



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
DEPUTY CHAIR	Dr Geoff Lee MP, Member for Parramatta
MEMBERS	Mr Garry Edwards MP, Member for Swansea Mr John Flowers MP, Member for Rockdale Ms Tania Mihailuk MP, Member for Bankstown The Hon. Shaoquett Moselmane MLC The Hon. Dr Peter Phelps MLC Mr David Shoebridge MLC
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2096 / 02 9230 2031
FACSIMILE	02 9230 3052
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations

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

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

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

Guide to the Digest

COMMENT ON BILLS

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

Ministerial Correspondence – Bills previously considered

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

COMMENT ON REGULATIONS

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

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

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

Conclusions

PART ONE - BILLS

1. CASINO CONTROL AMENDMENT (BARANGAROO RESTRICTED GAMING FACILITY) BILL 2013

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

2. CRIMES (APPEAL AND REVIEW) AMENDMENT (DNA REVIEW PANEL) BILL 2013

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

Redress for wrongful conviction – 20 year threshold

The Committee notes the Bill only requires police to retain relevant biological material where a person has been convicted of an offence punishable by 20 years prison or more; and the Supreme Court can only order DNA testing of retained material for offences punishable by 20 years prison or more, or where special circumstances exist. This threshold may mean retention of material, and access to DNA testing, is not available for people wrongly convicted of serious offences that attract lengthy custodial sentences (e.g. those punishable by a maximum of 14 years prison). The Committee refers the matter to Parliament for further consideration.

Redress for wrongful conviction – sentence of imprisonment on indictment

The Bill provides that the police have a duty to retain relevant biological material only where a person has been sentenced to imprisonment following a trial on indictment. It may therefore remove the rights of persons to have evidence retained that may reverse their wrongful conviction where they have been *summarily* convicted of serious offences and sentenced to imprisonment. Nonetheless, if a matter is heard summarily it significantly limits the length of any prison term that can be handed down. Therefore, this provision attempts to balance retention of evidence for future testing with ensuring the space and resources need for such retention are appropriately targeted. For this reason, the Committee makes no further comment.

3. FAIR TRADING AMENDMENT (TICKET RESELLING) BILL 2013

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

New Penalties

The Bill introduces significant monetary penalties where a person fails to take reasonable steps to ensure ticketing advertisements posted on their forum comply with certain requirements, or where they fail to remove or correct an advertisement after being notified that it is non-compliant. The Committee notes these provisions are intended to protect consumers and to provide redress for event organisers, where income is diverted to ticket scalpers who took no part and bore no risk in staging an event. For these reasons, the Committee makes no further comment.

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

Lack of Clarity

The Committee notes that by listing “any Act that amends this Act” rather than listing the names of each of those amending Acts, schedule 1, item 2 of the Bill is of limited clarity. However, as item 2 relates to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertions ensure these schedules are comprehensive, the Committee makes no further comment.

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

Commencement by Proclamation

The Committee prefers legislation of this kind, which imposes significant new monetary penalties, to commence on a fixed date or on assent.

4. FERNLEIGH TRACK CONSERVATION AREA PROTECTION BILL 2013

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the Legislation Review Act 1987.

5. MENTAL HEALTH (FORENSIC PROVISIONS) AMENDMENT BILL 2013

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

Deprivation of Liberty

The Committee notes that this Bill provides for the granting of extension orders to apply to forensic patients, which may include the detention of that patient for up to five years, and that this may constitute an unfair deprivation of liberty of that individual. Despite this, the Committee also notes the safeguards provided for in the Bill, together with the overarching interest in protecting the public. The Committee makes no further comment.

Excessive Penalties; Privacy

The Committee notes that the penalty for failure to comply is considerably high, and may be disproportionate to the offence committed. The Committee also notes that the disclosure of medical records, including the mental condition of a forensic patient, may constitute an interference with the patient’s privacy. However, the Committee appreciates that a scheme of this nature, in which individuals are subject to extension orders, requires a level of transparency and Ministerial awareness of the individuals affected to ensure the integrity of the scheme. As such, the Committee makes no further comment.

6. REAL PROPERTY AMENDMENT (ELECTRONIC CONVEYANCING) BILL 2013

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

7. RURAL FIRES AMENDMENT BILL 2013

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

Financial Burdens; Lack of Fairness

The Committee considers that the requirement of the owner to pay for the destruction or removal of their own building or structure for the purposes of making the premises safe from a

fire, incident or emergency, may be deemed unfair. However, the Committee notes the object of the Bill and therefore makes no further comment.

8. SURVEILLANCE DEVICES AMENDMENT (MUTUAL RECOGNITION) BILL 2013

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

9. TRAVEL AGENTS REPEAL BILL 2013

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

Right to compensation

The repeal of the *Travel Agents Act 1986* and the *Travel Agents Regulation 2011* will remove a right for a consumer to apply for compensation where they have suffered loss because of a travel agent's failure to account for the consumer's cash pre-payment to the relevant travel provider. However, the Committee notes the limited circumstances in which this right applies. The Committee also notes that consumers can still pursue remedies against travel agents under various other laws intended to protect consumers. The Committee therefore makes no further comment.

PART TWO – REGULATIONS

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

Part One - Bills

1. Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013

Date introduced	12 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. George Souris MP
Portfolio	Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Casino Control Act 1992* (the ***principal Act***) to authorise the conduct of gaming in a restricted gaming facility to be situated at Barangaroo South. The following restrictions will apply in relation to gaming in the Barangaroo restricted gaming facility:
 - (a) gaming is not authorised until 15 November 2019,
 - (b) the playing of poker machines is not authorised,
 - (c) minimum bet limits will apply,
 - (d) only persons who, under the conditions of the licence for the facility, are members or guests of the gaming facility will be authorised to participate in gaming activities.

BACKGROUND

2. The Minister's second reading speech notes that, in October 2012, the NSW Government announced that it had received an unsolicited proposal from Crown Limited to develop a hotel with VIP gaming facilities at Barangaroo South. In accordance with the unsolicited proposal process and following independent analysis, the Government agreed to accept the proposal. The Bill introduces amendments to the *Casino Control Act 1992* to enable the Independent Liquor and Gaming Authority to grant a restricted gaming licence at Barangaroo South.

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 Casino Control Act 1992 No 15

5. Schedule 1 [2] defines the **Barangaroo restricted gaming facility** as the premises situated on that part of Barangaroo South identified as the site of the Barangaroo restricted gaming facility on the map accompanying the Bill for the proposed Act on its introduction into the Legislative Assembly (see Schedule 1[5]) and defined by the Independent Liquor and Gaming Authority (the **Authority**) under proposed section 19A (see Schedule 1 [17]). The boundaries (ie the area) of the Barangaroo restricted gaming facility are to be defined by the Authority in the licence for the facility and may be redefined by the Authority on application by the licence holder. However, the Authority is to ensure the total gaming area within the Barangaroo restricted gaming facility does not exceed 20,000 square metres.
6. Schedule 1 [11] enables a restricted gaming licence to be granted by the Authority to operate the Barangaroo restricted gaming facility. Only one such licence may be in force at any one time. Schedule 1 [3] provides that the term **casino** includes the Barangaroo restricted gaming facility (which also means that a restricted gaming licence is treated as a type of casino licence for the purposes of the principal Act). Schedule 1 [1], [4], [9], [10], [16] and [29] are consequential amendments.
7. Schedule 1 [6] and [7] ensure that gambling in the Barangaroo restricted gaming facility is lawful only if it is conducted in accordance with the principal Act (which will include the restrictions imposed by the proposed Act).
8. Schedule 1 [8] enables the Minister to give directions to the Authority in relation to the granting of a restricted gaming licence.
9. Schedule 1 [12] provides that a person approved by the Minister may apply for a restricted gaming licence and that the Authority must be satisfied that the approved applicant and each close associate of the applicant is a suitable person to be concerned in or associated with the management and operation of the Barangaroo restricted gaming facility.
10. Schedule 1 [13] and [14] ensure that the Authority may carry out investigations in relation to an application for a restricted gaming licence.
11. Schedule 1 [15] makes it clear that a licence under the principal Act is subject to conditions imposed by the Act (and not just those imposed by the Authority).
12. Schedule 1 [18] provides that the Authority may only amend the conditions of a restricted gaming licence with the agreement of the licence holder. Schedule 1 [19] is a consequential amendment and Schedule 1 [20] makes it clear that licence conditions imposed by the principal Act cannot be amended by the Authority.
13. Schedule 1 [21] imposes restrictions on gaming in the Barangaroo restricted gaming facility. Gaming is not authorised before 15 November 2019 and poker machines are not permitted. Minimum bet limits will also apply. Only persons who are members or guests of the Barangaroo restricted gaming facility will be allowed to gamble.
14. Schedule 1 [22] provides that the regular intervals for the investigation by the Authority of a restricted gaming licence after it is granted start when gaming is authorised to start in the Barangaroo restricted gaming facility (ie from 15 November 2019).

15. Schedule 1 [23] provides that certain facilities and equipment for conducting monitoring and surveillance operations in the Barangaroo restricted gaming facility must be to a standard approved by the Authority.
16. Schedule 1 [24] provides that certain games are taken to have been approved by the Authority in relation to the Barangaroo restricted gaming facility and Schedule 1 [25] provides that keno games cannot be approved to be played in the facility.
17. Schedule 1 [26] provides that the power of the Authority to give directions to a casino operator about the games to be played in a casino does not apply in relation to the Barangaroo restricted gaming facility.
18. Schedule 1 [27] provides that the Authority cannot give directions as to the times of operation of the Barangaroo restricted gaming facility.
19. Schedule 1 [28] enables the operator of the Barangaroo restricted gaming facility to extend credit to overseas patrons for certain purposes.
20. Schedule 1 [30] provides that the *Smoke-free Environment Act 2000* does not apply to the Barangaroo restricted gaming facility once gaming is authorised in the facility. However, the conditions of the licence for the facility must require the installation, maintenance and operation of air quality equipment and for the testing of that equipment.
21. Schedule 1 [31] omits a redundant provision relating to places of public entertainment.
22. Schedule 1 [32] enables the Minister to direct the Authority to conduct negotiations and enter into agreements relating to the establishment of the Barangaroo restricted gaming facility.
23. Schedule 1 [33] provides that the exclusion of Crown liability for certain action taken under the principal Act in relation to a licence does not apply in relation to a restricted gaming licence.

Schedule 2 Amendment of other Acts

24. Schedule 2.1 amends the *Gaming Machines Act 2001* to provide that the Authority cannot under that Act authorise the keeping of gaming machines (ie poker machines) on any premises situated on the site of the Barangaroo restricted gaming facility.
25. Schedule 2.2. amends the *Unlawful Gambling Act 1998* to ensure that the prohibitions under that Act do not apply to lawful gambling in the Barangaroo restricted gaming facility.

ISSUES CONSIDERED BY COMMITTEE

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

2. Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2013

Date introduced	12 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Crimes (Appeal and Review) Act 2001 to implement the recommendations arising from a statutory review of the DNA Review Panel under section 97 of that Act.
2. In particular, the Bill makes amendments to provide for the following:
 - (a) the abolition of the DNA Review Panel and savings and transitional arrangements consequent on that abolition,
 - (b) the imposition of an on-going duty on the NSW Police Force and other authorities of the State to retain biological material (or swab or sample taken from such material) obtained in connection with the investigation or prosecution of an offence for which a person was convicted if:
 - i the offence was punishable by imprisonment for life or 20 years or more, and
 - ii the convicted person was sentenced to imprisonment or full-time detention for the offence following a trial on indictment,
 - (c) enabling a person convicted of an offence or his or her legal representative to request information about, and the DNA testing of, biological material that may have been retained by the NSW Police Force or any other authority of the State in connection with the offence.

BACKGROUND

3. In his Second Reading Speech to Parliament, Mr Geoff Provest MP, Parliamentary Secretary for Police and Emergency Services (on behalf of the Hon. Greg Smith MP, Attorney General and Minister for Justice) told Parliament that the DNA Review Panel was established in 2006. It provides an opportunity for wrongfully convicted people to prove their innocence by having DNA tests conducted on crime scene exhibits held by the Police.
4. The panel arranges for the NSW Police to conduct searches for exhibits that might contain DNA evidence, arranges for DNA tests of any evidence found during those

searches, and refers cases to the Court of Criminal Appeal when DNA tests raise reasonable doubt as to the convicted person's guilt.

5. Under the Principal Act, the panel's functions automatically cease on 23 February 2014 unless extended by proclamation because at the time the panel was introduced it was thought that routine use of DNA testing during investigations would soon render the role of the panel redundant. However, the science around DNA is constantly evolving and it is now known that evidence capable of exonerating a convicted person may only become available a significant time after a convicted person has exhausted all avenues of appeal.
6. A recent statutory review of the DNA Review Panel found that, despite the existence of the panel, there has not been a lot of demand for post-conviction DNA review. The panel has considered only 31 applications since its establishment and none of those has warranted referral to the Court of Criminal Appeal. As a result, the statutory review found that there was insufficient justification for retaining the panel in its current form.
7. Nonetheless, given the continuing importance of retention of exhibits and access to DNA testing, while the panel itself will not be maintained, the provisions in the Principal Act that relate to retention of exhibits and access to DNA testing are retained by the Bill. In addition, while it is currently the case that exhibit retention and access to DNA testing only applies in respect of eligible offences for which a person was convicted before 19 September 2006; given increased knowledge of and continuing evolution of the science around DNA, this time limit is removed by the Bill.

OUTLINE OF PROVISIONS

8. Clause 1 sets out the name (also called the short title) of the proposed Act.
9. Clause 2 provides for the commencement of the proposed Act on 23 February 2014.

Schedule 1 Amendment of Crimes (Appeal and Review) Act 2001 No 120

10. Schedule 1 makes the amendments to the Crimes (Appeal and Review) Act 2001 referred to in the 'Purpose and Description' section of this Bill report.

ISSUES CONSIDERED BY COMMITTEE

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

Redress for wrongful conviction – 20 year threshold

11. Schedule 1, item 4 of the Bill retains the requirement for police to retain relevant biological material in connection with the investigation or prosecution of an offence for which a person was convicted. However, as is currently the case, this requirement only exists for offences for which the maximum penalty is imprisonment for life or 20 years or more.
12. In addition, schedule 1, item 10 of the Bill provides the Supreme Court can order DNA testing of retained biological material but again, only if the offence committed by the convicted person was punishable by imprisonment for life or 20 years or more or if, in cases where the maximum penalty is less than 20 years prison, special circumstances exist that warrant the making of the order. Even if special circumstances do exist, a Supreme Court order for DNA testing may be of little use to an applicant if, as per item 4

of the Bill, there is no requirement for police to have retained evidence in respect of the offence.

The Committee notes the Bill only requires police to retain relevant biological material where a person has been convicted of an offence punishable by 20 years prison or more; and the Supreme Court can only order DNA testing of retained material for offences punishable by 20 years prison or more, or where special circumstances exist. This threshold may mean retention of material, and access to DNA testing, is not available for people wrongly convicted of serious offences that attract lengthy custodial sentences (e.g. those punishable by a maximum of 14 years prison). The Committee refers the matter to Parliament for further consideration.

Redress for wrongful conviction – sentence of imprisonment on indictment

13. Schedule 1, item 4 of the Bill also alters the existing duty for police to retain relevant biological material (that could later be used for DNA testing) by providing that such material need only be retained where the convicted person was sentenced to imprisonment or full time detention following a trial on indictment.

The Bill provides that the police have a duty to retain relevant biological material only where a person has been sentenced to imprisonment following a trial on indictment. It may therefore remove the rights of persons to have evidence retained that may reverse their wrongful conviction where they have been *summarily* convicted of serious offences and sentenced to imprisonment. Nonetheless, if a matter is heard summarily it significantly limits the length of any prison term that can be handed down. Therefore, this provision attempts to balance retention of evidence for future testing with ensuring the space and resources need for such retention are appropriately targeted. For this reason, the Committee makes no further comment.

3. Fair Trading Amendment (Ticket Reselling) Bill 2013

Date introduced	14 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Fair Trading

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Fair Trading Act 1987 with respect to tickets to sporting or entertainment events held in New South Wales, but only tickets that are subject to resale restrictions, being terms or conditions that limit or prohibit the resale of any such ticket or provide for the ticket to be cancelled or rendered invalid following resale.
2. This Bill:
 - (a) requires a person conducting the business or undertaking of a public forum (such as a website, newspaper or magazine) to ensure:
 - i that any advertisement in the forum for the sale of such a ticket complies with certain requirements such as including a photograph of the ticket, specifying the ticket number, row number and seat number and setting out the circumstances in which resale of the ticket may result in the ticket being cancelled or rendered invalid, and
 - ii that, if the person is notified in writing by any person about an advertisement in the forum that does not comply with those requirements, the advertisement is, insofar as is reasonably practicable, removed or corrected, and
 - (b) makes void any resale restriction that provides for a ticket to be cancelled or rendered invalid if it is resold unless the ticket contains a prescribed warning.

BACKGROUND

3. In his Second Reading Speech to Parliament, the Hon. Anthony Roberts MP, Minister for Fair Trading, indicated that the Bill aims to bring openness and transparency to the secondary ticketing market, help to protect consumers from price gouging and fraud, and empower event organisers to enforce their ticket terms and conditions.
4. The Minister told Parliament that ticket scalping, or unauthorised resale of tickets for a price above the original value, is an ongoing problem for consumers, event organisers, sporting codes and performers. In some cases, tickets are sold out within minutes of going on sale on official sites and are then immediately listed on online auction sites for several times the original price.

5. Consumers who buy tickets from scalpers face the risk of counterfeit tickets, or, where the tickets are genuine, they may still be worthless if the event promoter cancels them for being resold in breach of terms and conditions.
6. Mr Roberts indicated that he and the former Minister for Sport and Recreation held forums with representatives of sporting codes, the entertainment industry, ticketing organisations and consumer groups and that their offices also met individually with key stakeholders to discuss these issues. The reforms introduced by the Bill are the result.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Fair Trading Act 1987 No 68

9. Schedule 1 [1] inserts proposed Division 6 (comprising proposed sections 58–60B) into Part 4 of the Fair Trading Act 1987 (the principal Act).
10. Proposed section 58 provides that the proposed Division applies to tickets to sporting and entertainment events held in New South Wales that are subject to a resale restriction. A resale restriction is a term or condition of a ticket that limits or prohibits resale of the ticket (including any term or condition that provides for the ticket to be cancelled or rendered invalid if it is resold).
11. Proposed section 59 sets out what advertisements are unauthorised advertisements for the purposes of proposed Division 6. An advertisement that offers a ticket for sale is an unauthorised advertisement if the advertisement does not satisfy the requirements of the proposed section.
12. Those requirements are that the advertisement must specify the ticket number, row number and seat number (if the ticket has such numbers) and specify the terms and conditions of the ticket or specify where those terms and conditions can be readily found. The advertisement must also include a notice specifying the circumstances in which resale of the ticket may result in the ticket being cancelled or rendered invalid. Finally, the advertisement must contain a photograph of the ticket that clearly shows any ticket number, row number and seat number. However, the photograph must not show any barcode on the ticket. An advertisement is not an unauthorised advertisement if it is published by or on behalf of the organiser of the event to which the ticket relates or any agent of the organiser or if the advertisement is an advertisement of a class prescribed by the regulations under the principal Act.
13. Proposed section 60 places obligations on a person who conducts the business or undertaking of a forum (including the owner of the forum). A forum is defined to include any forum having advertisements to which members of the public have access (whether or not a member of the public is first required to pay a fee or subscription, register or become a member) such as a website, a newspaper, magazine or other publication or a public notice board. Any such person is required to take reasonable steps to ensure that no advertisement in the forum is an unauthorised advertisement. Failure to do so is an offence with a maximum penalty of \$22,000. Such a person is also required to ensure

that an unauthorised advertisement in the forum is removed or corrected within a reasonable time after the person is notified in writing that the advertisement is an unauthorised advertisement, but only if it is reasonably practicable to do so. Failure to do so is an offence with a maximum penalty of \$5,500. The regulations under the principal Act can prescribe circumstances in which the person is taken to have been notified in writing. The offences do not apply to an advertisement offering a ticket for sale in a forum that has been authorised for the purposes of such sale by the organiser of the event to which the ticket relates.

14. Proposed section 60A provides that a resale restriction that provides for a ticket to be cancelled or rendered invalid if it is resold (or if it is resold in certain circumstances such as resale for a profit) is void unless the ticket contains a warning in the form prescribed by the regulations.
15. Proposed section 60B requires the Minister to conduct a review of the proposed Division after 3 years and to table a report on the outcome of that review in Parliament.
16. Schedule 1 [2] permits regulations under the principal Act to contain provisions of a savings or transitional nature consequent on the enactment of the principal Act or any Act that amends the principal Act (including the proposed Act).
17. Schedule 1 [3] contains savings and transitional provisions that are consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

New Penalties

18. Proposed section 60 of the Bill requires a person conducting a business or undertaking of a forum (e.g. a website) to take reasonable steps to ensure no advertisement in the forum is an unauthorised advertisement. For example, an advertisement would be unauthorised if it did not include a notice specifying the circumstances under which resale of the ticket may result in the ticket being cancelled or rendered invalid. If a person fails to take the reasonable steps, the maximum penalty is a \$22,000 fine.
19. Similarly, proposed section 60 of the Bill requires such a person to ensure an unauthorised advertisement in the forum is removed or corrected within a reasonable time after the person is notified in writing that the advertisement is an unauthorised advertisement, where it is reasonably practicable to do so. Failure to comply attracts a maximum penalty of \$5,500.

The Bill introduces significant monetary penalties where a person fails to take reasonable steps to ensure ticketing advertisements posted on their forum comply with certain requirements, or where they fail to remove or correct an advertisement after being notified that it is non-compliant. The Committee notes these provisions are intended to protect consumers and to provide redress for event organisers, where income is diverted to ticket scalpers who took no part and bore no risk in staging an event. For these reasons, the Committee makes no further comment.

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

Lack of Clarity

20. Schedule 1, item 2 of the Bill provides that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

The Committee notes that by listing “any Act that amends this Act” rather than listing the names of each of those amending Acts, schedule 1, item 2 of the Bill is of limited clarity. However, as item 2 relates to the regulation-making power for provisions of a savings or transitional nature, and recognising that the proposed insertions ensure these schedules are comprehensive, the Committee makes no further comment.

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

Commencement by Proclamation

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

The Committee prefers legislation of this kind, which imposes significant new monetary penalties, to commence on a fixed date or on assent.

4. Fernleigh Track Conservation Area Protection Bill 2013

Date introduced	14 November 2013
House introduced	Legislative Assembly
Member responsible	Ms Sonia Hornery MP
Portfolio	N/A

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prevent the sale, lease or other disposal of certain land set aside for the Charlestown East Bypass, a project that is not being proceeded with. The land is in the vicinity of the Fernleigh Track Conservation Area, in the local government area of Lake Macquarie, and is currently owned by Roads and Maritime Services.

BACKGROUND

2. In her Second Reading Speech to Parliament, Ms Sonia Hornery MP indicated the Bill seeks to ensure that State Government owned land zoned for conservation around Fernleigh Track cannot be sold, leased or otherwise disposed of without the approval of both Houses of Parliament. Ms Hornery told Parliament that Fernleigh Track is a 15 kilometre walking and cycling track that forms part of a wildlife corridor connecting Glenrock Conservation Area, Awabakal Nature Reserve and Belmont Wetlands State Reserve.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
5. Clause 3 prohibits the sale, lease or other disposal of the relevant land except with the approval of both Houses of Parliament.

ISSUES CONSIDERED BY COMMITTEE

The Committee makes no comment on the Bill in respect of issues set out in section 8A of the Legislation Review Act 1987.

5. Mental Health (Forensic Provisions) Amendment Bill 2013

Date introduced	14 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Mental Health (Forensic Provisions) Act 1990* (the principal Act) to provide for a scheme for the extension of the status of certain persons as forensic patients and to facilitate the review by the Mental Health Review Tribunal (the Tribunal) of those forensic patients' care, treatment, detention and release from custody.
2. The amendments made by the Bill apply to persons who:
 - (a) are found unfit to be tried for an offence but are not acquitted at a special hearing and on whom a limiting term is imposed, and
 - (b) pose an unacceptable risk of causing serious harm to others (being a risk that cannot be adequately managed by less restrictive means that extending the person's status as a forensic patient).

BACKGROUND

3. This Bill implements recommendations of the NSW Law Reform Commission in its *Report 138: People with cognitive and mental health impairments in the criminal justice system: criminal responsibility and consequences* of May 2013.
4. According to the Attorney in his Second Reading Speech, the Bill addresses the gap by ensuring that the Mental Health Review Tribunal can continue its oversight of the forensic patients in limited circumstances.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. The principal Act provides for the conduct of special hearings in respect of persons who are found unfit to be tried for an offence (whether by reason of mental illness, mental condition or developmental disability of mind). If the court finds at a special hearing that a person committed an offence, the court may nominate a term (*a limiting term*) to represent the sentence that the court would have imposed had the person been found guilty of the offence at a normal trial of criminal proceedings. The nomination of a

limiting term enables the court to order that the person be detained in a mental health facility or other place. A person who has been detained following the nomination of a limiting term is a *forensic patient*, being a person whose care, treatment, detention and release from custody is subject to the review of the Tribunal. The proposed amendments to the principal Act provide for the extension of the status of certain persons as forensic patients whose limiting terms expire to facilitate the review by the Tribunal of their care, treatment, detention and release from custody.

8. Schedule 1 [8] provides for the extension of a person's status as a forensic patient in accordance with the provisions set out in proposed Schedule 1. Schedule 1 [3] gives a person whose status as a forensic patient has been extended in accordance with that proposed Schedule the status of a forensic patient for the purposes of the principal Act. This has the effect of extending to those persons the application of the provisions of Part 5 of the principal Act that relate to the review of the care, treatment, detention and release from custody of forensic patients.
9. Schedule 1 [13] inserts proposed Schedule 1 into the principal Act. The new Schedule contains the following provisions: Proposed clause 1 enables the Supreme Court to make an order for the extension of a person's status as a forensic patient (*an extension order*).
10. Proposed clause 2 provides that the Court may make an extension order only if the Supreme Court is satisfied to a high degree of probability that the forensic patient poses an unacceptable risk of causing serious harm to others if he or she ceases being a forensic patient, and that the risk cannot be adequately managed by other less restrictive means.
11. Proposed clause 3 enables any Minister administering the principal Act to apply for an extension order against a forensic patient.
12. Proposed clause 4 provides that an application for an extension order may only be made if the forensic patient is subject to a limiting term or existing extension order and may not be made more than 6 months before the expiry of the limiting term or existing extension order.
13. Proposed clause 5 requires that the application be supported by certain documentation relevant to the application, including a report prepared by a qualified psychiatrist, registered psychologist or registered medical practitioner that assesses the risk of the forensic patient causing serious harm to others and the need for ongoing management of the patient as a forensic patient.
14. Proposed clause 6 requires an application to be served on the forensic patient within 2 days after it is filed in the Supreme Court. Within 28 days after the application is filed, the Court is to conduct a preliminary hearing. The Court may appoint qualified psychiatrists, registered psychologists and registered medical practitioners to examine the forensic patient if it is satisfied that the matters alleged in the supporting documentation would, if proved, justify the making of an extension order. If the Court is not so satisfied, it must dismiss the application.
15. Proposed clause 7 provides for the matters to which the Supreme Court must have regard in determining whether or not to make an extension order (including the safety

of the community, reports prepared by qualified psychiatrists, psychologists and medical practitioners and orders or decisions made by the Tribunal with respect to the forensic patient).

16. Proposed clause 8 provides that the term of an extension order cannot exceed 5 years, but a subsequent order may be made against the same forensic patient.
17. Proposed clause 9 continues the effect of any order made in respect of a forensic patient, relating to the patient's care, detention, treatment or release from custody, that was in force immediately before the making of an extension order or interim extension order.
18. Proposed clauses 10 and 11 provide for the making of interim extension orders in circumstances where the limiting term or existing extension order will expire before the determination of proceedings on an application for an extension order. The term of an interim extension order may not exceed 28 days, but the order may be renewed for periods totalling not more than 3 months.
19. Proposed clause 12 provides for the variation or revocation of an extension order or interim extension order on the application of a Minister administering the principal Act or on the recommendation of the Tribunal.
20. Proposed clauses 13–22 provide for miscellaneous matters, including appeal rights, the right of a party to appear in the proceedings, call witnesses and make submissions and the power to make rules of court.
21. Schedule 1 [4] provides that the period within which the Tribunal must review the case of a forensic patient who is subject to an extension order cannot be extended beyond the period of 6 months.
22. Schedule 1 [5] provides that the Tribunal must not make an order for the unconditional release of a forensic patient who is subject to an extension order but may make a recommendation to the Supreme Court as to the variation or revocation of the order.
23. Schedule 1 [6] and [7] provide that a person ceases to be a forensic patient if an extension order or interim extension order made against the person expires or is revoked without a subsequent extension order being made.
24. Schedule 1 [9] allows the Minister for Health and the Attorney General to appear before, or make submissions to, the Tribunal in relation to the possible recommendation to revoke an extension order in respect of a forensic patient.
25. Schedule 1 [10] requires the Tribunal to notify each Minister administering the principal Act of the upcoming expiry of a forensic patient's limiting term or extension order at least 6 months before that expiry.
26. Schedule 1 [13] provides for the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
27. Schedule 1 [1], [2], [11] and [12] make consequential amendments.

ISSUES CONSIDERED BY COMMITTEE

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

Deprivation of Liberty

28. Schedule 1, Section 8 (1) of this Bill provides for the extension of certain patients as forensic patients, which could include the continued detention of that patient for a period up to five years. As these patients can include individuals who have been deemed to be unfit to stand trial, these provisions could affect individuals who have never been tried and convicted for any offence, and any action may constitute an unfair deprivation of liberty of that individual.
29. Despite these concerns, the Committee notes the reasonably high threshold that must be met before the granting of an extension order. These provisions, under Schedule 1, Section 1(2), include consideration that the forensic patient poses an unacceptably high risk of causing serious harm to others, and that the risk cannot be adequately managed by less restrictive means.

The Committee notes that this Bill provides for the granting of extension orders to apply to forensic patients, which may include the detention of that patient for up to five years, and that this may constitute an unfair deprivation of liberty of that individual. Despite this, the Committee also notes the safeguards provided for in the Bill, together with the overarching interest in protecting the public. The Committee makes no further comment.

Excessive Penalties; Privacy

30. Schedule 1, Section 17 provides that a Minister administering the Act may order a person to provide to the Minister any report, information, or document under that person's possession or control, and that relates to the behaviour, or physical or mental condition, of any forensic patient who is subject to a limiting term. Failure to comply is an offence that attracts a maximum penalty of 100 penalty units, two years imprisonment, or both.

The Committee notes that the penalty for failure to comply is considerably high, and may be disproportionate to the offence committed. The Committee also notes that the disclosure of medical records, including the mental condition of a forensic patient, may constitute an interference with the patient's privacy. However, the Committee appreciates that a scheme of this nature, in which individuals are subject to extension orders, requires a level of transparency and Ministerial awareness of the individuals affected to ensure the integrity of the scheme. As such, the Committee makes no further comment.

6. Real Property Amendment (Electronic Conveyancing) Bill 2013

Date introduced	14 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Fair Trading

PURPOSE AND DESCRIPTION

1. The object of this Bill is to facilitate the implementation of the *Electronic Conveyancing National Law (NSW)*, which is part of a national scheme to create a single national electronic system for settling real property transactions and for the electronic lodgement and processing of land transactions. To achieve that object, this Bill amends the *Real Property Act 1900* in a number of ways.
2. First, by providing for the optional issue of paper certificates of title, allowing the Registrar-General to determine whether to issue or cancel a certificate in a particular case (replacing the current scheme, under which the Registrar-General issues a certificate of title for all privately owned Torrens title land).
3. Second, by allowing the Registrar-General, in circumstances where a certificate of title is not issued or has been cancelled, to accept an electronic consent to the registration of a matter where currently a certificate of title is required to be produced to the Registrar-General.
4. Lastly, by making other minor amendments to make the operation of the Act technology-neutral, including by making it clear that, unless otherwise provided, electronic documents lodged through the new system will be processed in the same way and according to the same legal considerations as conventional paper transactions and that the powers of the Registrar-General apply equally to paper and electronic conveyancing documents.
5. The Bill also makes minor unrelated amendments to the caveat provisions in the *Real Property Act 1900*.

BACKGROUND

6. In 2010, NSW collaborated with Victoria and Queensland to form National E-Conveyancing Development Limited (NECDL) to build the online platform to deliver a national electronic conveyancing solution to the Australian property industry. National E-Conveyancing Development Limited has now developed that platform, which is called Property Exchange Australia [PEXA].
7. Property Exchange Australia has begun operating successfully in some jurisdictions, and has either commenced or will commence processing mortgage transactions for all of Australia's major financial institutions.

8. This Bill makes a number of minor amendments to the *Real Property Act 1900* that are consequential on the commencement of electronic conveyancing and will facilitate increased usage of the system.

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 the date of assent to the proposed Act.
11. Schedule 1 [1] and [2] modify existing definitions of terms, and insert new definitions, to make it clear that:
 - (a) a reference to an approved form includes a reference to an electronic data file containing such a form, and
 - (b) a reference to a dealing, including a transfer, mortgage, memorandum or other instrument, includes a reference to the electronic form of that document created and lodged under the authority of the *Electronic Conveyancing National Law (NSW)*, and
 - (c) a reference to an instrument includes an electronic data file containing any instrument, and
 - (d) a reference to lodging an instrument or document includes lodging electronically, and
 - (e) a reference to signing includes digitally signing an electronic document.
12. Schedule 1 [7] provides that the powers of the Registrar-General may be exercised with respect to electronic lodgments in conjunction with powers granted under the *Electronic Conveyancing National Law (NSW)*. The amendment also extends the power of the Registrar-General to correct errors to include supplying entries or recordings omitted to be made in the Register if the error or omission resulted from a malfunction of an Electronic Lodgment Network or of any electronic system in which information is communicated between the Electronic Lodgment Network and the Registrar-General.
13. Schedule 1 [4]–[6] require the Registrar-General to keep records of corrections of the Register.
14. Schedule 1 [8] empowers the Registrar-General to issue directions in relation to the preparation and lodgment of registry instruments under the *Electronic Conveyancing National Law (NSW)*.
15. Schedule 1 [10] empowers the Registrar-General to require dealings lodged electronically to be executed and lodged in paper form, if the Registrar-General considers that the dealing cannot, or should not, be processed electronically.
16. Schedule 1 [11] provides for the Registrar-General to approve a manner of verification of caveats lodged by means of an Electronic Lodgment Network.

17. Schedule 1 [14] provides that the Registrar-General may approve an electronic version of any approved form, even if there is no paper form.
18. Schedule 1 [15] provides that the Registrar-General may produce an evidentiary copy of an electronic document in writing, recording information contained in an electronic instrument, and that the document so produced may be taken as evidence of the matters contained in the electronic instrument.
19. Schedule 1 [19] makes it clear that the special arrangements that the *Electronic Conveyancing National Law (NSW)* specifies for the digital signing and certifying of electronic documents by subscribers to an Electronic Lodgment Network apply instead of the provisions for certification of paper documents in the Act. (The *Electronic Conveyancing National Law (NSW)* provides for solicitors and conveyancers to be authorised to digitally sign documents on their clients' behalf and to generally conduct a transaction electronically. The authority for this will come from a new document called a client authorisation provided for in the *Electronic Conveyancing National Law (NSW)*.) Schedule 1 [16]–[18] are consequential amendments.
20. Schedule 1 [9] provides (in proposed section 33AA) for the optional issue of paper certificates of title, by empowering the Registrar-General to determine when a certificate of title will be issued. The amendment also empowers the Registrar-General to cancel a certificate of title held by persons on request. Where a certificate of title has not been issued, or has been cancelled, the Registrar-General is required to make an entry in the Register that no certificate of title has been issued, indicating the name of the person who has control of the right to deal in the land, being the person who would be entitled to be issued with the certificate of title, on request.
21. Schedule 1 [9] also provides (in proposed section 33AB) that any statutory requirement to produce a certificate of title may, if no current certificate is issued or if the certificate of title is cancelled, be satisfied by the party entitled to be issued with the certificate of title (on request) providing an approved electronic consent. The proposed section also provides that the Registrar-General may assume that a person who lodges an electronic consent with the Registrar-General has all necessary authority to lodge it with the Registrar-General or to withdraw it.
22. Schedule 1 [12] will mean that the Registrar-General is required in all cases to give the registered proprietor of an interest affected by a caveat notice of the lodgment of a caveat prohibiting the recording of any dealing affecting the estate or interest to which the person lodging the caveat claims to be entitled, the grant of any possessory application, the registration of a delimitation plan, the cancellation of an easement or the extinguishment of a restrictive covenant. Currently, the Registrar-General is not required by the Act to give notice if the registered proprietor's consent to the caveat is endorsed on the caveat, but it is the Registrar-General's practice to give notice in all cases as a fraud mitigation measure. The proposed amendment will align the statutory requirement with the Registrar-General's practice.
23. Schedule 1 [13] provides that a judgment creditor under a writ relating to land may apply to have a caveat (which would otherwise prevent the recording of the writ) lapsed in so far as necessary to allow the recording of the creditor's writ on title. This makes it clear that judgment creditors, who do not have an interest in land, are afforded the same rights as others to have a caveat lapsed to allow the writ to be recorded and so

allow the Sheriff, where appropriate, to sell the land to satisfy debts recognised by the Court through the issue of a writ.

24. Schedule 1 [3] corrects a grammatical error.
25. Schedule 1 [20] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and any other Act that amends the *Real Property Act 1900*.

ISSUES CONSIDERED BY COMMITTEE

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

7. Rural Fires Amendment Bill 2013

Date introduced	13 November 2013
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Emergency Services

PURPOSE AND DESCRIPTION

1. The objects of this Bill is to amend the *Rural Fires Act 1997* to make further provision for bush fire hazard reduction, as well as other miscellaneous amendments to that Act and related Regulation.
2. The Act also amends the *National Parks and Wildlife Act 1974* to provide immunity from committing certain offences under that Act in the course of carrying out bush fire hazard reduction work.
3. Lastly, the Bill amends the *State Emergency and Rescue Management Act 1989* to create an aggravated offence relating to impersonating an emergency services organisation officer.

BACKGROUND

4. Following the 2011 Election, the Government established the Independent Hazard Reduction Audit Panel to conduct a review of the hazard reduction program in New South Wales, and to provide recommendations on potential enhancements.
5. The panel made 18 recommendations, eight of which require legislative amendments. This Bill gives effect to all eight recommendations.

OUTLINE OF PROVISIONS

6. Clause 1 sets out the name (also called the short title) of the proposed Act.
7. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
8. Schedule 1 [1] inserts a new object into the *Rural Fires Act 1997*, namely, to provide for the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. Schedule 1 [2] is a consequential amendment.
9. Schedule 1 [3] expands the functions of the NSW Rural Fire Service to include the protection of infrastructure and environmental, economic, cultural, agricultural and community assets from destruction or damage arising from fires in rural fire districts. Schedule 1 [4] is a consequential amendment.
10. Schedule 1 [5] expands the things a rural fire brigade officer may do if a person or property is, or is likely to be, endangered by a fire or other emergency to include shoring

up buildings or structures and destroying, pulling down, shoring up or removing parts of buildings or structures on any land.

11. Schedule 1 [6] provides that the cost incurred by a rural fire brigade in destroying, pulling down, shoring up or removing any buildings or structures or parts of buildings or structures in order to make premises safe is to be borne by the owner of the building or structure and paid to the Commissioner of the NSW Rural Fire Service (the *Commissioner*). However, the Commissioner has a discretion to waive part or the whole of the payment of these costs.
12. Schedule 1 [7] enables the Commissioner to take and use, free of charge, water from a water source on any land (by arrangement with the owner, occupier or person having control or management of that land) for the purpose of training or demonstration by a rural fire brigade.
13. Schedule 1 [8] clarifies that a person who obstructs or hinders, or incites or encourages any person to obstruct or hinder, a volunteer rural fire fighter acting under the direction of the Commissioner, a fire control officer or an officer of a rural fire brigade or group of rural fire brigades commits an offence.
14. Schedule 1 [9] updates references to the membership of the Bush Fire Co-ordinating Committee.
15. Schedule 1 [10] enables the Commissioner to direct a Bush Fire Management Committee to amend a draft bush fire risk management plan prepared and submitted by it.
16. Schedule 1 [11] provides that a hazard management officer is not required to issue a bush fire hazard reduction certificate in respect of bush fire hazard reduction work required by a notice issued under section 66 (2) if the work is otherwise authorised, or not required to be authorised, to be carried out.
17. Schedule 1 [12] provides that a bush fire hazard reduction notice is not required in the case of the establishment or maintenance of a fire trail or bush fire hazard reduction work carried out by the Commissioner when the identity and location of the owner or occupier of land cannot be ascertained.
18. Schedule 1 [13] provides that the Commissioner can carry out bush fire hazard reduction work on land if the Commissioner cannot ascertain the identity and location of the owner or occupier of that land after reasonable inquiry conducted over a period of not less than 7 days.
19. Schedule 1 [14] is a consequential amendment.
20. Schedule 1 [15] provides that a public authority must report to the Commissioner on bush fire hazard reduction carried out in the preceding financial year on any land it manages within 1 month after the end of the financial year (rather than within 3 months as is the present case).
21. Schedule 1 [16] provides that, in addition to an annual report, a public authority must submit a monthly report on bush fire hazard reduction activities carried out in the preceding month on any land it manages and, if any activities planned for that month were not carried out, the reasons for that omission.

22. Schedule 1 [17] and [18] are consequential amendments.
23. Schedule 1 [20] inserts an offence of discarding a lighted tobacco product or match or any incandescent material on land, which is currently an offence under clause 28 (2) of the *Rural Fires Regulation 2013*. The proposed amendment provides for a higher penalty when the offence is committed during a total fire ban in the relevant part of the State. Schedule 1 [19] is a consequential amendment.
24. Schedule 1 [21] provides that where bush fire hazard reduction work is to be carried out on several parcels of adjoining land, a single bush fire hazard reduction certificate may be issued by the relevant issuing or certifying authorities. Schedule 1 [22] is a consequential amendment.
25. Schedule 1 [23] allows a bush fire hazard reduction certificate that applies only to carrying out bush fire hazard reduction work of a kind that is carried out regularly and has a low impact on the environment and biodiversity to operate for 3 years.
26. Schedule 1 [24] updates references to agencies and other bodies with whom the Commissioner must consult and whose recommendations, if any, the Commissioner must take into account in preparing a draft bush fire environmental assessment code.
27. Schedule 1 [25] clarifies that proceedings for offences under section 100 (1) of the Act (setting fires without lawful authority or allowing fire to escape) are indictable offences.
28. Schedule 1 [26] amends the definition of *bush fire hazard reduction work* to include the establishment or maintenance of fire trails. Schedule 1 [27] is a consequential amendment.
29. Schedule 1 [28] inserts a definition of *volunteer rural fire fighters* into the Dictionary.
30. Schedule 2.1 [1] and [2] exempt anything done in the course of carrying out bush fire hazard reduction work to which section 100C (4) of the *Rural Fires Act 1997* applies (namely, work carried out without certain approval, consent or authorisation but in accordance with a bush fire risk management plan and bush fire code) from the offences of harming or picking threatened species, endangered populations or endangered ecological communities and damaging the habitat of threatened species, endangered populations or endangered ecological communities, respectively.
31. Schedule 2.2 removes the offence of leaving or depositing a lighted tobacco product, match or any incandescent material on land or certain structures from clause 28 (2) of the *Rural Fires Regulation 2013*. That offence is now in proposed section 99A of the Act (see Schedule 1 [20]).
32. Schedule 2.3 inserts aggravated offences relating to impersonating an emergency services organisation officer.

ISSUES CONSIDERED BY COMMITTEE

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

Financial Burdens; Lack of Fairness

33. Schedules 1[6] and [7] of the Bill permit the rural fire brigade to take certain action to ensure the safety of premises. The owner of those premises will be liable for the cost of such action.
34. The Committee also notes that under Schedule 1[6], the Commissioner has the discretion to waive payment of any or all of the amount payable in such circumstances as the Commissioner thinks appropriate. The Committee also notes that these new provisions align with equivalent provisions under the *Fire Brigades Act 1989*.

The Committee considers that the requirement of the owner to pay for the destruction or removal of their own building or structure for the purposes of making the premises safe from a fire, incident or emergency, may be deemed unfair. However, the Committee notes the object of the Bill and therefore makes no further comment.

8. Surveillance Devices Amendment (Mutual Recognition) Bill 2013

Date introduced	14 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Surveillance Devices Act 2007* so as to bring the Act further into line with the model law on cross-border investigative powers for law enforcement developed by the Australian Leaders' Summit on Terrorism and Multi-jurisdictional Crime. This will facilitate the mutual recognition of warrants and authorisations for the use of surveillance devices issued under the New South Wales Act and those issued under Acts of other jurisdictions.

BACKGROUND

2. The Minister's second reading speech notes that New South Wales has not currently prescribed in the *Surveillance Devices Regulation* any corresponding laws from other jurisdictions. However, the Northern Territory has recognised the New South Wales legislation as a corresponding law under its legislation. New South Wales is in discussions with other jurisdictions to facilitate mutual recognition of the surveillance devices legislation. Some jurisdictions have requested the amendments proposed by the Bill to address minor differences between the current law in New South Wales and the model 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 Surveillance Devices Act 2007 No 64

Timing and contents of reports on use of surveillance device warrants

5. Schedule 1 [1] provides that a surveillance device warrant must specify the period within which a report in respect of the warrant must be made to the eligible Judge or eligible Magistrate who issued the warrant. That period must expire not less than 60 days after the expiry of the warrant. The provision that requires the report (section 44 (1)) states that the report must be made within the time specified in the warrant, but there is currently no obligation to specify such a time. This is inconsistent with the model law.
6. Schedule 1 [7] provides that, where a surveillance device warrant has been issued in New South Wales and executed in a participating jurisdiction, the report on the use of

the warrant must (in addition to the other matters currently required) include information (which is required by the model law) giving details of the benefit to the investigation of the use of the relevant surveillance device and of the general use made or to be made of any evidence or information obtained by the use of the device, and details of the compliance with the conditions (if any) to which the warrant was subject.

Timing and contents of reports on use of retrieval warrants

7. Schedule 1 [2] provides that a retrieval warrant must specify the period within which a report in respect of the warrant must be made to the eligible Judge or eligible Magistrate who issued the warrant under section 44 (6) of the Act, with that period being one that expires not less than 60 days after the expiry of the warrant. There is currently no obligation to specify such a time in the warrant itself. This is inconsistent with the model law.
8. Schedule 1 [8] makes a consequential amendment.
9. Schedule 1 [9] provides that, where a retrieval warrant has been issued in New South Wales and executed in a participating jurisdiction, the report on the use of the warrant must (in addition to the other matters currently required) include information (which is required by the model law) giving details of premises entered, things opened or removed or replaced, and details of the compliance with the conditions (if any) to which the warrant was subject.

Emergency use of surveillance devices arising from imminent threats of commission of serious narcotic offences

10. Schedule 1 [3] provides that emergency authorisations issued in New South Wales to allow a law enforcement officer to use a surveillance device in a participating jurisdiction without a warrant cannot be granted in relation to threats of serious narcotic offences, as at present. This will bring New South Wales in line with the model law, which does not permit the use of surveillance devices without a warrant where there is a threat of serious narcotics offences only.

Exemption to prohibition on use, communication or publication of information applies to serious narcotic offences only if information obtained in New South Wales

11. Schedule 1 [5] and [6] limit an existing exemption to the prohibition on the use, communication or publication of protected information that currently applies to permit the use, communication or publication of information obtained from the use of a surveillance device by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of a serious narcotics offence. Protected information relating to a serious narcotics offence will be exempt only if it was obtained from the use of a surveillance device in New South Wales. (The existing exemption to permit the use, communication or publication of protected information by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the threat of serious violence to a person or substantial damage to property will continue to apply whether the protected information was obtained in a participating jurisdiction or in New South Wales. That exemption is part of the model law.)
12. Schedule 1 [4] inserts an omitted word in a provision about protected information.

Contents of annual report to Parliament

13. Schedule 1 [10] includes additional reporting requirements in relation to the annual report about the operation of the Act that the Attorney General must table in Parliament. In addition to the other matters currently required, which apply to the exercise of powers in New South Wales or participating jurisdictions, the amendment will require the annual report to include additional details (that the model law requires) in cases where a surveillance device warrant issued in New South Wales has been executed in a participating jurisdiction.
14. Schedule 1 [11] makes a consequential amendment.

Keeping documents and records connected with warrants and emergency authorisations executed in participating jurisdictions

15. Schedule 1 [13] imposes additional obligations on chief officers of law enforcement agencies to keep records, in line with the model law, in relation to surveillance devices used by their agencies in a participating jurisdiction under warrants or emergency authorisations issued in New South Wales.
16. Schedule 1 [12] makes a consequential amendment.

Savings and transitional regulations

17. Schedule 1 [14] provides for the making of savings and transitional regulations consequent on the enactment of any Act that amends the *Surveillance Devices Act 2007*.

ISSUES CONSIDERED BY COMMITTEE

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

9. Travel Agents Repeal Bill 2013

Date introduced	14 November 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Minister for Fair Trading

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to repeal the *Travel Agents Act 1986* and to deal with savings and transitional matters.

BACKGROUND

2. The Bill repeals the travel agents legislation in accordance with the Travel Industry Transition Plan, which has been approved by the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs. The Plan makes reforms to how travel agents are regulated and was developed following public consultation. It requires all jurisdictions to repeal their travel agents legislation by 30 June 2014. Jurisdictions will subsequently move to a voluntary industry accreditation scheme from mid-2014.
3. The Minister's second reading speech notes that the internet and e-commerce have changed the way that people arrange travel and that the existing travel agents legislation is based on an outdated concept of how the industry works. The current legislation regulates the travel industry through a licensing requirement as well as a requirement to contribute to the Travel Compensation Fund. The Fund was established to protect cash pre-payments made by consumers to travel agents at a time when there were few other alternative payment options. If an agent failed to account for a consumer's pre-payment to the travel provider, a claim could be made to the Fund. However, the Minister explained that the Fund and licensing system have become increasingly redundant now that payments are regularly made directly to travel providers and/or via credit card.
4. The current travel agents legislation also does not address pricing irregularities, poor service, supplier failure, misrepresentations or misleading information. The Minister noted that the Australian Consumer Law has more relevance to consumer travel purchases now and in the future.

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 July 2014.
7. Clause 3 provides for the repeal of the *Travel Agents Act 1986* and the *Travel Agents Regulation 2011* on the commencement of the proposed Act.

Schedule 1 Amendment of other legislation

8. Schedule 1.1 makes an amendment to the *Administrative Decisions Review Regulation 2009* consequent on the repeal of the *Travel Agents Act 1986*.
9. Schedule 1.2 inserts into the *Fair Trading Act 1987* savings and transitional provisions consequent on the repeal of the *Travel Agents Act 1986* and the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Right to compensation

10. The Bill repeals the *Travel Agents Act 1986* and the *Travel Agents Regulation 2011* which, among other things, provide consumers with a right to apply for compensation in circumstances where a travel agent has failed to account for a consumer's cash prepayment to the relevant travel provider. The Minister's second reading speech notes that by mid to late 2015, the Travel Compensation Fund will close and any final consumer claims will be made.

The repeal of the *Travel Agents Act 1986* and the *Travel Agents Regulation 2011* will remove a right for a consumer to apply for compensation where they have suffered loss because of a travel agent's failure to account for the consumer's cash pre-payment to the relevant travel provider. However, the Committee notes the limited circumstances in which this right applies. The Committee also notes that consumers can still pursue remedies against travel agents under various other laws intended to protect consumers. The Committee therefore makes no further comment.

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.