kept separate from the Public Fund. The operating accounts can be used for the receipt of any money paid to the Trust that is not required to be held in the Public Fund (such as borrowings) and to meet its liabilities (for example, remuneration of Board members).

## Water management

At present the Act gives the Trust certain functions in respect of land that is significant for the conservation of natural heritage. **Schedule 1 [1]** inserts a definition of land into the Act to make it clear that land includes water on or under the surface of land. Accordingly, any of the functions of the Trust with respect to land extend to water on or under the surface of land.

**Schedule 1 [6]** also includes a provision that makes it clear that any arrangements entered into by the Trust with landholders can include arrangements for the management and protection of waters that affect the natural heritage of land. This may include waters not actually situated on the land to which the agreement relates.

**Schedule 1 [8]** authorises the Trust to buy, acquire, sell, hold, create security interests in and otherwise deal in access licences and other entitlements with respect to water under the *Water Management Act 2000* and the *Water Act 1912*. **Schedule 1 [10]** is a related amendment.

### **Use of covenants under revolving fund scheme**

At present the Trust operates a revolving fund scheme. Under the scheme, the Trust purchases or acquires land that is significant for the conservation of natural heritage, arranges for a covenant to be registered on the title to the land that protects that heritage, and then sells or leases the land subject to the covenant.

**Schedule 1 [4]** will authorise the Trust to sell or lease part of any land acquired, without arranging for a covenant to be registered on the title to that part of the land, if the Trust decides that the part of the land concerned is of low or no conservation value. **Schedule 1 [3]** is a related amendment.

### **Contents of Trust agreements**

**Schedule 1 [19]** permits Trust agreements to contain provisions that restrict the development of land the subject of the agreement. Development is given the same meaning as it has in the *Environmental Planning and Assessment Act 1979*, which includes the use of land, the subdivision of land, the erection of buildings on land and the carrying out of work on land. At present, only restrictions on the use of the land are expressly permitted (however, agreements can provide for any matters which the parties consider appropriate). A related amendment in **Schedule 1 [20]** makes it clear that a Trust agreement can include provisions that require a landholder to refrain from carrying out specified actions (such as development).

### **Membership of Board of Trust**

The requirements for membership of the Board of the Trust are modified, to make it clear that a non-government member must have skills and experience (rather than capacities) in one or more of the following areas:

- (a) increasing public knowledge, understanding and appreciation of the importance of natural and cultural heritage by private landholders and other community members,
- (b) protection and conservation of natural heritage,
- (c) protection and conservation of cultural heritage,



- (d) management of natural resources, including agricultural land,
- (e) land use planning and operation of local councils,
- (f) marketing and fundraising,
- (g) economics and financial management,
- (h) governance and administration,
- (i) decision making and leadership.

The principal amendment is **Schedule 1 [14]**. **Schedule 1 [13], [15], [16]** and **[24]** are related amendments. **Schedule 1 [25]** repeals a provision that allows members of the Board to appoint deputies.

### **Review of Act**

**Schedule 1 [23]** provides for a further review of the Act to be carried out 5 years after the date of assent to the proposed Act.

### **Savings and transitional**

**Schedule 1 [27]** enables the making of savings and transitional regulations as a consequence of the amendments. **Schedule 1 [28]** inserts specific transitional provisions relating to the amendments. **Schedule 1 [26]** is a consequential amendment.

### **Schedule 2 Amendment of *National Parks and Wildlife Act 1974 No 80***

**Schedule 2 [1]** makes it clear that conservation agreements entered into under the *National Parks and Wildlife Act 1974* can contain provisions for the purpose of the protection, conservation or management of waters. **Schedule 2 [2]** is a consequential amendment.

## **Issues Considered by the Committee**

11. <b>The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b>
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***The Committee makes no further comment on this Bill.***

## 5. OCCUPATIONAL LICENSING (ADOPTION OF NATIONAL LAW) BILL 2010

Date Introduced:	20 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Virginia Judge MP
Portfolio:	Fair Trading

### Purpose and Description

1. The Bill aims to apply as a law of this State a national law relating to the regulation of certain occupations.
2. This Bill adopts the Occupational Licensing National Law, as in force from time to time, set out in the schedule to the *Occupational Licensing National Law Act 2010* of Victoria, as a law of New South Wales.
3. The national law gives effect to the Intergovernmental Agreement for a National Licensing System for Specified Occupations signed by the Council of Australian Governments [COAG] on 30 April 2009. The national law sets out the regulatory framework for the national licensing system, which will see workers in licensed occupations across Australia operating under one scheme in order to enable them to work in any State or Territory under the same set of rules.
4. Currently, the Bill deals with the first group of occupations (air conditioning and refrigeration, electrical, plumbing and gasfitting, and some property-related occupations). Other occupations will follow in the future.
5. The national law aims to provide consistency in licensing policy and disciplinary arrangements for licensees, while providing flexibility for issues specific to particular jurisdictions or occupations. It will facilitate a consistent skills and knowledge base for licensed occupations. A prime objective of the national system is to ensure that licensing arrangements are effective and proportionate for consumer protection, worker and public health and safety while improving economic efficiency and equity of access.
6. The public will be provided with easy access to information about licensees through the establishment of a national register, which will enable consumers to confirm that an individual or business is licensed. The governance arrangements for the national system are set out in the national law. Responsibility for implementation and operation of the national system will rest with a ministerial council comprising a Commonwealth Minister and Ministers of each State and Territory.
7. The Bill specifies that reviews and appeals of licensing decisions under the national law will continue to be made to the Administrative Decisions Tribunal of New South Wales and applications for injunctions against traders operating in contravention of the national law will continue to be made to the New South Wales Supreme Court.

8. The Bill also provides that the disciplinary scheme for the first group of occupations will be the administrative show cause process currently in use in New South Wales, instead of the alternative court-based option included in the national law.

## Background

9. Under the national scheme, businesses and workers with a licence issued by the national authority will be able to operate across Australia without the need to hold multiple licences. This aims to reduce unnecessary red tape, provide a standard qualification requirement, require payment of only one licence fee and, facilitate a more mobile workforce.
10. As agreed by the Council of Australian Governments (COAG), the scheme will initially apply to seven occupational areas. These are air conditioning and refrigeration, building and building-related occupations, maritime, land transport, electrical, plumbing and gasfitting, and property-related occupations.
11. COAG agreed also that the national system will be implemented through cooperative national legislation without involving a referral of powers to the Commonwealth Government. The COAG's agreement provides for the national system to commence with a delegated agency model.
12. The National Occupational Licensing Authority will develop licence policy on advice from advisory committees representing various occupations, but delegate the operation of licensing services to the States and Territories. The States and Territories will retain responsibility for regulating licensee conduct.
13. The responsibility for the implementation phase of the national system rests with the Ministerial Council for Federal Financial Relations. The National Occupational Licensing Authority, governed by a board appointed by the ministerial council, is established by the national law to administer the system and make policy recommendations to the ministerial council.
14. The licensing authority will be supported in its policy role by occupational licensing advisory committees established under the national law for the regulated occupations.
15. The Agreement in Principle speech explained that:

On 1 July 2012, the first wave of occupations comprising air conditioning and refrigeration, electrical, plumbing and gasfitting and some property-related occupations will commence under the national system. The remaining occupations, such as building and building related, other property-related occupations, maritime and land transport, will commence after 1 July 2013. This staged approach is necessary to provide adequate time for the development of licence policy for each occupational area and transitioning to the national system, including the establishment of the licensing authority.
16. The Bill excludes the operation of certain New South Wales Acts from the operation of the national law. It excludes the operation of the *Annual Reports (Statutory Bodies) Act 1984*, the *Public Finance and Audit Act 1983*, the *Public Sector Employment and Management Act 2002* and the *Subordinate Legislation Act 1989*. The Agreement in Principle speech stated that:

The administrative and reporting matters dealt with by these New South Wales Acts have been replaced with appropriate national mechanisms within the national law for the operation of the National Occupational Licensing Authority. The application of a number of other New South Wales Acts has been limited so that they continue to apply to New South Wales licensing agencies when they are acting in their capacity as delegates of the licensing authority, but do not apply to the licensing authority itself...The New South Wales Acts, by being limited in this way, cover a number of privacy, information and interpretation issues. An appropriate national approach to these issues has been included in the national law for application to the licensing authority.

## The Bill

17. The object of this Bill is to adopt the Occupational Licensing National Law (the National Law) hosted by the Victorian Parliament and set out in the Schedule to the *Occupational Licensing National Law Act 2010* of Victoria. The National Law gives effect to the Intergovernmental Agreement for a National Licensing System for Specified Occupations, signed by the Council of Australian Governments on 30 April 2009 and establishes a national licensing scheme for the following occupations:

- (a) air conditioning and refrigeration,
- (b) electrical,
- (c) plumbing and gasfitting,
- (d) property-related occupations.

It is envisaged that additional occupations will be included in the national licensing scheme over time; this may be done by amending the National Law or by prescribing the occupations in regulations. Before the National Law commences it will be necessary for New South Wales, and each of the other States and Territories participating in the national licensing scheme, to enact legislation providing for consequential amendments of other Acts and transitional and savings arrangements consequent on the adoption of the National Law.

## 18. Outline of provisions

### Part 1 Preliminary

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act. Specifically, clause 3 (1) provides that the National Law set out in the Schedule to the *Occupational Licensing National Law Act 2010* of Victoria, as applied in New South Wales, is to be known as the *Occupational Licensing National Law (NSW)*.

Clause 3 (2) provides that if a term is used in the proposed Act and in the National Law, the term has the same meaning in the proposed Act as it has in the National Law.

### Part 2 Adoption of Occupational Licensing National Law

**Clause 4** provides that the National Law, as in force from time to time, applies as a law of New South Wales (clause 4 (a)). Each jurisdiction that adopts the National Law will have an equivalent provision in its adopting Act so that the National Law will be the law of each jurisdiction and is not only the law of Victoria. The effect is that a person licensed in an occupation to which the National Law applies (see Overview of Bill) is licensed nationally to carry out that occupation, rather than requiring a licence in each jurisdiction, and each of the entities created by the National Law is created not only by Victorian law but the law of each jurisdiction. For example, the National Occupational Licensing Authority will be not only a Victorian body but also a body of each jurisdiction in which the National Law applies. Section 6 of the National Law clarifies that the effect is the creation of one single national entity rather than separate bodies in each jurisdiction.

Clause 4 (b) provides that the National Law, as applying in New South Wales, may be referred to by the name *Occupational Licensing National Law (NSW)*.

Clause 4 (c) provides that the National Law, as applying in New South Wales, is part of the proposed Act. This is to ensure that the text of the National Law has effect for all purposes in New South Wales as an ordinary Act of Parliament. The effect of the proposed provision is that a reference in legislation to “an Act” or “any other Act” will include the National Law as applying in New South Wales.

**Clause 5** provides that a number of Acts that generally apply to New South Wales legislation do not apply to the *Occupational Licensing National Law (NSW)* or to instruments, including regulations, made under that Law. In particular, Acts dealing with the interpretation of legislation, financial matters and matters relating to the employment of public servants will not apply to the *Occupational Licensing National Law (NSW)*. Instead, provisions have been included in the National Law to deal with each of these matters, ensuring that the same law applies in relation to each jurisdiction that adopts the National Law. Acts dealing with freedom of information, the role of the Ombudsman, privacy and records will also not apply to the *Occupational Licensing National Law (NSW)* except to the extent that functions are being exercised under that Law by a State entity.

**Clause 6** provides for the declaration of the Supreme Court as a relevant tribunal or court for the purposes of section 13 of the National Law and the declaration of the Administrative Decisions Tribunal as a relevant tribunal or court for the purposes of sections 93 and 94 of the Law.

**Clause 7** provides that, for the purposes of taking disciplinary action in relation to licensees carrying out work in New South Wales, the show cause process set out in Division 4 of Part 3 of the National Law applies.

**Clause 8** provides that a penalty specified at the end of a provision of the National Law indicates that a contravention of the provision is punishable by a penalty of not more than the specified penalty.

### **Part 3 Miscellaneous**

**Clause 9** is the general regulation-making power.

**Clause 10** provides that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Note on Occupational Licensing National Law**

A copy of the National Law is set out in the Note to the proposed Act. The explanatory memorandum for the National Law, as set out in the Schedule to the *Occupational Licensing National Law Act 2010* of Victoria, is available at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

## **Issues Considered by the Committee**

### **Delegation of legislative powers [s 8A(1)(b)(iv) LRA]**

**Issue: Clause 2 (1) – Commencement by proclamation – Provide the executive with unfettered control over the commencement of an Act.**

19. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all.
20. However, the Committee also notes that the Agreement in Principle speech explains that:

On 1 July 2012, the first wave of occupations comprising air conditioning and refrigeration, electrical, plumbing and gasfitting and some property-related occupations will commence under the national system. The remaining occupations, such as building and building related, other property-related occupations, maritime and land transport, will commence after 1 July 2013. This staged approach is necessary to provide adequate time for the development of licence policy for each occupational area and transitioning to the national system, including the establishment of the licensing authority...The National Occupational Licensing Authority will develop licence policy on advice from advisory committees representing various occupations, but delegate the operation of licensing services to the States and Territories. The States and Territories will retain responsibility for regulating licensee conduct.

21. **Therefore, this will likely involve appropriate administrative and transitional arrangements to be made. The Committee is of the view that there may be good reasons why such discretion for commencement by proclamation is required, and the Committee considers that, in these circumstances, this may not give rise to an inappropriate delegation of legislative power.**

***The Committee makes no further comment on this Bill.***

## 6. PARLIAMENTARY BUDGET OFFICER BILL 2010

Date Introduced:	19 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Michael Daley MP
Portfolio:	Finance

### Purpose and Description

1. This Bill establishes and confers functions on the Parliamentary Budget Officer as an independent officer of Parliament; to provide for costings of election promises by that Officer; to repeal the *Charter of Budget Honesty (Election Promises Costing) Act 2006*; and for other purposes.
2. The object of the Bill is to establish the independent statutory office of Parliamentary Budget Officer to provide independent costings of election promises and also outside pre-election periods, to provide independent costings of proposed policies of members of Parliament. The officer will provide independent analysis, advice or briefings of a technical nature on financial, fiscal and economic matters to individual members of Parliament.

### Background

3. According to the Agreement in Principle speech: the office will require approximately 12 to 16 qualified and experienced economists, accountants and financial analysts covering the key spending areas and requisite support staff. The office will receive up to \$4 million—recurrent and capital funding combined—in 2010-11 in order to establish the Parliamentary Budget Office, and up to \$3 million recurrent in the years 2011-12 to 2018-19 for the ongoing operational costs of the office.

4. The Agreement in Principle speech explained that:

At the time of the final half-yearly budget review prior to an election, the Secretary of the Treasury is required to publicly identify the amount of money available to meet future spending commitments for the current budget year and the forward estimates—in other words, the financial envelope available to the Government to fund its policies. A parliamentary leader, which includes an Independent member of Parliament, may request the Parliamentary Budget Officer to prepare costings of policies that are announced or proposed for implementation after the next State general election. A parliamentary leader may make an election costing request in relation to a policy publicly announced or proposed by that leader or in relation to a policy of another parliamentary leader. Costing requests are to be made during the period from the day on which the last State budget before the election is presented to Parliament until the State general election. For the State general election due to be held on 26 March 2011, costing requests may be made from 25 January 2011. A costing request may be withdrawn at any time before the costing is provided by the Parliamentary Budget Officer.

5. The Agreement in Principle speech further outlined the background:

The concept of an independent PBO [Parliamentary Budget Officer] was raised at the Australia 2020 Summit and was included in its final report in May 2008. The idea is based on models in operation internationally. At a national level, the Federal Coalition's intention to establish an independent Parliamentary Budget Office was originally announced by former Leader of the Opposition, the Hon. Malcolm Turnbull, in his budget reply of 2009. The initiative was then announced by the Leader of the Opposition, the Hon. Tony Abbott, in Canberra on 22 June 2010. On 12 August 2010 the Federal Coalition announced that an elected Coalition government would establish a PBO, similar to the United States Congressional Budget Office. Following heated debate about the costing of election promises during the Federal election campaign and the push by Independent members of Parliament and the Greens for parliamentary reform, the Prime Minister of Australia, the Hon. Julia Gillard, as part of her written agreement with the Greens on 1 September 2010 co-signed with Senator Bob Brown, committed to the establishment of a Parliamentary Budget Office. In section 4.3 (a) of the agreement that the Prime Minister signed with Andrew Wilkie, the newly elected Federal member for Denison, she confirmed her commitment to establish a Parliamentary Budget Office within 12 months of the agreement date, being 2 September 2010. On 4 September 2010 the Federal member for Lyne, Rob Oakeshott, announced that the establishment of an independent PBO was one of the improvements agreed as part of a parliamentary reform document being finalised across the Parliament.

6. In terms of international experience, the Congressional Budget Office established in the United States in 1975, the Office of Budget Responsibility currently being established in the United Kingdom and the Parliamentary Budget Office established in Canada are the notable examples referred to during debate on this issue.

## The Bill

7. The object of this Bill is to establish the Parliamentary Budget Officer as an independent officer of Parliament with the following functions:

(a) preparing costings of election policies for parliamentary leaders and Independent members (including a budget impact statement for all their policies) in the period prior to a State general election,

(b) preparing costings of proposed policies of members of Parliament at the request of the member at any time during the year,

(c) providing to members of Parliament analysis, advice and briefings of a technical nature on financial, fiscal and economic matters (including in relation to the costing of proposals included in the State budget).

The Parliamentary Budget Officer will be appointed jointly by the President of the Legislative Council and the Speaker of the Legislative Assembly (the Presiding Officers). Parliamentary staff employed by the Presiding Officers to assist the Parliamentary Budget Officer to exercise his or her functions will comprise the Parliamentary Budget Office.

The Bill also repeals the Charter of *Budget Honesty (Election Promises Costing) Act 2006* as a result of the inclusion in Part 4 of the proposed Act of the provisions relating to costing of election promises.



## 8. Outline of provisions

### Part 1 Preliminary

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

**Clause 2** provides for the commencement of the proposed Act. The provisions relating to the establishment of the Parliamentary Budget Officer commence on assent but the provisions relating to election and other costings do not commence until 25 January 2011.

**Clause 3** defines certain words and expressions used in the proposed Act. A parliamentary leader means any of the following:

- (a) the Premier,
- (b) the Leader of the Opposition,
- (c) a member of Parliament who is the recognised parliamentary leader of a registered party (other than a party, and any coalition party, whose parliamentary leader is the Premier or the Leader of the Opposition),
- (d) a member of Parliament who is not an endorsed candidate of any registered party.

**Clause 4** provides that the Presiding Officers are to act and decide matters jointly for the purposes of the proposed Act. If the Presiding Officers are from the same registered party (or registered parties that are coalition parties), they must act and decide matters jointly with a deputy Presiding Officer who is from a different registered party.

### Part 2 Parliamentary Budget Officer

**Clause 5** establishes the position of Parliamentary Budget Officer as an independent officer of Parliament.

**Clause 6** provides for the appointment of the Parliamentary Budget Officer by the Presiding Officers. The person is to be selected from a list of at least 2 persons recommended by a panel comprising the Ombudsman, the Information Commissioner and the Chairperson of the Independent Pricing and Regulatory Tribunal.

**Clause 7** provides that the Parliamentary Budget Officer is to hold office for a period of not less than 4 years and not greater than 9 years. A person can be re-appointed but cannot hold the office for a total period of more than 9 years. The first person appointed as the Parliamentary Budget Officer is to be appointed for a period of 9 years and is not eligible for re-appointment.

**Clause 8** enables the Presiding Officers to appoint an acting Parliamentary Budget Officer during the absence, or a vacancy in the office, of the Parliamentary Budget Officer.

**Clause 9** sets out the circumstances in which the office of the Parliamentary Budget Officer becomes vacant. The Parliamentary Budget Officer cannot be removed from office by the Presiding Officers except for misbehaviour, incapacity or incompetence.

**Clause 10** provides that the Parliamentary Budget Officer is to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.

**Clause 11** authorises the Presiding Officers to employ staff to assist the Parliamentary Budget Officer to exercise his or her functions, which will comprise the Parliamentary Budget Office. Directions to staff in relation to the exercise of functions of the Parliamentary Budget Officer may only be given by that Officer. The Parliamentary Budget Officer may also engage consultants.

### **Part 3 Functions**

**Clause 12** confers on the Parliamentary Budget Officer the functions relating to the preparation of election policy costings under proposed Part 4.

**Clause 13** authorises the Parliamentary Budget Officer to also, at the request of any member of Parliament, prepare a costing of a proposed policy of the member, and provide any analysis, advice or briefings of a technical nature on financial, fiscal and economic matters (including in relation to the costing of proposals included in the State budget). The functions of the Parliamentary Budget Officer do not extend to providing any analysis, advice or briefings to committees of Parliament or developing policy proposals on behalf of members of Parliament.

**Clause 14** requires the Parliamentary Budget Officer to prepare an operational plan that includes the objectives of the Officer in exercising his or her functions, a broad outline of the strategies of the Officer to achieve those objectives and a schedule of the activities that the Officer proposes to undertake. A draft operational plan must be provided to the Presiding Officers, who are to approve the draft plan or request changes to the draft plan. The plan and any variation are required to be tabled in Parliament. The Parliamentary Budget Officer must take the operational plan into account in exercising his or her functions.

**Clause 15** requires the Parliamentary Budget Officer to provide an annual report to a committee of the Legislative Assembly and a committee of the Legislative Council designated by the Presiding Officers.

**Clause 16** enables the Parliamentary Budget Officer to request information from the head of any Government agency to assist the Officer in the preparation of a costing of an election or other policy under the proposed Act. The head of the Government agency must respond to such a request within 10 business days (or such other period as is agreed between the head of the agency and the Parliamentary Budget Officer), but is not required to provide information if for the purposes of the *Government Information (Public Access) Act 2009* there is an overriding public interest against the disclosure of the information or access to the information would otherwise be denied under that Act.

**Clause 17** makes it an offence for the Parliamentary Budget Officer, or any member of staff of the Parliamentary Budget Office, to disclose certain information or documents provided to the Officer, or prepared by the Officer, for the purposes of costings under the proposed Act (maximum penalty: 50 penalty units).

### **Part 4 Election policy costings**

#### **Division 1 Requests for election policy costings**

**Clause 18** provides that a parliamentary leader (including an Independent member of Parliament) may request the Parliamentary Budget Officer to prepare costings of policies that are announced or proposed for implementation after the next State general election. A parliamentary leader may make an election costing request in relation to a policy publicly announced or proposed by that leader or in relation to a policy of another parliamentary leader.

**Clause 19** allows costing requests to be made during the period from the day on which the last State budget before the election is presented to Parliament until the State general election. For the State general election due to be held on 26 March 2011, costing requests may be made from 25 January 2011.

**Clause 20** provides that a costing request may be withdrawn at any time before the costing is provided by the Parliamentary Budget Officer.

### **Division 2 Parliamentary Budget Officer to prepare costings of election policies**

**Clause 21** requires the Parliamentary Budget Officer to provide an election policy costing as soon as possible after receiving a request from a parliamentary leader. A parliamentary leader will be required to notify the Parliamentary Budget Officer of the public announcement by that leader of policies that have been costed by the Officer.

**Clause 22** enables a parliamentary leader to publicly release election policy costings provided to the leader by the Parliamentary Budget Officer. The Parliamentary Budget Officer will be required to publicly release an election policy costing once the parliamentary leader who made the costing request has notified the Officer that the policy has been publicly announced. If the Parliamentary Budget Officer considers that an election policy costing provided by the Officer has been publicly misrepresented, the Officer may issue a public statement to correct the misrepresentation.

**Clause 23** requires the Parliamentary Budget Officer to prepare a separate budget impact statement for the respective policies of each parliamentary leader that have been costed under the proposed Part. A budget impact statement will show a summary of the assessed financial impact of each costed policy and the total net financial impact of all costed policies on the current year's State budget and on the following 3 financial years. Two weeks before a State general election, the Parliamentary Budget Officer is to provide a draft budget impact statement to each parliamentary leader in relation to his or her respective policies. Within 48 hours of being provided with a draft budget impact statement, a parliamentary leader may notify the Parliamentary Budget Officer of the final list of costed policies for inclusion in the budget impact statement. The Parliamentary Budget Officer is to revise the statements in accordance with any notification and publicly release those final statements 5 days before the State general election.

### **Division 3 General election costing provisions**

**Clause 24** provides that the Secretary of the Treasury is to publicly release, on the release of the half-yearly budget review prior to the State general election, a statement of the amount of uncommitted funds that are available to meet any future expenditure commitments for the General Government Sector during the current year's State budget and during the following 3 financial years.

**Clause 25** authorises the Parliamentary Budget Officer to issue guidelines for the purposes of the making of election costing requests and the preparation of election policy costings and budget impact statements.

**Clause 26** enables the Parliamentary Budget Officer to revise election policy costings and budget impact statements to correct any errors.

**Clause 27** authorises a parliamentary leader to nominate, in writing to the Parliamentary Budget Officer, a person to exercise the parliamentary leader's functions under the proposed Part.

### **Part 5 Miscellaneous**

**Clause 28** provides that offences under the proposed Act may be dealt with summarily before the Local Court.

**Clause 29** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 30** provides for the review of the proposed Act in 5 years.

**Clause 31** repeals the *Charter of Budget Honesty (Election Promises Costing) Act 2006*.

### **Schedule 1 Amendment of other Acts**

**Schedule 1.1** makes a consequential amendment to the *Government Information (Public Access) Act 2009* to provide that there is a conclusive presumption of an overriding public interest against disclosure of confidential information relating to election policy and other costings.

**Schedule 1.2** makes a consequential amendment to the *Statutory and Other Offices Remuneration Act 1975* to provide that the Statutory and Other Offices Remuneration Tribunal is to determine the remuneration of the Parliamentary Budget Officer.

## **Issues Considered by the Committee**

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| 9. <b>The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b> |
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***The Committee makes no further comment on this Bill.***

## 7. SURROGACY BILL 2010

Date Introduced:	21 October 2010
House Introduced:	Legislative Council
Minister Responsible:	The Hon. John Hatzistergos MLC
Portfolio:	Attorney General

### Purpose and Description

1. The purpose of this Bill is to recognise certain surrogacy arrangements, to prohibit commercial surrogacy arrangements and to provide for the status of children of surrogacy arrangements, and to make related amendments to other Acts.
2. The Bill provides for the recognition of altruistic surrogacy arrangements, in certain circumstances, by allowing the parentage of a child of a surrogacy arrangement to be transferred to another person. The Bill prohibits commercial arrangements as well as the advertising of surrogacy arrangements
3. The Bill makes all surrogacy arrangements unenforceable, except to the extent that they provide for the payment of a birth mother's reasonable costs associated with her pregnancy.
4. The Bill also makes provisions with respect to protecting the privacy of surrogacy arrangements as well as enabling a person whose parentage is transferred as a result of a surrogacy arrangement to gain access to their birth information.
5. The Bill also amends the *Assisted Reproductive Technologies Act 2007* to require the use of an independent counsellor's report when assisted reproductive technology treatment is used in surrogacy arrangement.
6. The proposed amendments to the *Assisted Reproductive Technologies Act 2007* also provide for the collection of information concerning surrogacy arrangements in a central register and to enable access to that information by affected parties.
7. Lastly, the Bill amends the *Births, Deaths and Marriages Registration Act 1995* to make provision for the registration of parentage orders and to reflect changed parenting arrangements on a child's birth certificate.

### Background

8. The intention of this Bill is to introduce comprehensive surrogacy laws for New South Wales, to provide certainty for the parties to surrogacy arrangements and to protect the interests of children born as a result of such arrangements.
9. The surrogacy scheme will provide an alternative framework for children raised in families in which they are not raised by at least one biological parent and where adoption processes are deemed laborious and inappropriate, or where parental

responsibility orders from the Family Court are deemed insufficient because they are not permanent and do not apply when children reach adulthood.

10. This Bill draws on the work of the Standing Committee of Attorneys-General, which in March 2008 agreed to develop a national model for the legal recognition of parentage achieved by surrogacy arrangements. In November 2009, the Standing Committee of Attorneys-General adopted 15 principles as the basis for drafting model provisions to regulate surrogacy.
11. In addition, the Bill implements recommendations endorsed by the Legislative Council Standing Committee on Law and Justice, which tabled its report 'Legislation on Altruistic Surrogacy in New South Wales' in May 2009.
12. The work of both the Standing Committee of Attorneys-General and the Legislative Council Standing Committee on Law and Justice followed extensive consultation with stakeholder groups and other interested parties.
13. The Legislative Council Standing Committee on Law and Justice advertised its call for submissions in August 2008 and received 40 submissions from Government agencies, fertility clinics, community groups, religious groups, academics and private citizens. It also held public hearings in November 2008 and March 2009 where it heard from a range of stakeholders.
14. Meanwhile, the Standing Committee of Attorneys-General released its consultation paper for public comment in January 2009 in which it received 109 submissions from a variety of government bodies, institutions and individuals. The preparation of this Bill draws largely from the results of this consultation, together with ongoing consultation with NSW Health, the Department of Community Services, the Registry of Births, Deaths and Marriages, and the Supreme Court of NSW.

## The Bill

### 15. **Outline of Provisions**

#### **Part 1 Preliminary**

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** provides that the proposed Act is to be administered by reference to the principle that, in relation to any surrogacy arrangement, the best interests of a child of the surrogacy arrangement are paramount.

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** defines *surrogacy arrangement* and other key expressions. A surrogacy arrangement is:

- (a) an arrangement under which a woman agrees to become or to try to become pregnant with a child, and that the parentage of the child born as a result of the

pregnancy is to be transferred to another person or persons (a ***pre-conception surrogacy arrangement***), or

(b) an arrangement under which a pregnant woman agrees that the parentage of a child born as a result of the pregnancy is to be transferred to another person or persons (a ***post-conception surrogacy arrangement***).

A parentage order under the proposed Act can only be obtained in respect of a pre-conception surrogacy arrangement. In the proposed Act, ***birth mother*** means a woman who agrees to become pregnant or to try to become pregnant with a child, or who is pregnant with a child, under a surrogacy arrangement and ***intended parent*** means a person to whom it is agreed the parentage of a child is to be transferred under a surrogacy arrangement.

## **Part 2 Surrogacy arrangements**

### **Division 1 Enforcement of surrogacy arrangements**

**Clause 6** provides that a surrogacy arrangement is not enforceable. However, an obligation to pay or reimburse a birth mother's surrogacy costs is enforceable.

**Clause 7** defines what is meant by a ***birth mother's surrogacy costs***. The provision limits the costs that are recoverable by a birth mother under a surrogacy arrangement to the birth mother's reasonable costs associated with the following matters:

- (a) becoming or trying to become pregnant,
- (b) pregnancy or birth,
- (c) entering into and giving effect to a surrogacy arrangement.

The provision also lists the type of costs that are recoverable in each category mentioned above. A cost is reasonable only if the cost is actually incurred and the amount of the cost can be verified by receipts or other documentation.

### **Division 2 Offences in relation to surrogacy arrangements**

**Clause 8** makes it an offence to enter into, or to offer to enter into, a commercial surrogacy arrangement (maximum penalty: 2,500 penalty units for a corporation and 1,000 penalty units or 2 years imprisonment (or both) in any other case).

**Clause 9** defines ***commercial surrogacy arrangement***. A surrogacy arrangement is a commercial surrogacy arrangement if the arrangement involves the provision of a fee, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for the person or another person:

- (a) agreeing to enter into or entering into the surrogacy arrangement, or
- (b) giving up a child of the surrogacy arrangement to be raised by the intended parent or parents, or
- (c) consenting to the making of a parentage order in relation to a child of a surrogacy arrangement.

**Clause 10** prohibits a person from publishing any advertisement, statement, notice or other material that:

- (a) states or implies that a person is willing to enter into, or arrange, a surrogacy arrangement, or
- (b) seeks a person willing to act as a birth mother under a surrogacy arrangement, or
- (c) states or implies that a person is willing to act as a birth mother under a surrogacy arrangement, or
- (d) is intended, or is likely, to induce a person to act as a birth mother under a surrogacy arrangement.

### **Part 3 Parentage orders**

#### **Division 1 Parentage orders**

**Clause 11** confers power on the Supreme Court (the **Court**) to make a parentage order in relation to the child of a surrogacy arrangement. The purpose of a parentage order is to transfer parentage of a child of a surrogacy arrangement.

**Clause 12** confirms that a reference in the proposed Part to a child is a reference to a child of a surrogacy arrangement.

#### **Division 2 Application for parentage order**

**Clause 13** allows an application for a parentage order to be made by one intended parent or 2 intended parents jointly. Generally if there are 2 intended parents under the surrogacy arrangement, both intended parents must be a party to the application. However, in some cases an intended parent can make a sole application (such as when 2 intended parents have separated).

**Clause 14** permits an application for a parentage order to be made in relation to a surrogacy arrangement entered into before or after the commencement of the proposed Act.

**Clause 15** requires an application for a parentage order to be made not less than 30 days and not more than 6 months after the child of the surrogacy arrangement is born. For a surrogacy arrangement entered into before the commencement of the proposed Act (a **pre-commencement surrogacy arrangement**) an application must be made not more than 2 years after the commencement of the relevant section. The Court can hear an application that is made out of time in exceptional circumstances.

**Clause 16** requires an application for a parentage order to be supported by a report about the application prepared by an independent counsellor.

#### **Division 3 Making of parentage order**

**Clause 17** permits the Court to make a parentage order only if the preconditions to the making of a parentage order have been met. The Court may make a parentage order, despite not being satisfied that a precondition to the making of the order has been met, if the precondition is not a mandatory precondition to the making of a parentage order and the Court is satisfied that exceptional circumstances justify the making of the parentage order, despite the precondition not having been met.

**Clause 18** confers power on the Court to make ancillary orders in connection with a parentage order.



**Clause 19** requires the Court to keep birth siblings together in the same family when making parentage orders, unless the Court considers it in the best interests of the child to make the order, despite the fact that the birth siblings will not be kept together.

#### **Division 4 Preconditions to making of parentage order**

**Clause 20** explains that the Division sets out the preconditions to the making of a parentage order.

**Clause 21** makes it a mandatory precondition to the making of a parentage order that the Court is satisfied that the order is in the best interests of the child of the surrogacy arrangement.

**Clause 22** makes it a mandatory precondition to the making of a parentage order that the surrogacy arrangement is not a commercial surrogacy arrangement.

**Clause 23** makes it a mandatory precondition to the making of a parentage order that the surrogacy arrangement is a pre-conception surrogacy arrangement.

**Clause 24** makes it a mandatory precondition to the making of a surrogacy arrangement that the intended parent is single or, if there are 2 intended parents, that the intended parents were a couple at the time of entering into the surrogacy arrangement.

**Clause 25** makes it a mandatory precondition to the making of a parentage order that the child is under the age of 18 years and that his or her wishes have been considered (if the child is old enough to express them). This precondition will generally be of relevance only to pre-commencement surrogacy arrangements, which may have been entered into some years before the commencement of the proposed Act.

**Clause 26** makes it a precondition to the making of a parentage order that the birth mother was at least 25 years of age when she entered into the surrogacy arrangement. For pre-commencement surrogacy arrangements, the birth mother must have been at least 18 years of age. In all cases it is a mandatory precondition that the birth mother was at least 18 years of age when she entered into the surrogacy arrangement.

**Clause 27** makes it a mandatory precondition to the making of a parentage order that each of the intended parents was at least 18 years of age when the surrogacy arrangement was entered into.

**Clause 28** makes it a precondition to the making of a parentage order that the Court is satisfied that there is a medical or social need for the surrogacy arrangement. Medical or social need relates to the inability of the intended parent or parents to conceive or give birth to a child, or to a healthy child, or to do so in a manner that is safe for the mother.

**Clause 29** makes it a precondition to the making of a parentage order that the affected parties all consent to the making of the order. The consent of the birth parent to the making of the order is a mandatory precondition, except in limited circumstances (such as death or incapacity).

**Clause 30** makes it a precondition to the making of a parentage order that the applicant or applicants are resident in NSW.

**Clause 31** makes it a precondition to the making of a parentage order that the child of the surrogacy arrangement is living with the intended parent or parents.

**Clause 32** makes it a precondition to the making of a parentage order that the surrogacy arrangement is in writing. This is not required for a pre-commencement surrogacy arrangement.

**Clause 33** makes it a precondition to the making of a parentage order that the affected parties have obtained counselling. This is not required for a pre-commencement surrogacy arrangement.

**Clause 34** makes it a precondition to the making of a parentage order that the affected parties have received legal advice about the arrangement before entering into the arrangement. This is not required for pre-commencement surrogacy arrangements.

**Clause 35** makes it a precondition to the making of a parentage order that all registrable information concerning the surrogacy arrangement has been provided to the Director-General of the Department of Health for entry in the central register. The amendments to the *Assisted Reproductive Technology Act 2007* make further provision for the collection and use of this information.

**Clause 36** makes it a precondition to the making of a parentage order that the birth of the child has been registered.

#### **Division 5 Effect of parentage order**

**Clause 37** provides for the general effect of a parentage order. The general effect of a parentage order is that:

- (a) the child to whom the order relates becomes a child of the intended parent or parents named in the order and the intended parent or parents become the parents of the child, and
- (b) the child stops being a child of the birth parent and a birth parent stops being a parent of the child.

Other relationships are determined accordingly.

**Clause 38** makes it clear that a parentage order does not operate to deprive a child of any vested or contingent property right acquired by the child before the making of the parentage order.

**Clause 39** provides a protection from liability for trustees and legal personal representatives who transfer property without notice of a parentage order.

**Clause 40** requires the Court to approve a name for the child on making a parentage order.

#### **Division 6 Discharge of parentage order**

**Clause 41** permits an application for the discharge of a parentage order to be made by:

- (a) a child whose parentage was transferred and who has reached 18 years of age, or
- (b) a birth parent or intended parent of the child, or
- (c) the Attorney General.

**Clause 42** confers power on the Court to make an order discharging a parentage order. The Court may make such an order only if satisfied:

- (a) the parentage order was obtained by fraud, duress or other improper means, or
- (b) a consent the Court making the parentage order considered had been given to the making of the parentage order was, in fact, not given or was given for payment, reward or other material benefit or advantage (other than the birth mother's surrogacy costs), or
- (c) there is an exceptional reason why the parentage order should be discharged.

**Clause 43** provides for the effect of the discharge of a parentage order, which is Generally to restore all the parties to the position that they were in before the making of a parentage order.

**Clause 44** confers power on the Court to make ancillary orders in connection with a discharge order.

#### **Division 7 Other provisions relating to parentage order**

**Clause 45** requires proceedings in respect of a parentage order, or a discharge of a parentage order, to be heard in closed court unless the Court otherwise orders.

**Clause 46** provides for appeals against a decision to refuse an application for a parentage order or a decision to grant or refuse an application for the discharge of a parentage order.

**Clause 47** requires the registrar of the Court to notify the Registrar of Births, Deaths and Marriages of the making of a parentage order or the discharge of a parentage order. This requirement is relevant to the functions of the Registrar of Births, Deaths and Marriages with respect to the registration of parentage orders. Those functions are dealt with by amendments to the *Births, Deaths and Marriages Registration Act 1995*.

**Clause 48** requires the registrar of the Court to notify the registering authority of another State or a Territory of a parentage order, or a discharge of a parentage order, made by the Court in relation to a child whose birth the registrar has reasons to believe is registered in that State or Territory.

**Clause 49** requires the registrar of the Court to notify the Director-General of the Department of Health of the making of a parentage order or the discharge of a parentage order. This requirement is relevant to the functions of the Director-General with respect to the registration of information about surrogacy arrangements. These functions are dealt with by amendments to the *Assisted Reproductive Technology Act 2007*.

## **Part 4 Protection of privacy of surrogacy arrangements**

**Clause 50** makes it an offence to publish any material that identifies, or is reasonably likely to identify, a person as a person affected by a surrogacy arrangement. The provision does not prevent publication where the person identified or reasonably likely to be identified consents to be identified and the material published does not identify any person affected by the surrogacy arrangement who does not consent to being so identified.

**Clause 51** provides that a person is not entitled to access court records relating to proceedings in respect of a parentage order, except with leave of the Court.

## **Part 5 Access to birth information**

**Clause 52** defines the expressions used in the Part. An **original birth certificate** means a certificate certifying the particulars of a person's birth registered under the *Births, Deaths and Marriages Registration Act 1995*. A **full birth record** means a single certificate that records both a child's original birth details and particulars relating to a parentage order or discharge of a parentage order.

**Clause 53** gives a person who is the child of a surrogacy arrangement and whose parentage has been transferred by a parentage order a right to receive the person's original birth certificate and full birth record, if the person has reached the age of 18 years. This right also applies where a parentage order is made under a law of another State or a Territory.

**Clause 54** gives an affected party in relation to a surrogacy arrangement in respect of which a parentage order has been made a right to receive the original birth certificate and full birth record of the child whose parentage is transferred by the parentage order. This right also applies where a parentage order is made under a law of another State or a Territory.

**Clause 55** makes provision for an application for the supply of birth information.

## **Part 6 Miscellaneous**

**Clause 56** enables proceedings for offences under the Act to be dealt with summarily by the Local Court.

**Clause 57** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 58** provides for the review of the proposed Act in 3 years.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** makes provision for the making of savings and transitional regulations as a consequence of the enactment of the proposed Act. It also contains specific savings and transitional provisions relating to the proposed Act.

## **Schedule 2 Amendment of Acts**

### ***Assisted Reproductive Technology Act 2007 No 69 Assessment reports***

**Schedule 2.1 [4]** makes it an offence for an assisted reproductive technology (**ART**) treatment provider (an **ART provider**) to provide a woman with ART treatment in connection

with a surrogacy arrangement unless the provider has received an assessment report in relation to the surrogacy arrangement. An assessment report is a report by an independent counsellor that is based on interviews with the parties to the surrogacy arrangement. In addition, a registered medical practitioner who undertakes or supervises the provision of ART services by an ART provider must ensure that ART treatment is only provided if the medical practitioner is satisfied it is appropriate to do so, having regard to the assessment report. Non-compliance with this requirement is not an offence but may constitute improper conduct by the medical practitioner for the purposes of the *Health Practitioner Regulation National Law (NSW)*.

### Central register

**Schedule 2.1 [6]** requires the Director-General of the Department of Health (the **Director-General**) to establish a central register, which will include information about ART treatment (currently held on the central ART donor register) as well as information about surrogacy arrangements. The regulations will prescribe the information the Director-General is required to be entered in the register. The objective of the central register is to ensure that an adult whose parentage has been transferred as a result of a parentage order, and affected parties in relation to a surrogacy arrangement, have access to certain information about the surrogacy arrangement. **Schedule 2.1 [1], [3], [5] and [7]–[13]** are consequential amendments.

### Access to information

**Schedule 2.1 [14]** inserts provisions about access to information about surrogacy arrangements. The Director-General must, on application by an adult born as a result of a surrogacy arrangement, an affected party, or an adult biological sibling of a person born as a result of a surrogacy arrangement, provide to the person a copy of any information held on the central register about that person. The Director General must also, on application by an adult born as a result of a surrogacy arrangement, provide to that person the name of the person's birth parent, or gamete provider under the surrogacy arrangement, and any other prescribed information about the parent or gamete provider held on the central register, as well as prescribed non-identifying information about the person's birth siblings or other information a birth sibling has consented to being disclosed. The Director-General must, on application by a person's birth parent or a gamete provider, provide non-identifying information about the person whose parentage has been transferred as a result of a parentage order, and other information that the person has consented to being disclosed, to the birth parent or gamete provider. The Director-General may only contact a person to seek the person's consent to disclose information about the person if the person is an adult and the Director-General is of the opinion that the contact is justified in order to promote the welfare and best interests of one or more persons concerned. The Director-General may on application by an affected party, or on the Director-General's own initiative, remove information from the central register if the surrogacy arrangement did not involve the provision of ART treatment and a parentage order has not been granted in relation to the surrogacy arrangement or has been discharged.

### Other provisions

**Schedule 2.1 [16]** authorises an inspector under the *Assisted Reproductive Technology Act 2007* to exercise his or her functions under that Act relating to enforcement for the purpose of ascertaining whether or not a provision of the proposed Act or the regulations under the

proposed Act have been contravened by an ART provider or in connection with the provision of ART services.

**Schedule 2.1 [18]** extends the grounds on which the Director-General may prohibit a person from carrying on a business that provides ART services to include if the person has contravened the proposed Act or regulations made under the proposed Act. **Schedule 2.1 [17]** is a consequential amendment. **Schedule 2.1 [2]** inserts a definition of **surrogacy arrangement**. **Schedule 2.1 [15]** omits redundant provisions relating to surrogacy. **Schedule 2.1 [19]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. **Schedule 2.1 [20]** inserts savings and transitional provisions.

### ***Births, Deaths and Marriages Registration Act 1995 No 62***

**Schedule 2.2 [1]** inserts proposed Part 4A into the *Births, Deaths and Marriages Registration Act 1995*. Under the proposed Part, the Registrar of Births, Deaths and Marriages will be required to register parentage orders and orders for the discharge of a parentage order made in New South Wales and may register corresponding orders from other States and Territories. The Registrar will be required to issue a birth certificate for a person showing the information contained in the parentage order in place of the information recorded in relation to the person's birth before the parentage order was made. The birth certificate must not include any information that indicates that the person was the child of a surrogacy arrangement. **Schedule 2.2 [3]** authorises the Registrar of Births, Deaths and Marriages, if requested to do so by an applicant, to issue a certificate in relation to a person in respect of whom a parentage order has been made and registered by the Registrar, which will show the particulars of the birth of the person and the particulars of the parentage order.

**Schedule 2.2 [2]** provides that a provision in the *Births, Deaths and Marriages Registration Act 1995* for exceptions to certain change of name restrictions does not limit or affect the operation of the proposed Act.

**Schedule 2.2 [4]** provides that the *Births, Deaths and Marriages Registration Act 1995* is subject to the proposed Act (as well as the *Adoption Act 2000*, as is currently the case). To the extent of any inconsistency with the proposed Act or the *Adoption Act 2000*, those Acts prevail.

**Schedule 2.2 [5]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

### ***Status of Children Act 1996 No 76***

**Schedule 2.7** provides that the *Status of Children Act 1996* does not affect the operation of Part 3 of the proposed Act, which deals with parentage orders.

### **Amendments to other Acts**

**Schedule 2.3–2.6, 2.8 and 2.9** make consequential amendments to various Acts.

## Issues Considered by the Committee

### Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

#### Issue: Commencement by Proclamation

16. The Committee notes that this Bill is to commence on a day or days to be appointed by proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all.
17. However, the Committee also notes that various administrative arrangements will need to take place before this Bill can commence operation. For example, changes need to be made the central Assisted Reproductive Technology (ART) donor register run by the Department of Health to allow for the registration of information concerning surrogacy arrangements. Similarly, new procedures need to be developed by the Registry of Births, Deaths and Marriages to take into account new transferred parentage orders and its implication on birth certificates of children born in surrogacy arrangements.
18. As the Committee has not identified any other concerns with this Bill that may trespass on the rights and liberties of individuals, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power in this instance.
19. **The Committee recognises that appropriate administrative arrangements need to take place before the Bill can commence operation. As the Committee has not identified any other concerns with this Bill that may trespass on the rights and liberties of individuals, the Committee does not regard the commencement by proclamation to be an inappropriate delegation of legislative power under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

***The Committee makes no further comment on this Bill.***

## 8. UNIVERSITY OF TECHNOLOGY (KURING-GAI CAMPUS) BILL 2010\*

Date Introduced:	22 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Barry O'Farrell MP
Portfolio:	Non-Government

### Purpose and Description

1. The purpose of the Bill is to ensure that the Kuring-gai Campus of the University of Technology, Sydney is retained for educational purposes.

### Background

2. The history of the site of the Kuring-gai campus is outlined in the Agreement in Principle speech. It was purchased by the NSW Government in 1961 for the purpose of public instruction. William Balmain Teachers College opened in 1971 before changing into the Kuring-gai College of Advanced Education in 1974. The University of Technology, Sydney (UTS) was established in 1990 with the Kuring-gai College of Advanced Education becoming its Kuring-gai campus. The transfer of the land to UTS was completed in exchange for one dollar.
3. The Leader of the Opposition in his Agreement in Principle Speech, argues, that despite the need for further educational facilities in the area, significant residential development remains a concern on the site:
4. "One of the dilemmas about the residential development on this site is that the University of Technology, Ku-ring-gai at Lindfield campus is at the end of Eton Road. It overlooks the entrance to Lane Cove National Park. It is a magnificent site itself. It overlooks a magnificent part of Sydney. It is at the end of a long suburban road. It is not 100 metres from the railway station. The addition of 350 units of varying sizes would significantly increase traffic in the area, traffic in an area that is already blighted by rat running, particularly during peak periods. Local residents are understandably concerned."

### The Bill

5. **Clause 4** of the Bill provides that the Kuring-gai Campus cannot be lawfully sold, leased, mortgaged, charged or otherwise alienated or encumbered except as provided by the Bill. Subject to specified limitations, the proposed section enables the campus to be transferred, sold or leased, or the subject of a licence for occupation, solely for educational purposes.
6. **Clause 5** revokes the planning approval given on 11 June 2008 in relation to Kuring-Gai Campus and provides that planning approval cannot be given or granted for any purpose other than the purpose of educational facilities at the campus.



7. **Clause 6** enables the Minister to compulsorily acquire the Kuring-gai Campus and requires the Minister to take all reasonable steps to ensure that the campus, if so acquired, is used solely for the provision of education. The proposed section provides that the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to or in respect of any such acquisition.
8. **Clause 7** provides that the proposed Act applies to each part of the Kuring-gai Campus in the same way as it applies to the whole of the campus and that it applies despite the provisions of any other Act including section 18 of the *University of Technology, Sydney, Act 1989*.

## Issues Considered by the Committee

### Trespasses on personal rights and liberties [s 8A(1)(b)(i) LRA]

#### Issue: Property Rights – Clause 5

9. The revocation of any planning approval granted to CRI Australia Pty Ltd on behalf of UTS in relation to the land takes away a property right which may have already been granted to develop the land.

10. **The Committee considers that any revocation of planning approval granted to CRI Australia Pty Ltd on behalf of UTS in relation to the land takes away a fundamental property right to develop the land. As such, the Committee considers this a trespass upon rights and liberties.**

#### Issue: Acquisition of land not on just terms – Clause 6

11. Clause 6 of the Bill proposes to exclude application of the *Land Acquisition (Just Terms Compensation) Act 1991* and to ensure that any land acquired by the Minister is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.
12. The requirement that the acquisition of property be on just terms is an important safeguard of the right to property. The Committee is concerned about the lack of protection the Bill affords to property rights and interests. There do not appear to be circumstances that justify the departure from the application of the *Land Acquisition (Just Terms Compensation) Act 1991*.

13. **The Committee is concerned that the right to, and interests in, property are inadequately safeguarded by the Bill. It is uncertain whether the circumstances justify exclusion of the *Land Acquisition (Just Terms Compensation) Act 1991*. Accordingly, the Committee is concerned that the Bill may trespass unduly on personal rights and liberties.**

14. **The Committee considers that personal rights and liberties are unduly trespassed by the Bill as it allows the compulsory acquisition of land and interests in the land without compensation.**

***The Committee makes no further comment on this Bill.***

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## Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1			
Casino Control Amendment Bill 2010	Minister for Gaming and Racing and Attorney General	08/03/10	18/03/10				2, 5
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12		
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1	
Credit (Commonwealth Powers)	Minister for Fair Trading	08/03/10					2
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15		
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	08/08/09				10	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	06/02/09		9		
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1		2	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1		
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8		
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7			
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13		
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	05/01/09		14	2	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1		2	
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2			

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1			
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2	

## Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Central Coast Water Corporation Amendment Bill 2010				N	
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	N			N	
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	N, R				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Coastal Protection and Other Legislation Amendment Bill 2010	N, R	N, R		N	
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)	N, R	N, R		N	
Community Justice Centres Amendment Bill 2010	N				
Court Information Bill 2010	N, R			N	
Courts Legislation Amendment Bill 2010	N, R				
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	N, R		N, R	N	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				



	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Crimes Amendment (Terrorism) Bill 2010	N				
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	N, R				
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010				N	
Electronic Transactions Amendment Bill 2010				N	
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Evidence Amendment Bill 2010				N	
Fair Trading Amendment (Unfair Contract Terms) Bill 2010				N	
Game and Feral Animal Control Repeal Bill 2010	N, R				
Gas Supply Amendment Bill 2009				N	
Health Legislation Amendment Bill 2010	N, R			N, R	
Health Legislation Further Amendment Bill 2010				N	
Health Services Amendment (Local Health Networks) Bill 2010		N		N	
Home Building Amendment (Warranties and Insurance) Bill 2010	N				
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Jury Amendment Bill 2010	N, R			N	
Macedonian Orthodox Church Property Trust Bill 2010*				N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010				N	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	
Occupational Licensing (Adoption of National Law) Bill 2010				N	
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	N				
Parliamentary Contributory Superannuation Amendment Bill 2010	N				
Personal Property Securities Legislation Amendment Bill 2010				N	
Plantation and Reafforestation Amendment Bill 2010	N, R			N	
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010				N	
Privacy and Government Information Legislation Amendment Bill 2010				N	
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	N, R			N	
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010				N	
Relationships Register Bill 2010	N			N	
Residential Tenancies Bill 2010	N, R			N, R	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010				N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Statute Law (Miscellaneous Provisions) Bill 2010	N				
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	N, R				
Superannuation Legislation Amendment Bill 2010				N	
Surrogacy Bill 2010				N	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Terrorism (Police Powers) Amendment Bill 2010				N	
University of Technology (Kuring-gai Campus) Bill 2010	N				
Veterinary Practice Amendment Bill 2010	N, R				
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	
Workers Compensation Legislation Amendment Bill 2010				N	

Key

- R Issue referred to Parliament
- C Correspondence with Minister/Member
- N Issue Noted

## Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009	Digest 2010
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12		
Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010	Attorney General	23/02/10	28/04/10			1, 5
Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009	Minister for Primary Industries	23/11/09	11/01/10		16	1
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2	
Retirement Villages Regulation 2009	Minister for Fair Trading	22/02/10				1, 8
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10		