



Legislation Review Committee

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

Contents

Membership	ii
Functions of the Committee	iii
Guide to the Digest	v
Conclusions	vii
PART ONE - BILLS	1
1. BOARD OF STUDIES, TEACHING AND EDUCATIONAL STANDARDS BILL 2013	1
2. CIVIL AND ADMINISTRATIVE TRIBUNAL AMENDMENT BILL 2013; CIVIL AND ADMINISTRATIVE LEGISLATION (REPEAL AND AMENDMENT) BILL 2013	5
3. COAL MINE HEALTH AND SAFETY AMENDMENT (VALIDATION) BILL 2013	11
4. CRIMES LEGISLATION AMENDMENT BILL 2013	13
5. EDUCATION AMENDMENT (NON-GOVERNMENT SCHOOL FUNDING) BILL 2013	16
6. LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (ARREST WITHOUT WARRANT) BILL 2013	17
7. MINING AMENDMENT (DEVELOPMENT CONSENT) BILL 2013	20
8. POLICE AMENDMENT (POLICE PROMOTIONS) BILL 2013	22
9. REGIONAL RELOCATION (HOME BUYERS GRANT) AMENDMENT BILL 2013	25
10. SAME-SEX MARRIAGE BILL 2013	29
11. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2013	33
PART TWO – REGULATIONS	35
APPENDIX ONE – INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS	36
APPENDIX TWO – INDEX OF CORRESPONDENCE ON REGULATIONS ON WHICH THE COMMITTEE HAS REPORTED	37

Membership

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Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations

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

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

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

Guide to the Digest

COMMENT ON BILLS

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

Ministerial Correspondence – Bills previously considered

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

COMMENT ON REGULATIONS

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

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

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

Conclusions

PART ONE - BILLS

1. BOARD OF STUDIES, TEACHING AND EDUCATIONAL STANDARDS BILL 2013

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

Offences prescribed by the Regulations

The Committee prefers offence provisions to be contained in primary rather than delegated legislation. However, clause 23 of the Bill only allows the regulations to prescribe offences for which a penalty notice may be served, and penalty notices are generally reserved for relatively minor offences. In addition, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Therefore, the Committee makes no further comment.

2. CIVIL AND ADMINISTRATIVE TRIBUNAL AMENDMENT BILL 2013; CIVIL AND ADMINISTRATIVE LEGISLATION (REPEAL AND AMENDMENT) BILL 2013

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

Fair Representation

The Committee notes that the default position of Tribunal proceedings is that a party is not entitled to be represented by another person to advocate their case. While the Committee is concerned that this may, in some cases, adversely affect parties from being properly and fairly represented, the Committee also notes that discretion is vested in the Tribunal to enable parties to appoint representatives. The Committee makes no further comment.

Privilege; Self-Incrimination

The Committee notes that the Tribunal can suspend privilege rights for proceedings before the Occupational Division in certain prescribed matters. As such, the Tribunal can compel the answering of questions or production of documents despite any privilege that may otherwise exist. The privileges affected include the right against self-incrimination, ordinary privileged communications, or any privilege due to secrecy or other such restriction. Despite certain safeguards, the Committee is concerned about the possible erosion of rights to witnesses before the Tribunal. The Committee makes no further comment.

3. COAL MINE HEALTH AND SAFETY AMENDMENT (VALIDATION) BILL 2013

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

Retrospectivity

The Committee will generally comment when provisions in legislation are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people to order their affairs according to what the law is. However, in this case, the retrospective provisions in Schedule 1.1 of the Bill simply correct technical oversights and do not make substantive changes to legislative provisions. For this reason, the Committee makes no further comment.

4. CRIMES LEGISLATION AMENDMENT BILL 2013

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

Fair hearing

The Committee notes that permitting an application for an order to carry out a forensic procedure on a suspect to be heard and determined without the suspect being present could impact on the suspect's right to a fair hearing. However, the Committee notes that currently, while such applications and orders are to be made in the presence of the suspect, the legislation also gives magistrates the discretion to make a contrary order. For this reason, the Committee makes no further comment.

Retrospectivity

The Bill amends the meaning prescribed in the *Interpretation Act 1987* for offences that are punishable by imprisonment for a specified term or more. These amendments will apply retrospectively. However, the Bill also provides that the retrospective application of these amendments will not affect any judgment or other order of a court of tribunal that is given or made before the amendments commence. As such, the Committee makes no further comment.

5. EDUCATION AMENDMENT (NON-GOVERNMENT SCHOOL FUNDING) BILL 2013

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

6. LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (ARREST WITHOUT WARRANT) BILL 2013

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

Arrest and Detain Without Warrant

The Bill may remove certain safeguards around police powers to arrest without warrant and allows police to arrest people without warrant in a greater variety of circumstances. Therefore, it may create more potential for arbitrary arrest and detention, arrests and detention for minor offences, and a greater number of unlawful arrests for questioning. The Committee refers the matter to Parliament for further consideration.

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

Commencement by Proclamation

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent.

7. MINING AMENDMENT (DEVELOPMENT CONSENT) BILL 2013

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

Legislative interference in judicial matters

The proposed amendments will clarify what constitutes appropriate development consent for mining leases for minerals and validate certain mining leases granted before the commencement of the Bill. As these issues are currently the subject of proceedings before a court, the amendments appear to be a legislative fettering of a judicial process, the effect of

which would be prejudicial to one party over another. The Committee notes that the Bill seeks to clarify unintended consequences of earlier amendments to the Act and that, without such amendments, the outcome of the court proceedings could potentially impact on the validity of current mining leases. The Committee therefore makes no further comment.

8. POLICE AMENDMENT (POLICE PROMOTIONS) BILL 2013

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

Official Powers

By allowing the Commissioner to re-consider integrity information about a person to reverse a decision to appoint them to a position, or to reverse a decision to place them on the promotions list, the Bill may provide the Commissioner with unfair powers that can be used to the detriment of the police officer concerned. Nonetheless, the integrity of police officers is fundamental, and flexibility in dealing with integrity issues is important to promotion. In addition, the Minister's Second Reading Speech indicated the amendments are intended to address situations where the Commissioner is made aware of a complaint against a police officer during the promotions process but chooses to wait for it to be finalised, and for an adverse integrity finding against the officer, if any, before taking appropriate action. For these reasons the Committee makes no further comment.

9. REGIONAL RELOCATION (HOME BUYERS GRANT) AMENDMENT BILL 2013

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

10. SAME-SEX MARRIAGE BILL 2013

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

Penalties

The penalties for offences contained in the Bill broadly align with those for the same or similar offences under the Commonwealth *Marriage Act 1961*, particularly as regards terms of imprisonment. For this reason the Committee does not find the penalty provisions to be unreasonable.

Reversed onus of proof

By requiring an accused person to disprove a presumption that he or she is guilty of an offence, clause 45(3) of the Bill may violate a person's right to the presumption of innocence. Further, if the person is unable to disprove the presumption that he or she is guilty of the offence, the consequences are potentially serious. The person could be sentenced to a maximum penalty of 5 years imprisonment.

Nonetheless, the Commonwealth *Marriage Act 1961* contains a similar provision to plug an evidentiary gap for the prosecution, once it has proved a prima facie case of bigamy, which may otherwise be insurmountable. Similarly, clause 45(4) of the Bill tempers the defendant's evidentiary onus by providing that if s/he proves that at the time of the alleged offence, his/her spouse had been continually absent from him/her for a period of 7 years and s/he had no reason to believe the spouse was alive during that period, this is sufficient to prove s/he had reasonable grounds for presuming the spouse dead. For these reasons, the Committee makes no further comment.

11. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2013

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

PART TWO – REGULATIONS

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

Part One - Bills

1. Board of Studies, Teaching and Educational Standards Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Adrian Piccoli MP
Portfolio	Minister for Education

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to constitute the Board of Studies, Teaching and Educational Standards (the Board) and to confer on it functions currently exercised by the Board of Studies under the Education Act 1990 and the NSW Institute of Teachers under the Institute of Teachers Act 2004,
 - (b) to dissolve the Board of Studies and the NSW Institute of Teachers and to make consequential and other amendments of an administrative nature to the Education Act 1990 and the Institute of Teachers Act 2004.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Adrian Piccoli MP stated that the Bill merges the Board of Studies NSW and the NSW Institute of Teachers into the Board of Studies, Teaching and Educational Standards (the Board), bringing together curriculum, student assessment and teacher quality into one educational body.
3. The current functions of the Board of Studies and the Institute of Teachers will become the functions of the new board. This one entity will also now be responsible for the implementation of the Great Teaching, Inspired Learning Blueprint for Action across the government and non-government school sectors. In addition, Mr Piccoli told Parliament that the Bill will enhance the current registration requirements of the Board of Studies for non-government schools by strengthening the registration standards in the area of school governance.

OUTLINE OF PROVISIONS

Part 1 Preliminary

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or day to be appointed by proclamation (except for a consequential amendment to the proposed Act

that will coincide with the commencement of the Government Sector Employment Act 2013).

6. Clause 3 defines certain words and expressions used in the proposed Act. The term education and teaching legislation covers the proposed Act, the Education Act 1990 and the Institute of Teachers Act 2004.

Part 2 Board of Studies, Teaching and Educational Standards

7. Clause 4 constitutes the Board as a body corporate.
8. Clause 5 provides that the Board is to consist of the President of the Board, 3 ex-officio members nominated by the Director-General of the Department of Education and Communities and 19 members appointed by the Minister from various education and teaching sectors.
9. Clause 6 specifies the principal objective of the Board and its functions.
10. Clause 7 establishes the office of President of the Board.
11. Clause 8 specifies the principal functions of the President.
12. Clause 9 enables a person to be appointed by the Minister to act in the office of President.
13. Clause 10 provides for persons to be employed in the Public Service to enable the Board to exercise its functions.
14. Clause 11 provides for committees of the Board.
15. Clause 12 enables the Board to delegate its functions.

Part 3 Inspections

16. Clause 13 provides for the appointment of persons as inspectors for the purposes of the education and teaching legislation.
17. Clause 14 confers powers of inspectors in relation to the inspection of schools and premises of persons who provide courses to overseas students. These powers are currently contained in the Education Act 1990.

Part 4 Miscellaneous

18. Clause 15 establishes the Board of Studies, Teaching and Educational Standards Fund which is a continuation of the Institute of Teachers Fund under the Institute of Teachers Act 2004.
19. Clause 16 enables the Board to enter into information sharing arrangements with relevant agencies such as the Department of Education and Communities. Such arrangements may extend to information relating to the teaching workforce and teacher quality.

20. Clause 17 makes it an offence to make a false statement in documents (such as applications for accreditation as a teacher) provided to the Minister or the Board under the education and teaching legislation.
21. Clause 18 protects members of the Board or a committee of the Board, or members of staff of the Board, from personal liability for things done or omitted to be done in good faith under the teaching and education legislation.
22. Clause 19 enables the Board to acquire property by gift, devise or bequest.
23. Clause 20 provides for the manner of serving documents on the Board.
24. Clause 21 provides for the service of documents on persons under the education and teaching legislation.
25. Clause 22 provides for offences under the education and teaching legislation to be dealt with summarily.
26. Clause 23 enables offences under the education and teaching legislation to be dealt with by way of penalty notices.
27. Clause 24 enables the Governor to make regulations for the purposes of the proposed Act.
28. Clause 25 enables the Board to make rules in respect of its functions. Such a power is currently contained in the Education Act 1990 in respect of the Board of Studies.
29. Clause 26 provides for the review of the proposed Act within 5 years.

Schedule 1 Members and procedure of Board

30. Schedule 1 contains provisions relating to members and procedure of the Board that are standard provisions for statutory corporations. Provision is included in relation to the nomination of the appointed members and to ensure that certain education and teacher related interests are represented on the Board.

Schedule 2 Savings, transitional and other provisions

31. Schedule 2 provides for the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act or any Act that amends the proposed Act. The Schedule also dissolves the Board of Studies and the NSW Institute of Teachers (including its Board of Governance) and provides for the transfer of the assets, rights and liabilities of the former bodies to the new Board.

Schedule 3 Amendment of Education Act 1990

32. Schedule 3 amends the Education Act 1990 as a consequence of the proposed Act. The registration requirements for non-government schools under section 47 of that Act are also amended to include the requirement that a school must have policies and procedures in place for the proper governance of the school and to ensure that a student enrolment and attendance register is maintained.

Schedule 4 Amendment of Institute of Teachers Act 2004

33. Schedule 4 amends the Institute of Teachers Act 2004 as a consequence of the proposed Act (including the repeal of administrative provisions relating to the NSW Institute of Teachers which are being replicated in the proposed Act). The name of the Act is also changed to the Teacher Accreditation Act 2004.

Schedule 5 Amendment of other Acts

34. Schedule 5.1 contains amendments to the proposed Act that will commence when the Government Sector Employment Act 2013 commences. These amendments include aligning the employment arrangements for the President of the Board (who will continue to be a statutory officer appointed by the Governor) with the new employment arrangements for senior executives in the Public Service under the Government Sector Employment Act 2013.
35. Schedule 5.2 and 5.3 make consequential amendments to the Public Finance and Audit Act 1983 and the Public Sector Employment and Management Act 2002.

ISSUES CONSIDERED BY COMMITTEE

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

Offences prescribed by the Regulations

36. Clause 23 of the Bill provides that the regulations may prescribe offences for the purposes of proposed section 23 of the Bill. Proposed section 23 relates to offences under the education and teaching legislation for which a penalty notice may be served. A penalty notice gives the recipient a choice between paying a fine for an alleged infringement of the law, or going to court.

The Committee prefers offence provisions to be contained in primary rather than delegated legislation. However, clause 23 of the Bill only allows the regulations to prescribe offences for which a penalty notice may be served, and penalty notices are generally reserved for relatively minor offences. In addition, regulations are subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*. Therefore, the Committee makes no further comment.

2. Civil and Administrative Tribunal Amendment Bill 2013; Civil and Administrative Legislation (Repeal and Amendment) Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith QC MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The objects of the *Civil and Administrative Tribunal Amendment Bill 2013* (the amendment Bill) and the *Civil and Administrative Legislation (Repeal and Amendment) Bill 2013* are to provide for the constitution and the practice and procedure of, and appeals from, the Civil and Administrative Tribunal (NCAT).
2. In addition, these Bills provide for the abolition of the Vocational Training Appeal Panel and the transfer of its functions to NCAT, as well as further provisions with respect to savings and transitional matters.
3. The amendment Bill also renames the *Administrative Decisions Tribunal Act 1997* as the *Administrative Decisions Review Act 1997* and confines its operation to the process for the administrative review by NCAT of certain decisions of administrators and to repeal and amend certain other legislation consequent on the amendments made to that Act. The repeal Bill makes amendments to certain Acts and other legislation consequent on the abolition of various existing tribunals by the *Civil and Administrative Tribunal Act 2013* and the establishment of NCAT.
4. The NCAT is designed to simplify the complexity of the existing tribunal system, and provide citizens with a one-stop shop for almost all tribunal services for the first time.
5. These two Bills are cognate with each other.

BACKGROUND

6. The operation of the NSW Civil and Administrative Tribunal (NCAT) will commence on 1 January 2014 and will consolidate and exercise the functions of more than 20 existing tribunals including the Consumer, Trader and Tenancy Tribunal, the Administrative Decisions Tribunal, and the Guardianship Tribunal.
7. The amendment Bill sets out the jurisdiction, powers, and functions the tribunal will need to hear and determine matters. It also contains further transitional provisions to make sure that matters currently being heard by existing tribunals can be transferred seamlessly to the new tribunal environment.

8. The amending Bill confers four different types of jurisdiction in the tribunal. In its general jurisdiction, the NCAT will be able to hear a wide variety of matters from consumer disputes to guardianship proceedings. In its administrative review jurisdiction, the tribunal will provide citizens with the ability to challenge decisions made by a number of government agencies and other bodies. The appeal jurisdiction will enable the Tribunal's internal review functions while it will also be able to hear appeals from certain external bodies.
9. The repeal bill updates a considerable number of references to the existing tribunals with references to the NCAT.
10. In his Second Reading Speech, the Attorney advised that the Government consulted widely on these Bills to ensure that the tribunal's legislation meets the needs of all tribunal users. This involved meetings with a number of professional associations, advocacy groups, tribunal user groups, and tribunal representatives.

OUTLINE OF PROVISIONS

Civil and Administrative Tribunal Amendment Bill 2013

11. Clause 1 sets out the name (also called the short title) of the proposed Act.
12. Clause 2 provides for the commencement of the proposed Act (except for Schedule 2) on the date of assent to the proposed Act. Schedule 2 will commence on the day on which NCAT is formally established.
13. Schedule 1 amends the *Civil and Administrative Tribunal Act 2013*:
 - (a) to provide for the general constitution requirements and practice and procedure for NCAT, and
 - (b) to provide for internal appeals in NCAT and appeals rights to the Supreme Court, District Court and Land and Environment Court from decisions of NCAT, and
 - (c) to provide for the allocation of functions to the various Divisions of NCAT, the membership of the Divisions and special constitution, practice and procedure and appeal mechanisms for some of the Divisions of NCAT, and
 - (d) to make further provision with respect to the constitution and the procedure of the Rule Committee of NCAT, and
 - (e) to enable the President of NCAT to give procedural directions, and
 - (f) to provide for the abolition of the Vocational Training Appeal Panel and the transfer of its functions to NCAT, and
 - (g) to rename the Occupational and Regulatory Division of NCAT as the Occupational Division, and
 - (h) to make further provision with respect to savings and transitional matters consequent on the establishment of NCAT and the transfer to it of proceedings and functions of certain existing tribunals.

14. Schedule 2.1 repeals the *Administrative Decisions Legislation Amendment Act 1997*. The Act contains uncommenced amendments to the *Administrative Decisions Tribunal Act 1997* that will become redundant with the abolition of the Administrative Decisions Tribunal and the amendment of the *Administrative Decisions Tribunal Act 1997* by the proposed Act.
15. Schedule 2.2 amends the *Administrative Decisions Tribunal Act 1997*:
 - (a) to rename the Act as the *Administrative Decisions Review Act 1997*, and
 - (b) to remove provisions relating to the establishment, membership, officers and functions of the Administrative Decisions Tribunal, and
 - (c) to confine the operation of the Act to the process for the administrative review of certain decisions of administrators and confer the function of conducting such reviews on NCAT.
16. Schedule 2.3 amends the *Administrative Decisions Tribunal Regulation 2009* to rename it and confine its operation consistent with the amendments made to the *Administrative Decisions Tribunal Act 1997* by the proposed Act.
17. Schedule 2.4 repeals the *Administrative Decisions Tribunal Rules 1998*.

Civil and Administrative Legislation (Repeal and Amendment) Bill 2013

18. Clause 1 sets out the name (also called the short title) of the proposed Act.
19. Clause 2 provides for the commencement of the proposed Act.
20. Clause 3 repeals the *Consumer, Trader and Tenancy Tribunal Act 2001* and the *Consumer, Trader and Tenancy Tribunal Regulation 2009*.
21. Schedule 1 amends certain legislation:
 - (a) to transfer the functions of the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal to NCAT, and
 - (b) to remove or update provisions referring or relating to the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal that will become outdated with its abolition.
22. Schedule 2 amends certain legislation:
 - (a) to transfer the functions of the Administrative Decisions Tribunal to NCAT, and
 - (b) to remove or update provisions referring or relating to the Administrative Decisions Tribunal that will become outdated with its abolition.
23. Schedule 3 amends certain legislation:
 - (a) to transfer the functions of the Charity Referees under the *Dormant Funds Act 1942* to NCAT, and

- (b) to remove or update provisions referring or relating to the Charity Referees that will become outdated with its abolition.
24. Schedule 4 amends certain legislation:
- (a) to transfer the functions of the Consumer, Trader and Tenancy Tribunal to NCAT, and
 - (b) to remove or update provisions referring or relating to the Consumer, Trader and Tenancy Tribunal that will become outdated with its abolition.
25. Schedule 5 amends certain legislation:
- (a) to transfer the functions of the Guardianship Tribunal to NCAT, and
 - (b) to remove or update provisions referring or relating to the Guardianship Tribunal that will become outdated with its abolition.
26. Schedule 6 amends certain legislation:
- (a) to transfer the functions of the various health practitioner tribunals established under the *Health Practitioner Regulation National Law (NSW)* to NCAT, and
 - (b) to remove or update provisions referring or relating to those health practitioner tribunals that will become outdated with its abolition.
27. Schedule 7 amends certain legislation:
- (a) to transfer the functions of the Local Government Pecuniary Interest and Disciplinary Tribunal to NCAT, and
 - (b) to remove or update provisions referring or relating to the Local Government Pecuniary Interest and Disciplinary Tribunal that will become outdated with its abolition.
28. Schedule 8 amends certain legislation:
- (a) to transfer certain adjudicative functions of local land boards to NCAT, and
 - (b) to transfer certain non-adjudicative functions of local land boards to the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services, and
 - (c) to remove or update provisions referring or relating to local land boards that will become outdated with its abolition.
29. Schedule 9 amends certain legislation:
- (a) to transfer the functions of the Vocational Training Appeal Panel in relation to appeals against decisions of the Vocational Training Tribunal, and

- (b) to rename the Vocational Training Tribunal as the Vocational Training Review Panel, and
- (c) to enable the Vocational Training Review Panel to review certain decisions of the Commissioner for Vocational Training before an appeal can be made to NCAT, and
- (d) to remove or update provisions referring or relating to the Vocational Training Appeal Panel that will become outdated with its abolition.

30. Schedule 10 makes certain other amendments to legislation to facilitate the establishment of NCAT, including amendments to the *Defamation Act 2005* and the *Ombudsman Act 1974*.

ISSUES CONSIDERED BY COMMITTEE

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

Fair Representation

31. Schedule 1, section 45(1)(a) of the amendment Bill provides that a party to general proceedings before the Tribunal has carriage of his/her own case and is not entitled to be represented by any other person.
32. The Committee notes that the inability of an individual to appoint a representative to act on their behalf may adversely affect that individual from effectively advocating their case. This provision may particularly affect individuals who are senior, have a medical condition or disability, or who are from a non-English speaking background. As such, the default requirement for an individual to take carriage of their own matter may affect their right to fair representation.
33. The Committee also notes, however, that Schedule 1 section 45(1)(b) provides that the Tribunal may grant leave for another person to represent a party before the Tribunal.

The Committee notes that the default position of Tribunal proceedings is that a party is not entitled to be represented by another person to advocate their case. While the Committee is concerned that this may, in some cases, adversely affect parties from being properly and fairly represented, the Committee also notes that discretion is vested in the Tribunal to enable parties to appoint representatives. The Committee makes no further comment.

Privilege; Self-Incrimination

34. Schedule 5, section 7 of the amending Bill provides that certain privilege matters for matters before the Occupational Division for the purposes of the *Aboriginal Land Rights Act 1983* or the *Local Government Act 1993* is to be waived in proceedings before the Tribunal.
35. In particular, a witness summoned to attend or appear before a Tribunal is not excused from answering any question or producing any document on the ground that the answer or production may incriminate the witness; on any other ground of privilege; or on any ground of a duty of secrecy or restriction on that disclosure.

36. Schedule 5, section 7(3) provides a limited safeguard that any answer given or document provided cannot be admitted in evidence against a witness in any civil or criminal proceedings or in any disciplinary proceedings. However, for this protection to take effect, the witness must first object to giving the answer or producing the document, despite there being no compulsion that the Tribunal first advise or warn the witness of their rights to raise any such objection.
37. Schedule 5, section 7(5) similarly provides that legal professional privilege may also be invoked as a reason to refuse to comply with a direction to answer a question or produce a document. However, no other privileged communication exception is granted.

The Committee notes that the Tribunal can suspend privilege rights for proceedings before the Occupational Division in certain prescribed matters. As such, the Tribunal can compel the answering of questions or production of documents despite any privilege that may otherwise exist. The privileges affected include the right against self-incrimination, ordinary privileged communications, or any privilege due to secrecy or other such restriction. Despite certain safeguards, the Committee is concerned about the possible erosion of rights to witnesses before the Tribunal. The Committee makes no further comment.

3. Coal Mine Health and Safety Amendment (Validation) Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to validate previous appointments of the Chief Inspector, inspectors, mine safety officers and investigators under the Coal Mine Health and Safety Act 2002 and to save appointments of officers under that Act that were inadvertently revoked,
 - (b) to validate things done or omitted by those officers and things done in reliance on or as a consequence of such things.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Chris Hartcher MP, Minister for Resources and Energy, indicated that in 2006, the then Deputy Director General of Mineral Resources appointed the Chief Inspector and a number of other inspectors and investigators under the *Coal Mine Health and Safety Act 2002*. Mr Hartcher stated that, as there may be some irregularity with the instrument of delegation, those appointments are now being retrospectively validated by the Bill. This validation intends to provide certainty that any approvals, orders or directions issued, or other actions by the Chief Inspector and other statutory officers in reliance on the 2006 appointment are valid.
3. The Bill also seeks to address a 2012 instrument of appointment. That instrument was designed to ensure certainty for the appointments made in 2006. However, it appears that, in addition to reappointing the 2006 government officials, the instrument inadvertently revoked all previous appointments. The Bill intends to make certain that the unintended effect of the 2012 instrument is corrected, that is, to confirm the appointment of all the officials under the Act.
4. Mr Hartcher stressed that the Bill does not change any of the legislative provisions relating to the officials, it simply seeks to make certain that there are no technical hindrances to their appointments.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Acts

7. Schedule 1.1 amends the Coal Mine Health and Safety Act 2002 to validate the appointment under section 145 of that Act of the Chief Inspector, inspectors, mine safety officers and investigators who were purported to be appointed under that Act by an instrument dated 22 December 2006.
8. The amendment also saves the appointments of certain officers by reversing the inadvertent revocation of their appointments by an instrument of appointment published in the Government Gazette on 5 October 2012, and provides that the revocation is taken never to have had effect.
9. Subsequently, the appointments of those officers were revoked, and they were further reappointed, by an instrument dated 6 August 2013.
10. The amendment validates things that would have been valid if the amendment validating and saving the appointments had been in force when the things were done or omitted. Things done or omitted by officers whose appointments are validated or saved are validated, as are things done or omitted to be done in reliance on, or as a consequence of, those things. This includes the commencement or institution of criminal proceedings.
11. The amendment will not affect decisions in court proceedings made before the amendment commences unless they would be valid if the validation had been in force.
12. Schedule 1.2 makes it clear that the operation of the amendment made by Schedule 1.1 is not affected by its repeal by the Work Health and Safety (Mines) Act 2013.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

13. Schedule 1.1 of the Bill validates previous appointments of government officials made under the *Coal Mine Health and Safety Act 2002* and saves appointments of officials under that Act that were inadvertently revoked. Schedule 1.1 also retrospectively validates things done or omitted by the officials (and things done in reliance on or as a consequence of such things) that would have been valid if the amendment validating and saving the appointments had been in force when the things were done or omitted. This includes the commencement or institution of criminal proceedings and court decisions made before commencement of the Bill.

The Committee will generally comment when provisions in legislation are drafted to have retrospective effect. This is because such provisions are contrary to the rule of law which allows people to order their affairs according to what the law is. However, in this case, the retrospective provisions in Schedule 1.1 of the Bill simply correct technical oversights and do not make substantive changes to legislative provisions. For this reason, the Committee makes no further comment.

4. Crimes Legislation Amendment Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to amend the *Bail Act 1978* to clarify that a magistrate may review any decision made in relation to bail by the President of the Children's Court, exercising the jurisdiction of the Children's Court,
 - (b) to amend the *Crimes Act 1900* to extend the period for review of certain provisions of that Act relating to consorting with convicted offenders,
 - (c) to make various amendments to the *Crimes (Forensic Procedures) Act 2000*, including to provide that a hearing of an application for an order to authorise the carrying out of a forensic procedure may be heard ex parte,
 - (d) to amend the *Crimes (High Risk Offenders) Act 2006* in relation to the provision to the Attorney General of information held by a court relating to the behaviour, or physical or mental condition, of an offender,
 - (e) to amend the *Criminal Procedure Act 1986* to make it clear that protections that apply to the giving of evidence by a witness in certain sexual offence proceedings extend to evidence about acts that would constitute a relevant sexual offence,
 - (f) to amend the *Interpretation Act 1987* in relation to the interpretation of references to offences punishable by imprisonment for a specified term or more.

BACKGROUND

2. The purpose of the Bill is to make miscellaneous amendments to criminal legislation as part of the Government's regular legislative review and monitoring program. The Minister's second reading speech states that the Bill amends a number of Acts to improve the efficiency and operation of the State's criminal laws.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of legislation

Schedule 1.1 Bail Act 1978 No 161

5. Schedule 1.1 clarifies that a magistrate may review any decision made in relation to bail by the President of the Children's Court, exercising the jurisdiction of the Children's Court.

Schedule 1.2 Crimes Act 1900 No 40

6. Schedule 1.2 extends the period within which the Ombudsman must prepare a report on the operation of certain provisions of the *Crimes Act 1900* relating to consorting with convicted offenders. The review period is currently due to end on 9 April 2014 (2 years after the commencement of those provisions). The proposed amendment extends the review period for a further year.

Schedule 1.3 Crimes (Forensic Procedures) Act 2000 No 59

7. Schedule 1.3 [1] makes it clear that the legal representative and interview friend of a suspect who is subject to an order (made by oral communication) to carry out a non-intimate forensic procedure must be given the opportunity to speak to the senior police officer who made the order.
8. Schedule 1.3 [3] removes the requirement for an application for an order authorising the carrying out of a forensic procedure on a suspect to be made in the presence of the suspect. Schedule 1.3 [2] makes a consequential amendment.
9. Schedule 1.3 [4] enables a magistrate to make an order authorising the carrying out of a forensic procedure on a suspect ex parte. Schedule 1.3 [5] and [6] make consequential amendments.

Schedule 1.4 Crimes (High Risk Offenders) Act 2006 No 7

10. Schedule 1.4 [1] enables the Attorney General to request a court to provide information held by the court that relates to the behaviour, or physical or mental condition, of an offender. Schedule 1.4 [2] provides that the information is admissible in proceedings under the *Crimes (High Risk Offenders) Act 2006*.

Schedule 1.5 Criminal Procedure Act 1986 No 209

11. Schedule 1.5 extends Division 1 of Part 5 of the *Criminal Procedure Act 1986* to make it clear that the protections of that Division that apply to the giving of evidence by certain witnesses in sexual offence proceedings are not limited to the sexual offences to which the Division applies and extend to acts that would constitute such an offence if they occurred in the State at the time of the proceedings.

Schedule 1.6 Interpretation Act 1987 No 15

12. Schedule 1.6 provides for the avoidance of doubt that, in any Act or instrument, a reference to an offence that is punishable by imprisonment for a specified term or more includes a reference to a common law offence and an offence that is punishable by imprisonment for life.

ISSUES CONSIDERED BY COMMITTEE

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

Fair hearing

13. Schedule 1.3 item [3] of the Bill amends section 26 of the *Crimes (Forensic Procedures) Act 2000* to remove the requirement for an application by an authorised person for an order allowing him or her to arrange for the carrying out of a forensic procedure on a suspect to be made in the presence of the suspect. Schedule 1.3 item [4] of the Bill amends section 30 so that an order is to be either made in the presence of the suspect or, at the discretion of the Magistrate, *ex parte*.

The Committee notes that permitting an application for an order to carry out a forensic procedure on a suspect to be heard and determined without the suspect being present could impact on the suspect's right to a fair hearing. However, the Committee notes that currently, while such applications and orders are to be made in the presence of the suspect, the legislation also gives magistrates the discretion to make a contrary order. For this reason, the Committee makes no further comment.

Retrospectivity

14. Schedule 1.6 items [1] and [2] of the Bill amend the *Interpretation Act 1987* so that references in any Act or instruments to offences that are punishable by imprisonment for a specified term or more include references to common law offences and offences punishable by imprisonment for life. This amendment will be taken to have applied to any Act in force before the commencement of the amendment and to have applied on and from the enactment of any such Act.

The Bill amends the meaning prescribed in the *Interpretation Act 1987* for offences that are punishable by imprisonment for a specified term or more. These amendments will apply retrospectively. However, the Bill also provides that the retrospective application of these amendments will not affect any judgment or other order of a court of tribunal that is given or made before the amendments commence. As such, the Committee makes no further comment.

5. Education Amendment (Non-Government School Funding) Bill 2013

Date introduced	29 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Adrian Piccoli MP
Portfolio	Minister for Education

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to facilitate the provision under the *Education Act 1990* (***the Act***) of financial assistance to non-government schools, in accordance with the State's obligations under the National Education Reform Agreement (or under any future Commonwealth-State agreement on financial assistance in respect of non-government school children),
 - (b) to require the level of financial assistance provided under the Act in respect of non-government school children to be maintained if the provision of that assistance ceases to be subject to such an agreement,
 - (c) to enable any financial assistance provided under the Act in respect of non-government school children to be allocated having regard to the needs of different non-government schools.

BACKGROUND

2. The reforms proposed by the Bill allow the NSW Government to carry out its commitments in the National Education Reform Agreement for funding non-government schools according to the needs of students. The Bill has been developed following consultation with relevant stakeholders.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Education Act 1990 No 8

5. Schedule 1 gives effect to the objects described in the Purpose and Description section, above.

ISSUES CONSIDERED BY COMMITTEE

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

6. Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to extend police powers of arrest without warrant. The revised powers of arrest are modelled on the Police Powers and Responsibilities Act 2000 of Queensland.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Barry O'Farrell MP, Premier, indicated that the Bill is the result of a report prepared by the former Police Minister, the Hon. Paul Whelan, and former Shadow Attorney General Mr Andrew Tink on section 99 of the Law Enforcement (Powers and Responsibilities) Act 2002. Section 99 is concerned with the power of police officers to arrest without warrant in certain situations.
3. The Premier told Parliament that Police have raised concerns that section 99 of the Act is complex and difficult to apply, and that it has resulted in offenders escaping conviction, and in large Police payouts for wrongful arrests where arrests have been made by police officers in good faith. A recent decision of Judge Conlon of the District Court also argued that section 99 needed amending to take account of the many volatile situations in which it is desirable for an arrest to be undertaken by police officers.
4. In preparing their report, Mr Whelan and Mr Tink met with senior members of the NSW Police Force including senior operational police, the Ministry for Police and Emergency Services, and the Department of Attorney General and Justice. They also considered police powers to arrest without warrant in all other Australian jurisdictions, as well as those in Britain, and a 2012 Bureau of Crime Statistics and Research report on the effect of arrest and imprisonment on crime.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Schedule 1 Amendment of the Law Enforcement (Powers and Responsibilities) Act 2002 No 103

7. Section 99 (1) of the Law Enforcement (Powers and Responsibilities) Act 2002 currently provides that a police officer may arrest a person without a warrant if the person is committing an offence, has just committed an offence or has previously committed a serious indictable offence for which the person has not been tried. Section 99 (2) states that a police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence. Section 99 (3) prohibits the use of police powers of arrest without warrant unless the police officer suspects on reasonable grounds that the arrest is necessary for any one or more enumerated reasons (including to ensure the appearance of the arrested person before a court, to prevent a continuation of the offence or the commission of another offence, to prevent interference with evidence, to protect witnesses or to preserve the safety or welfare of the arrested person).
8. Schedule 1 [1] repeals section 99 and replaces it with a provision that allows a police officer to arrest a person without a warrant if the police officer suspects on reasonable grounds that the person is committing or has committed an offence and if the police officer is satisfied the arrest is reasonably necessary for any one or more enumerated reasons. The substituted section does not purport to limit the power of arrest for previous offences to serious indictable offences. The substituted section extends the reasons for arrest without warrant to include additional reasons in line with section 365 of the Police Powers and Responsibilities Act 2000 of Queensland. Those additional reasons include to stop the person fleeing, to make inquiries to establish the identity of the person, to obtain property in the possession of the person connected with the offence, to preserve the safety or welfare of any person or because of the nature and seriousness of the offence. A police officer is also empowered to arrest a person without a warrant if directed to do so by another police officer who may lawfully arrest the person. Additionally, the substituted section makes it clear that a person lawfully arrested without a warrant may be detained by any police officer for the purpose of investigating whether the person committed the offence for which the person has been arrested.
9. Schedule 1 [2] clarifies that a police officer may discontinue an arrest at any time despite the requirement that the arrested person be taken, as soon as is reasonably practicable, before an authorised officer to be dealt with according to law.

ISSUES CONSIDERED BY COMMITTEE

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

Arrest and Detain Without Warrant

10. Schedule 1, item 1 of the Bill appears to remove certain safeguards around police powers to arrest without warrant. Under the current section 99 of the Law Enforcement (Powers and Responsibilities) Act 2002, the test for a lawful arrest without warrant has two prongs. First, under section 99(2) the officer must suspect on reasonable grounds the person has committed an offence. Secondly, under section 99(3), a person must not be arrested unless the officer suspects on reasonable grounds that it is necessary to do so for certain reasons (e.g. to prevent the destruction of evidence).

11. In contrast, under schedule 1, item 1 of the Bill, the second 'suspect on reasonable grounds' test is omitted and replaced with a test that the police officer is satisfied the arrest is 'reasonably necessary' for certain reasons. This may constitute a lowering of the threshold for a police officer to be satisfied an arrest without warrant is appropriate in the circumstances, leading to a greater number of arrests without judicial oversight.
12. Similarly, schedule 1, item 1 appears to remove the requirement that the arrest without warrant be made 'for the purposes of taking proceedings for an offence against the person' arrested currently contained in section 99(3) of the Law Enforcement (Powers and Responsibilities) Act 2002. This could potentially lead to police arresting people without warrant for relatively trivial offences for which the penalty is a moderate fine and (as a person lawfully arrested without warrant can also be detained for the purpose of investigating whether the person committed the offence for which he or she has been arrested) to people also being taken into custody for relatively trivial offences.
13. Finally, schedule 1, item 1 of the Bill extends the reasons for which police may arrest a person without warrant, including to establish the identity of the person.

The Bill may remove certain safeguards around police powers to arrest without warrant and allows police to arrest people without warrant in a greater variety of circumstances. Therefore, it may create more potential for arbitrary arrest and detention, arrests and detention for minor offences, and a greater number of unlawful arrests for questioning. The Committee refers the matter to Parliament for further consideration.

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

Commencement by Proclamation

14. Clause 2 of the Bill provides that the Bill commences on a day to be appointed by proclamation.

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent.

7. Mining Amendment (Development Consent) Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The object of this Bill to amend the *Mining Act 1992* to clarify the requirement for appropriate development consents for activities carried out under mining leases.

BACKGROUND

2. The Minister's second reading speech noted that the validity of current mining leases is being brought into question in current court proceedings, particularly as to what constitutes appropriate development consent for mining leases for minerals. The Minister stated that this current uncertainty is an unintended consequence of amendments to the legislation in 1996 that introduced mining leases for minerals. The amendments proposed by the Bill will clarify that development consent for mining purposes can be an appropriate form of consent to enable the grant of a mining lease for minerals.
3. The Minister noted that if the court were to find that development consent permitting mining purposes is not an appropriate form of consent for granting a mining lease for minerals, this could call into question the validity of most mining leases that exist today.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Mining Act 1992 No 29

6. Schedule 1 [1] amends the requirement for there to be an appropriate development consent (which may include approvals under the former Part 3A and Part 5.1 of the *Environmental Planning and Assessment Act 1979*) before a mining lease is granted. The requirement will apply if a development consent is required for carrying out activities to be carried out under the lease on land to which the lease applies and does not require there to be a link between the category of mining lease and the nature of the development consent. The amendment also makes it clear that nothing in the *Mining Act 1992* permits an activity to be carried out under a mining lease without any required development consent under the *Environmental Planning and Assessment Act 1979*.

7. Schedule 1 [2] provides that a mining lease granted before the commencement of the proposed Act is taken to comply, and to have always complied, with the requirement for there to be an appropriate development consent before the mining lease was granted if there was a development consent relating to any of the activities permitted under the lease when the lease was granted. The provision will also apply to a mining lease found to be invalid if the ground of invalidity was a failure to comply with the requirement for an existing development consent and there was an existing development consent applicable to a permitted activity under the mining lease.

ISSUES CONSIDERED BY COMMITTEE

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

Legislative interference in judicial matters

8. The Bill proposes to amend the *Mining Act 1992* to clarify what constitutes appropriate development consent for mining leases for minerals. The amendments also provide that mining leases granted before the commencement of the Bill that also have development consent are taken to comply, and to have always complied, with the requirements of section 65 of the *Mining Act 1992*. Section 65 requires applicants to obtain appropriate development consent before the Minister can grant a mining lease. The amendments will also extend to mining leases that have been found to be invalid because of a contravention of the requirements of section 65.

The proposed amendments will clarify what constitutes appropriate development consent for mining leases for minerals and validate certain mining leases granted before the commencement of the Bill. As these issues are currently the subject of proceedings before a court, the amendments appear to be a legislative fettering of a judicial process, the effect of which would be prejudicial to one party over another. The Committee notes that the Bill seeks to clarify unintended consequences of earlier amendments to the Act and that, without such amendments, the outcome of the court proceedings could potentially impact on the validity of current mining leases. The Committee therefore makes no further comment.

8. Police Amendment (Police Promotions) Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Minister for Police and Emergency Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Police Act 1990 to create exceptions to the general requirement that appointments by way of promotion to vacant non-executive police officer positions of a particular rank are to be made from the promotion list for that rank and according to rankings on that list.
2. As a result of the proposed Act, promotion appointments to certain specialist positions (being a position which requires specialist qualifications or unique knowledge, skills or experience and which is specially designated by the Commissioner of Police) may, if the position has not been able to be filled after being advertised to persons on the promotion list for the rank concerned, be made from outside the relevant promotion list.
3. The current exception that enables appointments to specialist positions to be made from a promotion list otherwise than in accordance with the order of rankings on the promotion list is continued.
4. The Bill also provides for police officers to be promoted, following a selection process, to superintendent positions otherwise than in accordance with the rankings on the relevant promotion list. Appointments of sergeants to senior sergeant positions will also be made following a selection process as there will no longer be a promotion list for the grade of senior sergeant.

BACKGROUND

5. In his Second Reading Speech to Parliament, the Hon. Michael Gallacher MLC, Minister for Police and Emergency Services, indicated that the Bill seeks to improve the process for promoting NSW Police Force officers. In doing so, it aims to boost the ability of the NSW Police Force to select the best officer for the job while ensuring integrity, transparency and equity in police promotions.
6. In 2006, new legislation established a new promotions system for police officers with the exception of constables and executive officers (the current system). It was established because of problems with the previous system such as extensive delays filling vacancies, a protracted and costly appeals process, insufficient emphasis on experience and a lack of transparency; and because a ministerial inquiry and a Police Integrity Commission Investigation confirmed a new approach was needed.

7. The current promotions system is a rank-oriented process which recognises merit and policing experience. Officers must prove their readiness for promotion to a rank rather than a position, and complete a series of competitive stages to be ranked on a promotions list.
8. As required by clause 137 of the Police Regulation 2008, a review of the current promotions system took place. This review was conducted by the Hon. Lance Wright QC and found that the system was generally working well and its central concepts should be retained. However, it made a number of recommendations for improvement, the majority of which have been accepted by the Government and included in the Bill, although the Government has also supported several alternative proposals which it believes are practical solutions for the NSW Police Force. Both the NSW Police Force and the Police Association of NSW were consulted during the review, the Government response to the review, and the development of the Bill.

OUTLINE OF PROVISIONS

9. Clause 1 sets out the name (also called the short title) of the proposed Act.
10. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Police Act 1990 No 47

11. At present under section 66 of the Police Act 1990, the Commissioner of Police must, in deciding to appoint a person by way of promotion to a vacant non-executive police officer position of a certain rank, appoint a person from the promotion list for that rank who has the greatest merit according to rankings on the list. An exception currently exists for appointments to positions that require specialist qualifications, in which case a person who has the qualifications required for the position may be appointed from the relevant promotion list (and not necessarily in accordance with the order of rankings on that list).
12. Schedule 1 [4] restates the existing exception referred to above and inserts new provisions dealing with promotion appointments to vacant non-executive police officer positions in other cases.
13. Proposed section 66AA (3) provides that, in the case of a specialist position designated by the Commissioner that has not been able to be filled from the promotion list after being advertised to persons on the list, an appointment may be made from outside the promotion list on the basis that the person obtain the required qualifications for the position within a certain period (see proposed section 66AA (5)). Similarly, section 66AA (6) provides that a person may be provisionally appointed from the relevant promotion list to a specialist position that requires a specific qualification even though the person does not hold the qualification. The permanent appointment of the person is subject to the person obtaining the relevant qualification within a certain period.
14. Section 66AA (8) authorises the Commissioner to require a person who applies for a specialist position to undergo a psychological assessment of the person's suitability for the position.

15. Proposed section 66AB enables promotion appointments, after a selection process, to be made to vacant positions of the rank of superintendent from the promotion list for that rank regardless of the rankings on the list.
16. Proposed section 66AC provides for the appointment of police officers (who are of the rank of sergeant) to the grade of senior sergeant following a selection process.
17. Schedule 1 [2] and [3] are consequential amendments.
18. Schedule 1 [6] and [7] provide that promotion lists are only to be established in relation to ranks (i.e. sergeant, inspector and superintendent) and not for grades (such as the grade of senior sergeant) within a rank. Schedule 1 [1] and [5] are consequential amendments.
19. Schedule 1 [8] and [9] enable the Commissioner, in deciding to suspend or remove a person from a promotion list or from the process of being placed on a promotion list, or in reversing a decision to appoint a person, to have regard to information as to the person's integrity regardless of whether the information was previously available or considered.
20. Schedule 1 [10] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Official Powers

21. Schedule 1, items 8 and 9 of the Bill enable the Commissioner, in deciding to suspend or remove a person from a promotion list, or in reversing a decision to appoint a person to a position under the Police Act 1990 (before the person is actually appointed), to have regard to information as to the person's integrity regardless of whether the information was previously available or considered in making the decision to appoint the person or to place them on the promotions list.
22. Currently, if the integrity information has already been considered when the decision to appoint the person, or place them on the promotions list, was made, the same information cannot be used to reverse the decision. This provides the person with a level of certainty regarding promotions decisions.

By allowing the Commissioner to re-consider integrity information about a person to reverse a decision to appoint them to a position, or to reverse a decision to place them on the promotions list, the Bill may provide the Commissioner with unfair powers that can be used to the detriment of the police officer concerned. Nonetheless, the integrity of police officers is fundamental, and flexibility in dealing with integrity issues is important to promotion. In addition, the Minister's Second Reading Speech indicated the amendments are intended to address situations where the Commissioner is made aware of a complaint against a police officer during the promotions process but chooses to wait for it to be finalised, and for an adverse integrity finding against the officer, if any, before taking appropriate action. For these reasons the Committee makes no further comment.

9. Regional Relocation (Home Buyers Grant) Amendment Bill 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Stoner MP
Portfolio	Deputy Premier, Minister for Trade and Investment, Minister for Regional Infrastructure and Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Regional Relocation (Home Buyers Grant) Act 2011 to permit grants to be made available under that Act to persons who relocate from metropolitan areas to regional areas for the purposes of employment, self-employment or purchasing a home.

BACKGROUND

2. In his Second Reading Speech to Parliament, the Hon. Andrew Stoner MP, Deputy Premier, Minister for Trade and Investment and Minister for Infrastructure and Services indicated the Bill proposes legislative changes to the *Regional Relocation (Home Buyers Grant) Act 2011* (the Principal Act), which established a grant scheme for home owner-occupiers in metropolitan areas if they sell their metropolitan home and purchase a regional home as their principal place of residence.
3. The amendments proposed by the Bill form part of the Government's response to the final report of the NSW Decentralisation Taskforce, made up of the Members for Lismore, Bathurst, Albury and Port Stephens, which consulted with stakeholders across the state and recommended changes to the original relocation grant scheme.
4. The amendments proposed by the Bill extend the original grant scheme to people residing in metropolitan homes that they do not own (renters); who are prepared to relocate to a regional location to enter the regional housing market; establish a new grant called the Skilled Regional Relocation Incentive for people who undertake an eligible employment relocation or an eligible self-employment relocation to a regional area; and generally enhance and clarify the operation and functioning of the amended Act.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on 1 January 2014.

Schedule 1 Amendment of Regional Relocation (Home Buyers Grant) Act 2011 No 26

7. The Regional Relocation (Home Buyers Grant) Act 2011 (the principal Act) established a scheme for the payment of grants to persons who live in their own homes in metropolitan areas (metropolitan homes) if those persons sell their metropolitan homes and purchase homes in regional areas (regional homes) and relocate and reside in those regional homes.
8. Schedule 1 [15] extends the scheme to persons who reside in metropolitan homes that they do not own. In such a case, the person must still purchase a regional home and relocate and reside in that regional home. To be eligible for such a grant, the person must have had his or her principal place of residence in one or more metropolitan homes for a continuous period of 2 years and each such metropolitan home must have been occupied under a lease or licence or other arrangement for valuable consideration. Each metropolitan home must be at least 100 kilometres from the regional home that is purchased. Schedule 1 [17] extends the 100 kilometre requirement to the current scheme in the principal Act so that the metropolitan home that is sold must be at least 100 kilometres from the regional home that is purchased. Schedule 1 [16] makes a consequential amendment.
9. Schedule 1 [19] inserts proposed Division 2 into Part 2 of the principal Act. The proposed Division provides for the payment of a skilled regional relocation incentive of \$10,000 to persons who relocate from metropolitan areas to regional areas for the purposes of employment or self-employment. A person who applies for the incentive (the applicant) is eligible for the incentive in respect of a relocation if the applicant is an eligible applicant and the relocation is an eligible employment relocation or an eligible self-employment relocation.
10. To be an eligible employment relocation, the applicant must be employed on a full-time basis for at least 2 years (or such lesser period as may be permitted by the Chief Commissioner of State Revenue (the Chief Commissioner)) in one or more jobs in regional areas (regional jobs).
11. Employment in the first regional job must commence on or after 1 January 2014 and before 1 July 2015. The applicant also needs to have relocated from a metropolitan area for the purposes of the regional job, having resided in one or more metropolitan homes for a continuous period of at least 2 years ending within 12 months before commencing employment in the regional job. The applicant's regional job and home must be at least 100 kilometres away from the applicant's former metropolitan home.
12. To be an eligible self-employment relocation, the applicant must relocate from a metropolitan area for the purposes of self-employment in a regional small business (being a business in a regional area that has an ABN and is conducted by an individual who is a sole trader or by a partnership where each partner is an individual). The applicant must have resided in one or more metropolitan homes for a continuous period of at least 2 years ending within 12 months before commencing self-employment in the regional small business. The regional small business and the applicant's regional home must be at least 100 kilometres away from the applicant's former metropolitan home. The applicant must establish or purchase the regional small business in which the applicant is to be self-employed.

13. To establish a regional small business the applicant must either set up a small business in a regional area or relocate a small business from a metropolitan area to a regional area. To purchase a small business the applicant must purchase at least 50% of a small business in a regional area.
14. The establishment or purchase of a regional small business is not eligible for a regional relocation grant if a person has already been paid a regional relocation grant in relation to the establishment or purchase of the small business. Self-employment in the regional small business must be commenced by the applicant on or after 1 January 2014 and before 1 July 2015. The applicant must be self-employed in the regional small business for at least 2 years (or such lesser period as may be permitted by the Chief Commissioner) following the applicant's relocation. The applicant must also complete a business advisory program approved by the Small Business Commissioner unless the applicant is purchasing part of an existing regional small business and a person who has been a partner in the business (or who has operated the business as a sole trader) will continue in the business as a partner with the applicant.
15. Schedule 1 [5] sets out the requirements to be met to be an eligible applicant for a regional relocation grant (which includes a skilled regional relocation incentive). To be an eligible applicant, the applicant must be a natural person who is an Australian citizen or permanent resident and the applicant or any member of the applicant's household must not have already received a regional relocation grant. Schedule 1 [5] also makes it clear that a person may not be paid more than one regional relocation grant and that more than one grant cannot be paid in relation to the establishment or purchase of a regional small business. Schedule 1 [24] provides that a skilled regional relocation incentive is to be paid in 2 equal instalments at least a year apart.
16. Schedule 1 [3], [6]–[10], [12]–[14], [18], [22], [23], [27] and [28] rename the current regional relocation grant as the regional relocation home buyers grant and make a number of other amendments that are consequential on the amendments made by Schedule 1 [15] and [19].
17. Schedule 1 [1] and [2] amend the long title and the name of the principal Act to take into account the proposed skilled regional relocation incentive.
18. Schedule 1 [4] makes provision for determining whether a principal place of employment or principal place of business is in a regional area or within 100 kilometres of a specified place in the case of a person (such as a tradesperson) whose work takes place in a number of locations.
19. Schedule 1 [4] also provides that a regional relocation grant is taken not to have been paid if it is later paid back.
20. Schedule 1 [11] provides that only one regional relocation home buyers grant is payable in respect of the purchase of a regional home.
21. Schedule 1 [20] provides for the time in which applications for a regional relocation grant must be made and also provides that an application is to be accompanied by any evidence required by the Chief Commissioner to demonstrate the applicant's eligibility for the regional relocation grant.

22. Schedule 1 [21] provides that all interested persons must be applicants for a regional relocation home buyers grant. Section 5 (2) of the principal Act (which is proposed to be relocated to section 4B (1) by Schedule 1 [5]) requires that every applicant meet the requirements for the payment of a regional relocation home buyers grant for any one of those applicants to be eligible. An interested person means each owner of the regional home that is purchased who was, in the case of an application made on the basis of the disposal of a metropolitan home, also an owner of that metropolitan home.
23. Schedule 1 [25] provides that if an applicant has a liability to repay an amount under the principal Act, that amount is a charge on the applicant's interest in land. Either the regional home that was the subject of a regional relocation home buyers grant or, in the case of a skilled regional relocation incentive, on any interest held by the applicant in land. Schedule 1 [26] makes a consequential amendment.
24. Schedule 1 [31] provides that the Minister for Finance and Services can appoint a scheme closure date if it appears to the Minister that the number of regional relocation grants authorised to be paid under the principal Act has exceeded or will exceed the amount of money appropriated from the Consolidated Fund for the purposes of regional relocation grants during the period of 1 July 2013 to 30 June 2015. Schedule 1 [33] provides that funds for the purposes of regional relocation grants are to be appropriated by Parliament. Schedule 1 [29] and [30] make consequential amendments.
25. Schedule 1 [32] provides that a regional relocation home buyers grant is not payable in respect of the purchase of a regional home if the purchase is commenced after the scheme closure date and a skilled regional relocation incentive is not payable in respect of employment in a regional job, or self-employment in a regional small business, if the employment or self-employment is commenced after the scheme closure date.
26. Schedule 1 [34] inserts a number of savings and transitional provisions consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

10. Same-Sex Marriage Bill 2013

Date introduced	31 October 2013
House introduced	Legislative Council
Minister responsible	The Hon. Penny Sharpe MP
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The object of this Bill is to allow for adults of the same sex to enter into a same-sex marriage.

BACKGROUND

2. In her Second Reading Speech to Parliament, the Hon. Penny Sharpe MLC indicated the Bill is the work of the NSW Cross Party Marriage Equality Working Group consisting of Liberal, National, Labor, Greens and Independent Members of the NSW Parliament. The announcement of the Working Group led to a round of meetings with stakeholders and the preparation of a first draft Bill.
3. Subsequently, the Premier supported the establishment of the terms of reference for a same-sex marriage laws inquiry by the Social Issues Committee of the Legislative Council. The inquiry received more than 7000 submissions and, as a result of evidence given to it by academics, a number of amendments were made to the first draft Bill to create the Bill before the House.

OUTLINE OF PROVISIONS

Part 1 Preliminary

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Same-sex marriages

7. Part 2 (clauses 4–18) sets out the requirements for same-sex marriages. Clause 6 provides that same-sex marriages are required to be solemnised by authorised celebrants, and may be solemnised on any day, at any time and at any place in New South Wales. The proposed Part also sets out the grounds of eligibility for same-sex marriages, the notices and declarations that must be given before same-sex marriages may be solemnised, the form and wording of same-sex marriage ceremonies, and requirements relating to witnesses and same-sex marriage certificates.
8. Clause 14 provides that a same-sex marriage solemnised otherwise than in accordance with proposed Part 2 is not valid. Under clause 18, it is an offence for a person to

solemnise a same-sex marriage unless the person is an authorised celebrant, and it is an offence for an authorised celebrant to solemnise a same-sex marriage except in accordance with the proposed Part (maximum penalty: \$11,000, or imprisonment for 6 months, or both). Clause 18 also sets out a number of other offences relating to solemnising same-sex marriages.

Part 3 Void same-sex marriages

9. Part 3 (clause 19) sets out the grounds on which same-sex marriages are void, which include the following (among other grounds):
 - (a) if either of the parties was already same-sex married to another person,
 - (b) if either party subsequently marries another person under Commonwealth law (including a law recognised by the Commonwealth),
 - (c) if either of the parties was not an adult,
 - (d) if the consent of either of the parties was not real consent because of various circumstances, including duress, fraud, mistaken identity or mental incapacity.

Part 4 Dissolution and annulment

10. Part 4 (clauses 20–31) provides for the dissolution and annulment of same-sex marriages.
11. Proceedings under proposed Part 4 are to be instituted in the Supreme Court. An application for a dissolution order in relation to a same-sex marriage must be based only on the ground that the same-sex marriage has broken down irretrievably (clause 21). This ground is established only if the Supreme Court is satisfied that the parties have separated and lived separately for a continuous period of at least 12 months. However, a dissolution order will not be made if the Court is satisfied that there is a reasonable likelihood of cohabitation being resumed. Clause 22 deals with the meaning of separation and clause 23 deals with the effect of resumption of cohabitation.
12. A dissolution order takes effect one month from the making of the order, subject to certain circumstances. If a dissolution order has taken effect, the parties may same-sex marry again under the proposed Act.
13. An application for a decree of nullity of a same-sex marriage must be based on the ground that the same-sex marriage is void (clause 24).

Part 5 Authorised celebrants

14. Division 1 (clause 32) provides that the Registrar of Births, Deaths and Marriages is authorised to solemnise same-sex marriages and that the Minister may authorise other persons employed in the Public Service and statutory officers to solemnise same-sex marriages.
15. Division 2 (clauses 33–42) provides for the registration of same-sex marriage celebrants, including provisions relating to the register of same-sex marriage celebrants, the requirements for entitlement to be registered and applications for registration. The

effect of registration is that the registered same-sex marriage celebrant may solemnise same-sex marriages at any place in New South Wales.

16. The proposed Division also provides for performance reviews and disciplinary measures in relation to same-sex marriage celebrants. Certain decisions of the Registrar with respect to same-sex marriage celebrants are reviewable.

Part 6 Interstate same-sex marriages

17. Part 6 (clause 43) provides for same-sex marriages under the laws of other States or Territories to be recognised for the purposes of the law of New South Wales.

Part 7 Miscellaneous

18. Part 7 (clauses 44–52) creates a number of offences, including an offence of going through a form or ceremony of same-sex marriage with a person who is not an adult (maximum penalty: imprisonment for 2 years) and an offence of bigamy (maximum penalty: imprisonment for 5 years).
19. The proposed Part also contains several miscellaneous provisions. Clause 48 provides that proceedings for offences under the proposed Act are to be dealt with summarily before the Local Court, except for the offences of same-sex marriage with a person who is not an adult and bigamy, which are to be prosecuted on indictment. Clause 50 enables the Governor to make regulations for the purposes of the proposed Act and clause 51 enables rules of court to be made under the Supreme Court Act 1970 with respect to applications and service of documents under the proposed Act. Clause 52 provides for the review of the proposed Act in 5 years.

Schedule 1 Amendment of Acts

20. Schedule 1 makes amendments consequential on the enactment of the proposed Act to the Acts specified in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Penalties

21. The Bill contains penalties for a number of offences. For example, Part 7 provides a maximum penalty of 5 years imprisonment for bigamy and 2 years imprisonment for same-sex marrying a person who is not an adult, while clause 18 provides for a \$1,100 fine or imprisonment for 6 months or both for various offences relating to solemnising same-sex marriages.

The penalties for offences contained in the Bill broadly align with those for the same or similar offences under the Commonwealth *Marriage Act 1961*, particularly as regards terms of imprisonment. For this reason the Committee does not find the penalty provisions to be unreasonable.

Reversed onus of proof

22. Clause 45 (3) of the Bill provides it is a defence to a prosecution for the offence of bigamy for the defendant to prove that at the time of the alleged offence the defendant believed that his or her spouse was dead, and the defendant's spouse had been absent

from the defendant for such a time and in such circumstances as to provide, at the time of the alleged offence, reasonable grounds for presuming that the defendant's spouse was dead.

By requiring an accused person to disprove a presumption that he or she is guilty of an offence, clause 45(3) of the Bill may violate a person's right to the presumption of innocence. Further, if the person is unable to disprove the presumption that he or she is guilty of the offence, the consequences are potentially serious. The person could be sentenced to a maximum penalty of 5 years imprisonment.

Nonetheless, the Commonwealth *Marriage Act 1961* contains a similar provision to plug an evidentiary gap for the prosecution, once it has proved a prima facie case of bigamy, which may otherwise be insurmountable. Similarly, clause 45(4) of the Bill tempers the defendant's evidentiary onus by providing that if s/he proves that at the time of the alleged offence, his/her spouse had been continually absent from him/her for a period of 7 years and s/he had no reason to believe the spouse was alive during that period, this is sufficient to prove s/he had reasonable grounds for presuming the spouse dead. For these reasons, the Committee makes no further comment.

11. Statute Law (Miscellaneous Provisions) Bill (No 2) 2013

Date introduced	30 October 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to make minor amendments to various Acts and Regulations (Schedules 1 and 2), and
 - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 3), and
 - (c) to repeal an Act and amend an Act to remove references to repealed provisions (Schedule 4), and
 - (d) to make other provisions of a consequential or ancillary nature (Schedule 5).

BACKGROUND

2. The Bill continues the longstanding statute law revision program by amending 26 Acts and two Regulations. The amendments make minor policy changes of a non-controversial nature, repeal redundant legislation and generally maintain the quality of NSW legislation.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act.
5. Clause 3 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedule 1 Minor amendments

6. Schedule 1 makes amendments to the following Acts and Regulation:

Associations Incorporation Act 2009 No 7
Environmental Planning and Assessment Act 1979 No 203
Food Act 2003 No 43
Food Regulation 2010
Health Administration Act 1982 No 135
Local Government Act 1993 No 30

Photo Card Act 2005 No 20

Public Health Act 2010 No 127

Retirement Villages Act 1999 No 81

Smoke-free Environment Act 2000 No 69

Snowy Hydro Corporatisation Act 1997 No 99

Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290

Transport Administration Act 1988 No 109

Victims Rights and Support Act 2013 No 37

7. The amendments to each Act and Regulation are explained in detail in the explanatory note relating to the Act or Regulation concerned set out in Schedule 1.

Schedule 2 Amendments consequent on amalgamation of Local Government Association of New South Wales and Shires Association of New South Wales

8. Schedule 2 makes amendments to various Acts and a Regulation consequent on the amalgamation of the Local Government Association of New South Wales and the Shires Association of New South Wales under the *Industrial Relations Act 1996* and the repeal (by Schedule 4) of the *Local Government Associations Incorporation Act 1974*.
9. The nature of the amendments contained in Schedule 2 is explained in detail in the explanatory note at the beginning of the Schedule.

Schedule 3 Amendments by way of statute law revision

10. Schedule 3 amends certain Acts and instruments for the purpose of effecting statute law revision.
11. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 3.

Schedule 4 Repeals

12. Schedule 4 repeals an Act and amends provisions of an Act.
13. Clause 1 of the Schedule repeals the *Local Government Associations Incorporation Act 1974*, which is redundant as a consequence of the amalgamation of the Local Government Association of New South Wales and the Shires Association of New South Wales.
14. Clause 2 of the Schedule removes references in the *Marine Safety Act 1998* to redundant provisions of legislation.

Schedule 5 General savings, transitional and other provisions

15. Schedule 5 contains savings, transitional and other provisions of general effect.
16. The purpose of each provision is explained in detail in the explanatory note relating to the provision concerned set out in the Schedule.

ISSUES CONSIDERED BY COMMITTEE

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

Part Two – Regulations

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

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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