



## Legislation Review Committee

### LEGISLATION REVIEW DIGEST

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

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# Membership

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# Functions of the Committee

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

## **8A Functions with respect to Bills**

1 The functions of the Committee with respect to Bills are:

to consider any Bill introduced into Parliament, and

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,

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

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:

- (b) 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
- (c) 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. BOARDING HOUSES BILL 2012

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

#### *Powers of Entry*

Although the Bill provides for inspection procedures that may cause damage to property, it also provides for compensation to be payable in such circumstances. As such, the Committee makes no further comment.

#### *Privacy*

The Committee notes that section 19 of the Bill does not require that notice is to be provided to the residents of boarding houses when an inspection is due to take place. As the Committee recognises the overall intent of the inspections is to ensure boarding house residents are living in suitable conditions, and is expected to be beneficial to residents, the Committee makes no further comment.

#### *Self-Incrimination*

The Committee notes the provision that provides that self-incrimination is not an excuse to the requirement for a person to provide documents or information or answer questions. The Committee recognises that its potential effect is tempered by certain assurances that information disclosed or answers given cannot be used in criminal proceedings against that person. However, this protection does not extend to documents provided which, although required to be submitted despite any self-incrimination concerns, is not inadmissible in evidence against that person in criminal proceedings. The Committee refers to the Parliament whether this is a trespass on individual rights and liberties.

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

#### *Commencement by Proclamation*

The Committee is generally concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative arrangements that are required to occur before the Act become operable, such as setting up the scheme for boarding house registration. As such, the Committee makes no further comment with respect to this issue.

### 2. CRIMES (ADMINISTRATION OF SENTENCES) LEGISLATION AMENDMENT (INTERSTATE TRANSFERS) BILL 2012

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

### 3. DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT (DISCLOSURES) BILL 2012

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

#### *Administration of criminal justice*

In the circumstances, and given the public interest at stake, the Committee does not consider there to be an undue trespass on personal rights and liberties arising from the provisions of this Bill.

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

*Retrospectivity*

Although the Committee often comments on retrospective provisions in legislation, the Committee notes that the retrospective aspects of this Bill should not adversely affect any persons.

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

*Commencement by proclamation*

The Committee will always be concerned where the commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee acknowledges that commencing the Act by proclamation may assist in ensuring that the administrative and practical arrangements for the new disclosure procedures are appropriately established.

#### 4. ELECTRONIC CONVEYANCING (ADOPTION OF NATIONAL LAW) BILL 2012

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

*Right to silence*

The Committee will always be concerned when a person is compelled by a government official to answer questions or produce documents that may be incriminating.

However, the Committee also notes that such requirements are agreed to by conveyancers upon subscribing and that such requirements are common in commercial duties. The Committee further notes that the Bill provides such information is inadmissible as evidence against the person in criminal proceedings.

Therefore, the Committee makes no adverse comments in relation to this issue.

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

*Conferral of subject power to National Law*

The Committee is keen to comment in circumstances where a Bill has the effect of referring the power of the NSW Parliament to legislate with respect to subject matter to National Law. The Committee notes that in these circumstances, the National Law takes the form of an appendix to the Bill and, as such, is not separate to NSW legislation and may be amended by the NSW Parliament. As such, the Committee makes no further comment in relation to this issue.

*Commencement by proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the operation of this Bill requires certain administrative arrangements to be implemented. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

5. FIREARMS AMENDMENT (GUN SAFETY) BILL 2012\*

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

6. GRAFFITI CONTROL AMENDMENT (RACIST GRAFFITI) BILL 2012\*

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

7. LOCAL GOVERNMENT AMENDMENT (CONDUCT) BILL 2012

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

*Commencement by Proclamation*

The Committee is generally concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature, as an inappropriate delegation of legislative powers.

8. MARINE SAFETY AMENDMENT (DOMESTIC COMMERCIAL VESSEL NATIONAL LAW APPLICATION) BILL 2012

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

*Commencement by Proclamation*

The Committee is generally concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that this Bill forms part of a nationwide scheme and, given the nature of cooperative federalism, a commencement date is dependent on the actions of other States. In such circumstances, the Committee does not consider commencement by proclamation to be an inappropriate delegation of legislative power.

9. MISCELLANEOUS ACTS AMENDMENT (DIRECTORS' LIABILITY) BILL 2012

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

*Commencement by proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the implementation of this Bill will require certain administrative arrangements to be implemented. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

10. PASSENGER TRANSPORT AMENDMENT (TICKETING AND PASSENGER CONDUCT) BILL 2012

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

*Commencement by proclamation*

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the inclusion of a commencement by proclamation provision assists in the implementation of national rail safety law in 2013.

11. PORTS ASSETS (AUTHORISED TRANSACTIONS) BILL 2012

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

*Official powers*

The Committee notes that State employees may have a preference to work for the agency for which they applied to work, or a general preference to work within the public sector. Given the objects of this Bill, the Committee makes no further comment on this issue.

*Denial of compensation*

The Committee is concerned that removing a right to compensation may impact on the rights and liberties of individuals. Given the objects of this Bill, the Committee makes no further comment on this issue.

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

*Functions in the regulations*

The Committee notes that functions of state owned companies are more appropriately included in legislation, rather than in regulation. The Committee refers to Parliament whether providing for additional functions for port state owned companies, or specifically the Ports Assets Ministerial Holding Corporation, in the regulations is appropriate in the circumstances.

## 12. PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL 2012

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

*Self incrimination*

The Committee notes that the effect of requiring individuals to provide documentation and answer questions may impact on any right to silence and right against self incrimination. The Committee refers to Parliament whether such powers are appropriate.

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

*Matters in regulations rather than legislation*

The Committee notes the grounds on which beekeepers may be refused registration, or have their registration suspended or cancelled, are not outlined in the registration. Given the impact on the livelihood of beekeepers of such criteria, the Committee refers to Parliament whether such matters relating to licensing ought to be outlined in the principal legislation, rather than the regulations.

## 13. RAIL SAFETY (ADOPTION OF NATIONAL LAW) BILL 2012

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

*Personal physical integrity*

The Committee will always seek to comment on provisions which impact the personal physical integrity of individuals. Given the public safety objective of this National Law, the Committee makes no further comment on this issue.

*Search and seizure without warrant*

Whilst the Committee notes the coercive search and seizure powers outlined in Schedule 2 of the Bill, the Committee notes the circumstances in which this power may be exercised –

namely in circumstances involving notifiable occurrences – and as such, makes no further comment on this issue.

*Reversal of onus of proof*

The Committee notes that the effect of section 20 and subsections 226(3), 227(2) and 228(2) of the National Law is to reverse the onus of proof. However, the Committee notes the objectives of the National Law – particularly as they relate to safety – and considers these sections to be reasonable in the circumstances.

*Access to justice*

The Committee notes that restricting access to appeals to those instituted within a month of a decision may adversely impact on an individual's right to seek recourse in the courts. However, as this relates to National Law the Committee makes no further comment on this issue.

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

*Henry VIII clause*

The Committee considers that the inclusion of a clause that enables the amendment of legislation through regulation to be of great concern. Schedule 1 has the power to amend the National Law as it stands in New South Wales. Whilst the Committee appreciates the importance of enabling New South Wales to adapt the National Law to the specific conditions in New South Wales where appropriate, to make such amendment through regulation is arguably inappropriate and the Committee refers this to Parliament for its attention.

*Conferral of subject power to National Law*

The Committee is keen to comment in circumstances where a Bill has the effect of referring the power of the NSW Parliament to legislate with respect to subject matter to National Law. The Committee notes that in these circumstances, the National Law takes the form of a Note to the Bill and, as such, is not separate to NSW legislation and may be amended by the NSW Parliament. As such, the Committee makes no further comment in relation to this issue.

**14. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2012**

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

*Retrospectivity*

The Committee notes the retrospective introduction of the clauses in relation to the Management Committee's preparation of guidelines in relation to consent orders under the *Criminal Assets Recovery Act 1990*. However, as this section relates to the ongoing work between the Police Integrity Commission and the Management Committee of the Crime Commission, the Committee makes no further comment on this issue.

The Committee notes that these clauses may commence retrospectively. However, as these clauses relate to administrative details the Committee makes no further comment on this issue.

*Excessive penalties*

The Committee is concerned that the *Parliamentary Electorates and Elections Regulation 2008* provides penalties in relation to the failure vote. The Committee is particularly concerned that

the effect of this amendment is to double the maximum penalties. The Committee refers to Parliament whether this is appropriate in the circumstances.

### *Privacy*

The Committee is concerned that the effect of the amendment is to construe more narrowly the types of property that require an occupier's consent before entry from 'dwellings' to 'premises or a part of premises used for residential purposes'. However, as the object of the principal legislation is to prevent cruelty to animals, and relates to concerns that injured animals may be placed in a residential dwelling, the Committee makes no further comment in relation to this issue.

## 15. SWIMMING POOLS AMENDMENT BILL 2012

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

## 16. TATTOO PARLOURS AMENDMENT BILL 2012

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

### *Privacy and Oppressive Official Powers*

The Committee is concerned that the effect of clause 8 of Schedule 1 of the Bill is to provide the Commissioner with the power to compel the production of information and records from individuals who may only be a contractor of the licensee, or "will be" a contractor of the licensee. Whilst the Committee recognises the purpose of this clause with respect to ensuring that a licensee continues to be a fit and proper person to hold a tattoo parlour licence, the Committee refers to Parliament whether the power to compel such information and records from contractors and employees, or individuals who "will be engaged" as a contractor or employee, constitutes an undue trespass on privacy and represents an oppressive official power.

### *Self incrimination*

The Committee notes that the effect of requiring individuals to provide documentation and answer questions may impact on any right to silence and right against self incrimination. The Committee refers to Parliament whether such powers are appropriate, particularly in circumstances where a warrant has not been sought.

### *Retrospectivity*

The Committee refers to Parliament whether expanding the definition of 'close associate' retrospectively is appropriate in circumstances where this exposes such individuals to privacy and oppressive official powers, as highlighted above.

## PART TWO - REGULATIONS

## 1. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (TRANSITIONAL PART 3A PROJECTS) REGULATION 2012

The Committee acknowledges the purpose of the regulation, which is to provide a specified length of time in relation to the transitional arrangements following the repeal of Part 3A of the Act, and does not raise any issues with respect to its content. However, the Committee notes that the effect of the regulation is to amend the principal Act. The Committee also notes that clause 10 of Schedule 6A of the Act provides the regulations with the power to amend

Schedule 6A. The Committee notes that legislation is more appropriately achieved by way of an amending Act, rather than by regulation.

However, given the savings and transitional nature of Schedule 6A, the Committee makes no further comment in relation to this issue.

**2. ROAD TRANSPORT (VEHICLE REGISTRATION) AMENDMENT (RELEASE OF INFORMATION TO TOLL OPERATORS) REGULATION 2012**

**The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA**

The Committee will always comment when a government department is permitted to release a person's private information to another organisation. However, the Committee notes that the release is subject to a registration disclosure agreement that cannot be entered into without prior consultation with the Privacy Commissioner, and that the information shared relates to registration information. As such, the Committee makes no adverse comments.



## Part One – Bills

### 1. Boarding Houses Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Ageing and Disability Services

#### PURPOSE AND DESCRIPTION

1. The objects of this Bill are to provide for a registration system for certain boarding houses. The Bill also provides for certain occupancy principles to be observed with respect to registrable boarding houses and for appropriate mechanisms for the enforcement of those principles.
2. The Bill also seeks to replace the existing licensing and regulatory regime for residential centres for handicapped persons in the *Youth and Community Services Act 1973* with a new licensing and regulatory regime for certain boarding houses and their staff, including providing for service and accommodation standards at such boarding houses.

#### BACKGROUND

3. Although clear data is lacking, it is estimated that there are 750 boarding houses operating in NSW, with the vast majority in the Sydney metropolitan region. The vast majority of boarding houses are unlicensed and only partially regulated. Of the estimated 7,500 people who live in boarding houses, approximately 7,000 live in unlicensed ones. The remaining tenants live in boarding houses regulated under the *Youth and Community Services Act 1973*, and are tenants with a disability.
4. Three separate reports by the Ombudsman in the past decade have criticised the unregulated nature of the boarding house sector, with particular emphasis on the inadequate rights of entry to Ageing, Disability and Home Care officers for monitoring purposes, residents' lack of occupancy rights, and their limited access to advocacy services. In addition, the State Coroner made key recommendations to the sector following an inquest into six deaths at a hostel in Marrickville.
5. Since October 2011, the Government has been working, with the assistance of the Interdepartmental Committee on Boarding House Reform, to develop a final reform proposal to ensure a viable boarding house sector and the need to provide appropriate protections for boarding house residents.
6. In July and August 2012, an exposure draft was released for consultation with key stakeholders. Over 126 submissions and comments were received from peak bodies, advocacy groups, service providers and key stakeholders, the majority of which demonstrated strong support for the proposed scheme.

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

7. Clause 1 sets out the name (also called the short title) of the proposed Act.
8. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
9. Clause 3 sets out the objects of the proposed Act.
10. Clause 4 defines certain words, terms and expressions used in the proposed Act, including the following.
11. The term boarding premises is defined to mean premises (or a complex of premises) that:
  - (a) are wholly or partly a boarding house, rooming or common lodgings house, hostel or let in lodgings, and
  - (b) provide boarders or lodgers with a principal place of residence, and
  - (c) may have shared facilities (such as a communal living room, bathroom, kitchen or laundry) or services that are provided to boarders or lodgers by or on behalf of the proprietor, or both, and
  - (d) have rooms (some or all of which may have private kitchen and bathroom facilities) that accommodate one or more boarders or lodgers.
12. The term Commissioner is defined to mean the Commissioner for Fair Trading, Department of Finance and Services or, if no such position exists, the Director-General of the Department of Finance and Services.
13. The term Director-General is defined to mean the Director-General of the Department of Family and Community Services.
14. The term proprietor, in relation to premises, is defined to mean:
  - (a) in the case of premises that are leased—a tenant or sub-tenant who is entitled to immediate possession of the premises, or
  - (b) in any other case—an owner of the premises.
15. Clause 5 defines the term registrable boarding house to mean any of the following:
  - (a) boarding premises that provide beds, for a fee or reward, for use by 5 or more residents (not counting any residents who are proprietors or managers of the premises or relatives of the proprietors or managers), which are referred to in the proposed Act as a general boarding house,
  - (b) an assisted boarding house that is required to be authorised under Part 4 for it to be lawfully used as such under that Part, which is referred to in the proposed Act as a regulated assisted boarding house.

16. The proposed section also excludes certain kinds of premises from the definition of a general boarding house.
17. Clause 6 provides that the proposed Act does not operate to limit any requirement imposed by or under the Environmental Planning and Assessment Act 1979, the Food Act 2003, the Local Government Act 1993, the Public Health Act 2010 or any other Act or law with respect to the use, or the provision of services to residents, of boarding premises.

## **Part 2 Registration of boarding houses**

### ***Division 1 Introductory***

18. Clause 7 defines certain words, terms and expressions used in the Part.
19. Clause 8 provides that a registrable boarding house is registered for the purposes of the Part if the particulars of the boarding house are currently included in the Register of Boarding Houses kept by the Commissioner under the Part.

### ***Division 2 Provision of information about registrable boarding houses***

20. Clause 9 requires a proprietor of boarding premises that are used as a registrable boarding house to notify the Commissioner of certain particulars about the boarding house for inclusion in the Register of Boarding Houses to be kept by the Commissioner.
21. A proprietor who contravenes the proposed section will be guilty of an offence. The maximum penalty for the offence if committed by a corporation will be 100 penalty units (currently, \$11,000) or 50 penalty units (currently, \$5,500) in any other case.
22. Clause 10 requires a proprietor of a registrable boarding house to notify the Commissioner of the changes (if any) in particulars about the boarding house as at the end of the annual return period of the boarding house.
23. A proprietor who contravenes the proposed section will be guilty of an offence. The maximum penalty for the offence if committed by a corporation will be 20 penalty units (currently, \$2,200) or 10 penalty units (currently, \$1,100) in any other case.
24. Clause 11 requires the proprietor of premises that have ceased to be used as a registrable boarding house to notify the Commissioner of that fact within 28 days of the cessation.
25. A proprietor who contravenes the proposed section will be guilty of an offence. The maximum penalty for the offence if committed by a corporation will be 20 penalty units (currently, \$2,200) or 10 penalty units (currently, \$1,100) in any other case.

### ***Division 3 Register***

26. Clause 12 requires the Commissioner to keep a Register of Boarding Houses (the Register).
27. Clause 13 requires the Commissioner to record in the Register in relation to each registrable boarding house the particulars notified to the Commissioner under this Part and Part 4 about the boarding house. It also enables the Commissioner to include other information in the Register.

28. Clause 14 requires the Commissioner to arrange for certain limited information about registrable boarding houses recorded in the Register to be made available to the public.
29. Clause 15 provides that the Register is evidence of any particulars recorded in it and enables the Commissioner and certain other persons to give certificates that are admissible in legal proceedings about certain matters recorded in the Register.

*Division 4 Initial compliance investigations for registered boarding houses*

30. Clause 16 requires the local council for the local government area in which a registered boarding house is located to arrange for an initial compliance investigation of the boarding house to be conducted within the period of 12 months after it is first registered or re-registered in the Register or after there is a change in the proprietors of the boarding house. A registered boarding house is a registrable boarding house that is registered for the purposes of the Part.
31. An initial compliance investigation is defined to mean an investigation into whether the registered boarding house complies with requirements imposed by or under the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979 with respect to the use of the boarding house, including (but not limited to):
  - (a) requirements in relation to building and fire safety, and
  - (b) relevant standards or requirements for places of shared accommodation for the purposes of Order No 5 (d) in the Table to section 124 of the Local Government Act 1993.
32. Clause 17 confers a power of entry on employees and other persons authorised by a local council (an authorised person) to enter premises of a registered boarding house for the purpose of conducting an initial compliance investigation.
33. Clause 18 enables an authorised person to exercise certain inspection and investigation powers on entering the premises of such a boarding house.
34. Clause 19 requires an authorised person to give written notice of the intention to enter premises, subject to certain limited exceptions.
35. Clause 20 enables an authorised person to use reasonable force to enter premises if authorised to do so by the council.
36. Clause 21 requires an authorised person to notify the council of an entry without notice or the exercise of reasonable force to gain entry. The council is then required to notify appropriate authorities of the entry.
37. Clause 22 requires an authorised person to do as little damage as possible when entering premises and to take certain other precautionary measures.
38. Clause 23 enables a council to charge and recover an approved fee under section 608 (Council fees for services) of the Local Government Act 1993 for the conduct of an initial compliance investigation.
39. Clause 24 requires the council to pay compensation for damage caused by an inspection except if the inspection reveals a contravention of the proposed Act or any other Act.

- 40. Clause 25 requires the council to issue an authorised person with a written authorisation to enter premises. A power conferred by the Division may not be exercised without such an authority.
- 41. Clause 26 provides that nothing in the Division limits the exercise of powers or other functions by councils under the Local Government Act 1993 or any other Act.

### **Part 3 Occupancy agreements and principles for registrable boarding houses**

#### ***Division 1 Introductory***

- 42. Clause 27 defines certain words, terms and expressions used in the Part and provides for certain other interpretive provisions applicable to the Part.
- 43. The term occupancy agreement, in relation to a registrable boarding house, is defined to mean a written or unwritten agreement:
  - (a) that is between the proprietor of the boarding house (or a person acting on behalf of the proprietor) and a resident of the house (or a person acting as an authorised representative of the resident), and
  - (b) under which the resident is granted the right to occupy, for a fee or reward, one or more rooms in the boarding house as a resident of the house, but does not include a rental agreement between a proprietor and resident of a registrable boarding house (or any persons acting on their behalf).
- 44. The term occupancy fee is defined to mean an amount payable by or for a resident of a registrable boarding house for the right to occupy one or more rooms in the boarding house as a resident of the house during the term of an occupancy agreement.

#### ***Division 2 Occupancy agreements***

- 45. Clause 28 requires the proprietor of a registrable boarding house to ensure that occupancy agreements entered into by the proprietor are in writing.
- 46. Clause 29 enables the Commissioner to approve standard forms of occupancy agreements.

#### ***Division 3 Occupancy principles***

- 47. Clause 30 provides that the occupancy principles in relation to registrable boarding houses are those set out in Schedule 1.
- 48. The occupancy principles will apply for the purposes of the Division only in relation to residents of registrable boarding houses under occupancy agreements. The principles will not apply to a resident who is entitled to reside in a registrable boarding house under a rental agreement because rental agreements are excluded from the definition of occupancy agreement in proposed section 27.
- 49. The proposed section also enables the regulations to make provision for or with respect to:
  - (a) what constitutes, or what does not constitute, compliance with the occupancy principles for the purposes of the Part, and

(b) the issuing of guidelines for that purpose.

50. Clause 31 makes it a term of every occupancy agreement that:

- (a) a resident must be provided with accommodation in compliance with the occupancy principles, and
- (b) a resident must be given the notices, receipts or other information required by the occupancy principles, and
- (c) any notice, receipt or other information to be given to a resident under the occupancy principles must also be given to the authorised representative of the resident if the resident is a person with additional needs who has an authorised representative, and
- (d) the proprietor must exercise the proprietor's rights or powers under the occupancy agreement (including in relation to the collection, payment, retention and repayment of money) subject to any requirements of the occupancy principles.

#### *Division 4 Enforcement*

- 51. Clause 32 enables a resident or former resident of a registrable boarding house (or an authorised representative of a resident or former resident) or a proprietor or former proprietor of such a boarding house to apply to the Consumer, Trader and Tenancy Tribunal for orders to resolve a dispute about the application of the occupancy principles to the resident or former resident under an occupancy agreement.
- 52. Clause 33 enables a resident of a registrable boarding house to apply to the Consumer, Trader and Tenancy Tribunal for an order that the proprietor of the boarding house prepare and enter into a written occupancy agreement with the resident.

### **Part 4 Assisted boarding houses**

#### *Division 1 Introductory*

- 53. Clause 34 sets out the objects of the Part.
- 54. Clause 35 defines certain words, terms and expressions used in the Part, including the following.
- 55. The term authorised boarding house is defined to mean an assisted boarding house with respect to which a boarding house authorisation is in force.
- 56. The term authorised operator of an authorised boarding house is defined to mean:
  - (a) if the boarding house is a licensed boarding house—the licensee, and
  - (b) if an interim permit is in force with respect to the boarding house—the interim permit holder.
- 57. The term boarding house authorisation is defined to mean a boarding house licence or interim permit granted under the Part.
- 58. Clause 36 defines a person to be a person with additional needs if:

- (a) the person has any one or more of the following conditions:
  - i an age related frailty,
  - ii a mental illness within the meaning of the Mental Health Act 2007,
  - iii a disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and
- (b) the condition is permanent or likely to be permanent, and
- (c) the condition results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal care such as (but not limited to) showering or bathing, the preparation of meals and the management of medication.

59. Clause 37 defines an assisted boarding house to mean any of the following:

- (a) boarding premises that provide beds, for a fee or reward, for use by 2 or more residents who are persons with additional needs (not counting any persons with additional needs who reside there with their competent relatives),
- (b) boarding premises that are declared to be an assisted boarding house by a notice in force under proposed section 39.

60. The proposed section also excludes certain kinds of premises from the definition of an assisted boarding house.

61. Clause 38 defines who is a close associate of an applicant or authorised operator for the purposes of the Part.

62. Clause 39 enables the Director-General in certain circumstances to declare, by notice served on the relevant operator of boarding premises, that the premises to be an assisted boarding house.

63. Clause 40 enables the Director-General, by notice, to exempt premises and persons from the operation of some or all of the provisions of the Part or the regulations (whether conditionally or unconditionally).

## *Division 2 Authorisation of assisted boarding houses*

### *Subdivision 1 Requirement for assisted boarding houses to be authorised*

64. Clause 41 makes it an offence for a proprietor of boarding premises to use (or permit the use of) the premises as an assisted boarding house unless the premises are used in accordance with the authority conferred by a boarding house authorisation for the premises.

65. The proposed section also makes it an offence for a person to act as the manager of boarding premises that are being used as an assisted boarding house unless the person is an individual who is:

- (a) an authorised operator of the boarding house, or

- (b) an approved manager of the boarding house appointed by the authorised operator of the boarding house.
- 66. The maximum penalty for any such offence will be:
  - (a) in the case of a corporation—120 penalty units (currently, \$13,200) and in addition, for a continuing offence, 20 penalty units (currently, \$2,200) for each day the offence continues, and
  - (b) in any other case—60 penalty units (currently, \$6,600) and in addition, for a continuing offence, 10 penalty units (currently, \$1,100) for each day the offence continues.
- 67. Clause 42 provides for the use of boarding premises as an assisted boarding house to be authorised by the grant of either a boarding house licence or interim permit for the premises under the Part.
- 68. Clause 43 provides that a boarding house authorisation is subject to the following conditions:
  - (a) any condition imposed on the authorisation by the proposed Act or prescribed by the regulations,
  - (b) any condition imposed on the authorisation by the Director-General under the proposed Act.
- 69. The proposed section also makes it an offence for an authorised operator of an assisted boarding house to contravene a condition of the boarding house authorisation for the boarding house. The maximum penalty for such an offence will be:
  - (a) in the case of a corporation—40 penalty units (currently, \$4,400) and in addition, for a continuing offence, 10 penalty units (currently, \$1,100) for each day the offence continues, and
  - (b) in any other case—20 penalty units (currently, \$2,200) and in addition, for a continuing offence, 5 penalty units (currently, \$550) for each day the offence continues.

*Subdivision 2 Boarding house licences*

- 70. Clause 44 provides for applications for boarding house licences to be made to the Director-General.
- 71. Clause 45 enables the Director-General to carry out such investigations and inquiries in relation to a licence application as the Director-General considers necessary for a proper consideration of the application. These investigations and inquiries will include the conduct (or arranging for the conduct) of certain probity checks concerning the applicant, the applicant's close associates and proposed staff members.
- 72. Clause 46 provides for the circumstances in which the Director-General may (or may not) grant an application for a boarding house licence.



- 73. Clause 47 enables the Director-General to vary a boarding house licence (including any conditions imposed on the licence by the Director-General).
- 74. Clause 48 enables the Director-General to appoint a substitute licensee in certain circumstances.
- 75. Clause 49 provides for the circumstances in which the Director-General may (or must) cancel or suspend a boarding house licence.
- 76. Clause 50 enables a licensee voluntarily to surrender a boarding house licence. The proposed section also requires a licensee to surrender a licence if licensed premises cease to be used as (or ceases to be) an assisted boarding house. A failure to comply with the requirement will constitute an offence punishable by a maximum penalty of 20 penalty units (currently, \$2,200).
- 77. Clause 51 provides that a boarding house licence may be granted for a fixed term or for no fixed term and specifies when it ceases to be in force in either case.
- 78. Clause 52 provides that a boarding house licence is to be in the form approved by the Director-General.
- 79. Clause 53 requires the licensee of a licensed boarding house to ensure that a copy of the boarding house licence is displayed in a conspicuous position at the boarding house. A failure to comply with this requirement will be an offence punishable by a maximum penalty of 10 penalty units (\$1,100) in the case of a corporation or 5 penalty units (currently, \$550) in any other case.

#### *Subdivision 3 Interim permits*

- 80. Clause 54 enables the Director-General to grant an interim permit to a person to use or continue to use specified boarding premises as an assisted boarding house on a short-term basis, including pending the determination of an application for a boarding house licence.
- 81. Clause 55 provides for the period for which an interim permit may be granted.
- 82. Clause 56 enables the Director-General to vary an interim permit (including any conditions imposed on the permit by the Director-General).
- 83. Clause 57 provides for the circumstances in which the Director-General may revoke an interim permit.
- 84. Clause 58 enables a permit holder voluntarily to surrender an interim permit. The proposed section also requires a permit holder to surrender an interim permit if the premises to which the permit relates cease to be used as (or ceases to be) an assisted boarding house. A failure to comply with the requirement will constitute an offence punishable by a maximum penalty of 20 penalty units (currently, \$2,200).

#### *Subdivision 4 Approval of managers of assisted boarding houses*

- 85. Clause 59 makes it a condition of a boarding house authorisation that the authorised operator must ensure that at least one approved manager is appointed by the operator

to act as the manager of the assisted boarding house to which the authorisation relates if:

- (a) the operator is a corporation, body politic or trustee or holds the authorisation on behalf of an unincorporated body, or
  - (b) the operator is an individual who is not acting (or does not intend to act) as the manager of the boarding house.
86. Clause 60 enables the Director-General to grant an approval (a manager approval) that authorises the person to act as the manager of a specified assisted boarding house.
87. Clause 61 provides for the circumstances in which the Director-General may grant (or refuse to grant) a manager approval.
88. Clause 62 provides that a manager approval may be granted for a fixed term or for no fixed term and specifies when it ceases to be in force in either case.
89. Clause 63 provides that a manager approval is subject to the following conditions:
- (a) any conditions imposed by the proposed Act or prescribed by the regulations,
  - (b) any conditions imposed by the Director-General under the proposed Act.
90. Clause 64 enables the Director-General to vary a manager approval (including any conditions imposed on the approval by the Director-General).
91. Clause 65 provides for the circumstances in which the Director-General may suspend or revoke a manager approval.

### *Division 3 Compliance and enforcement*

#### *Subdivision 1 Enforcement officers*

92. Clause 66 enables the Director-General to appoint enforcement officers for the purposes of the Part.
93. Clause 67 requires the Director-General to issue identification cards to the enforcement officers appointed by the Director-General.
94. Clause 68 makes it an offence for a person to hinder or obstruct an enforcement officer in the exercise of the officer's functions or to fail to comply with a requirement made by the officer under the Part. The maximum penalty for such an offence will be 100 penalty units (currently, \$11,000) in the case of a corporation and 50 penalty units (currently, \$5,500) in any other case.

#### *Subdivision 2 Investigation powers*

95. Clause 69 defines the expression person involved in the management of an authorised boarding house.
96. Clause 70 enables the Director-General to require a person involved in management of authorised boarding house to provide certain relevant documents concerning the boarding house.

97. Clause 71 enables the Director-General to require a person involved in the management of an authorised boarding house to answer questions about any matters in respect of which information is required for the administration or enforcement of the Part.
98. Clause 72 enables functions under the Subdivision to be exercised outside the State.
99. Clause 73 makes it an offence for a person, without reasonable excuse, to fail to comply with a requirement made of the person under the Subdivision. The maximum penalty for the offence will be:
  - (a) in the case of a corporation—40 penalty units (currently, \$4,400) and in addition, for a continuing offence, 10 penalty units (currently, \$1,100) for each day the offence continues, and
  - (b) in any other case—20 penalty units (currently, \$2,200) and in addition, for a continuing offence, 5 penalty units (currently, \$550) for each day the offence continues.
100. Clause 74 provides that self-incrimination is not an excuse for a failure to comply with a requirement under the Subdivision. However, information provided on objection cannot be used in criminal proceedings against the person (except for providing false or misleading information).
101. Clause 75 provides that the Subdivision does not affect any functions conferred by any other provision of the proposed Act or by any other Act.

*Subdivision 3 Powers of entry*

102. Clause 76 enables an enforcement officer (and an assistant such as a medical practitioner) to enter and inspect any of the following premises for certain enforcement purposes without the need for a search warrant:
  - (a) an authorised boarding house,
  - (b) premises that are the subject of an application for a boarding house authorisation.
103. Clause 77 enables an authorised service provider, at any reasonable time and subject to the conditions of the authorisation, to:
  - (a) enter an authorised boarding house for the purpose of conferring with any resident of the boarding house to determine whether the resident wishes to access the services provided by the provider or the organisation to which the provider belongs, and
  - (b) provide such services, or arrange for the organisation to provide such services, if a resident wishes to access the services.
104. An authorised service provider is a person authorised by the Director-General for the purposes of the section on the basis that the Director-General is of the opinion that the person is able to provide relevant information or advice to residents of such boarding houses about support services, financial services, legal services or advocacy services provided by the person or the organisation to which the person belongs.

105. Clause 78 enables an enforcement officer (with the written consent of the Director-General) to apply for a search warrant for premises if the enforcement officer has reasonable grounds for believing that a provision of the Part or the regulations for the Part has been or is being contravened at the premises.

*Subdivision 4 Compliance notices*

106. Clause 79 enables the Director-General, if of the opinion that a person is contravening a provision of the Part or the regulations for the Part, to serve the person with a notice (a compliance notice) requiring the person to remedy the contravention within the period specified in the notice.
107. Clause 80 makes it an offence for a person, without reasonable excuse, to fail to comply with a compliance notice. The maximum penalty for the offence will be:
- (a) in the case of a corporation—40 penalty units (currently, \$4,400) and in addition, for a continuing offence, 10 penalty units (currently, \$1,100) for each day the offence continues, and
  - (b) in any other case—20 penalty units (currently, \$2,200) and in addition, for a continuing offence, 5 penalty units (currently, \$550) for each day the offence continues.
108. Clause 81 provides that the issue, variation or revocation of a compliance notice does not affect any proceedings for an offence against the proposed Act or the regulations in connection with any matter in respect of which the notice was issued.

*Subdivision 5 Operation of assisted boarding houses*

109. Clause 82 makes it a condition of a boarding house authorisation for the authorised operator to ensure that the requirements of the proposed section concerning records are complied with.
110. Clause 83 requires the manager of an authorised boarding house, as soon as is reasonably possible after becoming aware of the following incidents, to report the incident to the Director-General:
- (a) the death of a resident of the boarding house,
  - (b) the sexual assault (or the making of an allegation of sexual assault) of a resident of the boarding house,
  - (c) the absence of a resident of the boarding house for a period of more than 24 hours if the resident has not informed the manager of his or her whereabouts,
  - (d) such other incidents involving residents as may be prescribed by the regulations.
111. The manager must also report a death (or the sexual assault or the making of an allegation of sexual assault) of a resident to a police officer as soon as reasonably practicable after becoming aware of the incident concerned.
112. A failure to report such incidents will constitute an offence punishable by a maximum penalty of 50 penalty units (currently, \$5,500).

113. Clause 84 makes it a condition of a boarding house authorisation that the authorised operator must ensure that the requirements of the proposed section concerning the conduct and use of probity and criminal record checks on staff members are complied with.

*Subdivision 6 Removal of persons with additional needs from unauthorised boarding houses*

114. Clause 85 enables an officer or employee of the Department of Family and Community Services to require a parent or guardian of a person with additional needs under 18 years of age who is a resident in an unauthorised boarding house to remove him or her from the boarding house.
115. Clause 86 enables removal costs for persons with additional needs to be recovered from persons who have been convicted of using (or permitting the use of) unauthorised boarding houses.

*Division 4 Review of authorisation, approval and enforcement decisions*

116. Clause 87 enables applications to be made to the Administrative Decisions Tribunal for reviews of certain decisions made under the Part (including decisions refusing authorisations or approval and decisions to suspend, cancel or revoke authorisations or approvals).

*Division 5 General*

117. Clause 88 enables evidentiary certificates about certain matters concerning assisted boarding houses to be issued for use in legal proceedings.
118. Clause 89 enables the Director-General to require further information to be provided in connection with an application under the Part.
119. Clause 90 sets out general provisions concerning the making and effect of notices issued by the Director-General or an enforcement officer under the Part.
120. Clause 91 sets out regulation-making powers relating to assisted boarding houses.

**Part 5 Miscellaneous**

121. Clause 92 provides that the proposed Act binds the Crown.
122. Clause 93 enables a Minister administering the whole or any part of the proposed Act, the Director-General and the Commissioner (an Act administrator) to delegate their functions under the proposed Act.
123. Clause 94 permits the exchange of certain information between an Act administrator and certain government agencies in connection with the administration of the proposed Act.
124. Clause 95 makes it an offence for a person to provide any document or information or do any other thing in purported compliance with a requirement made by or under the proposed Act knowing that it is false or misleading in a material particular. The maximum penalty for the offence will be 100 penalty units (currently, \$11,000) in the case of corporations and 50 penalty units (currently, \$5,500) in any other case.

125. Clause 96 enables an Act administrator to apply to the Land and Environment Court for an order to remedy or restrain a contravention of a provision of the proposed Act or the regulations.
126. Clause 97 sets out general provisions with respect to the determination of liability for continuing offences under the proposed Act.
127. Clause 98 enables certain authorised officers to issue penalty notices for offences under the proposed Act and the regulations that have been prescribed as penalty notice offences under the regulations.
128. Clause 99 provides for offences under the proposed Act and the regulations to be dealt with summarily before the Local Court or the Land and Environment Court.
129. The proposed section also provides for the time within which proceedings must be commenced and requires Ministerial consent in most cases for the commencement of proceedings.
130. Clause 100 allows the use of circumstantial evidence in certain proceedings to find that particular premises are a general boarding house or assisted boarding house.
131. Clause 101 provides for the methods for giving or serving documents under the proposed Act.
132. Clause 102 provides for how documents are to be served, or given to or lodged with an Act administrator for the purposes of the proposed Act.
133. Clause 103 enables the Governor to make regulations for the purposes of the proposed Act.
134. Clause 104 repeals:
  - (a) the Youth and Community Services Act 1973, and
  - (b) the Youth and Community Services Regulation 2010, and
  - (c) the Miscellaneous Acts (Disability Services and Guardianship) Repeal and Amendment Act 1987 (which contains an uncommenced provision to repeal the Youth and Community Services Act 1973).
135. Clause 105 provides for the review of the proposed Act in 5 years.

### **Schedule 1 Occupancy principles**

136. Schedule 1 sets out the occupancy principles applicable to registrable boarding houses that house residents under occupancy agreements.

### **Schedule 2 Savings, transitional and other provisions**

137. Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule contains provisions to convert existing licences and permits under the Youth and Community Services Act 1973 into authorisations and approvals under Part 4 of the proposed Act.

### Schedule 3 Amendment of legislation

138. Schedule 3 amends the legislation specified in the Schedule consequent on, or related to, the enactment of the proposed Act.
139. In particular, Schedule 3.6 amends the Local Government (General) Regulation 2005 to apply the accommodation standards for certain places of shared accommodation set out in Part 1 of Schedule 2 to that Regulation to general boarding houses under the proposed Act.

### ISSUES CONSIDERED BY COMMITTEE

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

##### *Powers of Entry*

140. The Committee notes that section 17 will enable an authorised council employee to enter the premises of a registered boarding house for the purpose of conducting inspections and investigations under the Bill. Sections 18(b) and 18(c) provide that the authorised council employee can open any ground, remove any flooring, dig trenches, or break up the soil for the purposes of the inspection.
141. Although the Committee notes that these inspection procedures may cause damage to property, the Committee also recognises that under section 24, a council must pay compensation for damage caused by any person authorised by the council to enter premises for the purpose of an inspection.

**Although the Bill provides for inspection procedures that may cause damage to property, it also provides for compensation to be payable in such circumstances. As such, the Committee makes no further comment.**

##### *Privacy*

142. Section 19 of the Bill will require an authorised council employee to provide notice of entry to the proprietor or manager of the premises, and arrange for a day for inspection to take place. The Bill does not mention any requirement about providing notice to residents of boarding houses. The Committee notes that this might interfere with the privacy of those residents.
143. The Committee also recognises that the intent of the inspections is generally to ensure that residents are living in suitable conditions, and is expected to be beneficial to residents.

**The Committee notes that section 19 of the Bill does not require that notice is to be provided to the residents of boarding houses when an inspection is due to take place. As the Committee recognises the overall intent of the inspections is to ensure boarding house residents are living in suitable conditions, and is expected to be beneficial to residents, the Committee makes no further comment.**

##### *Self-Incrimination*

144. Section 74(2) of the Bill provides that a person is not excused from a requirement to provide documents or information or to answer a question on the ground that the

document, information or answer might incriminate the person or make the person liable to a penalty.

145. The Committee generally raises concerns with provisions in Bills that compel individuals to disclose information or provide documents that would implicate them in criminal conduct.
146. The Committee also notes, however, that this provision is tempered by other provisions to mitigate the effects of any self-incrimination. Section 74(3) provides that information disclosed or answers given are not admissible in evidence against the person in criminal proceedings if the person objected, or if the person was not warned, that the responses might incriminate the person.
147. Despite these assurances, section 74(4) provides that any further information obtained as a result of a document provided in compliance with a requirement is not *inadmissible* on the ground that the document might incriminate the person. Similarly section 74(5) provides that further information obtained a result of a document or information provided or answer given is also not inadmissible on the ground that the information might incriminate the person.

**The Committee notes the provision that provides that self-incrimination is not an excuse to the requirement for a person to provide documents or information or answer questions. The Committee recognises that its potential effect is tempered by certain assurances that information disclosed or answers given cannot be used in criminal proceedings against that person. However, this protection does not extend to documents provided which, although required to be submitted despite any self-incrimination concerns, is not inadmissible in evidence against that person in criminal proceedings. The Committee refers to the Parliament whether this is a trespass on individual rights and liberties.**

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

#### ***Commencement by Proclamation***

148. Section 2 provides that this Act is to commence on a day or days to be appointed by proclamation.

**The Committee is generally concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative arrangements that are required to occur before the Act become operable, such as setting up the scheme for boarding house registration. As such, the Committee makes no further comment with respect to this issue.**



## 2. Crimes (Administration of Sentences) Legislation Amendment (Interstate Transfers) Bill 2012

Date introduced	18 October 2012
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 amend the *Crimes (Interstate Transfer of Community Based Sentences) Act 2004* so as:
  - (i) to facilitate the making of reciprocal arrangements for the administration of local and interstate community based sentences, and
  - (ii) to clarify the application of the Act in relation to fines and other financial penalties imposed by an interstate sentence, and
  - (iii) to limit the purposes for which an interstate penalty has effect in relation to an interstate sentence after it has been registered as a community based sentence under a law of this State, and
  - (iv) to provide that proceedings against an offender whose interstate sentence is registered as a community based sentence under a law of this State may not be commenced or continued in relation to any breach of the conditions of the sentence that occurred before it was registered, and
  - (v) to make other miscellaneous amendments to the Act, and
- (b) to amend the *Parole Orders (Transfer) Act 1983* so as:
  - (i) to facilitate the making of reciprocal arrangements for the administration of local and interstate parole orders, and
  - (ii) to vary the conditions that must be satisfied before an interstate parole order may be registered in this State, and
  - (iii) to extend the range of documents that may be used to support an application for the registration of an interstate parole order, and
  - (iv) to provide that an interstate parolee whose parole order is registered in this State may be dealt with under the laws of this State for any breach of the conditions of parole that occurred before the order was registered, and that

proceedings against a NSW parolee whose parole order is registered under a law of another jurisdiction may not be commenced or continued in relation to any breach of the conditions of parole that occurred before the order was registered, and

- (v) to provide that the consequences of the revocation of a parole order that has been registered under the Act are no different to those of the revocation under the laws of this State of any other parole order, and
  - (vi) to insert a provision with respect to the Minister's use of various documents and information in connection with the making of determinations and exercise of discretions under the Act, and
  - (vii) to make other miscellaneous amendments to the Act, and
- (c) to amend the *Prisoners (Interstate Transfer) Act 1982* so as:
- (i) to enable prisoners who are being transferred to an interstate jurisdiction to be delivered to an interstate escort, and at a location, authorised for that purpose by the prisons authority for that jurisdiction, and
  - (ii) to ensure that the arrest powers given to an interstate escort in relation to an offender who escapes from custody while in this State extend not only to prisoners in transit to another jurisdiction but also to prisoners being transferred to this State.

## BACKGROUND

2. Currently, interstate travel arrangements exist between the Probation and Parole and Community Corrections Services of the Australian States and Territories, where an offender subject to a community-based sentence or a parole order is permitted to temporarily travel to, and remain in, an interstate jurisdiction. The Bill aims to provide a statutory basis for these interstate travel arrangements.
3. In the Bill's Second Reading Speech, the Attorney-General outlined that the amendments to the three Acts are endorsed by the Council of Australian Governments Standing Committee on Law and Justice. The Attorney General also stated that:

There are three uniform national model statutory schemes providing for the transfer of community-based sentences, parole orders and prisoners between the Australian States and Territories. The *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*, the *Parole Orders (Transfer) Act 1983*, and the *Prisoners (Interstate Transfer) Act 1982* are the New South Wales versions of the uniform national model legislation. The *Crimes (Interstate Transfer of Community Based Sentences) Act 2004* provides for the interstate transfer of community-based sentences such as community service orders and good behaviour bonds.

## 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 Crimes (Interstate Transfer of Community Based Sentences) Act 2004 No 72**

### ***Administration of local and interstate sentences***

6. Schedule 1 [8] inserts proposed Part 5A into the Act. The new Part contains the following provisions:
7. Proposed section 27A contains various definitions for the purposes of the proposed Part.
8. Proposed section 27B enables the Minister to enter into arrangements with the corresponding Minister of an interstate jurisdiction for the administration, within this State and that jurisdiction, of sentences imposed under the respective laws of each jurisdiction.
9. Proposed section 27C requires any permission for interstate travel that is given to a local offender to be given in the form of an interstate travel permit, and to be subject to such conditions as are required to be imposed on the permit by the arrangements referred to in proposed section 27B. The proposed section further provides that an interstate travel permit ceases to have effect in an interstate jurisdiction if the relevant authority in that jurisdiction is notified that permission to travel has been revoked, or if the offender is arrested in the interstate jurisdiction pursuant to a warrant issued under the laws of that jurisdiction.
10. Proposed section 27D provides that, while a local offender is travelling interstate in accordance with an interstate travel permit, the conditions of the permit are taken to have replaced the conditions of his or her sentence and his or her compliance (or non-compliance) with the conditions of the permit is taken to be compliance (or non-compliance) with the conditions of his or her sentence.
11. Proposed section 27E empowers the local authority (that is, the Commissioner of Corrective Services) to issue an arrest warrant for an interstate offender if advised by the relevant interstate authority that the offender's interstate travel permit is no longer in force in this State or if of the opinion that the offender has failed to comply with the conditions of the permit.
12. Proposed section 27F gives recognition in this State to arrest warrants of the kind referred to in proposed section 27E that are issued under the laws of another jurisdiction.
13. Proposed section 27G provides that nothing in the Act is intended to limit or otherwise affect the operation of the Service and Execution of Process Act 1992 of the Commonwealth.

### ***Application of Act to fines and penalties***

14. Section 4 (2) provides that the Act does not apply to a parole order, or to a sentence to the extent to which it imposes a fine or other penalty or requires the making of reparation.
15. Schedule 1 [1] substitutes the subsection with a new subsection that merely provides that the Act does not apply to a parole order.

16. Schedule 1 [5] amends section 24 (which deals with the effect of registering an interstate sentence as a community based sentence under a law of this State) so as to provide that the section does not apply to the extent to which the interstate sentence imposes a fine or other financial penalty or requires the making of reparation.
17. Schedule 1 [7] amends section 27 (which deals with the registration of a local sentence as a community based sentence under the laws of another jurisdiction) so as to provide that the section does not apply to the extent to which the sentence imposes a fine or other penalty or requires the making of reparation and, to that extent, the sentence remains a sentence in force in this jurisdiction and may be enforced accordingly.

*Effect of interstate penalties*

18. Section 24 (1) (e) provides that, if an interstate sentence is registered in this State, the penalty for the offence for which the penalty was imposed is taken to be the relevant penalty for the offence under the laws of the originating jurisdiction (that is, the jurisdiction in which the sentence was originally imposed) and not the penalty for an offence of that kind under the laws of this State. Schedule 1 [4] amends section 24 so as to provide that section 24 (1) (e) applies only for the purpose of determining the penalty to be imposed for the relevant offence in circumstances in which the offender is, under the laws of this State, re-sentenced in relation to the offence. If the offender breaches the conditions of the sentence in circumstances that do not result in the offender being re-sentenced for the original offence, the relevant penalty to be imposed for the breach is the penalty that could be imposed for a breach of a similar sentence imposed under the laws of this State.

*Proceedings for breaches arising before registration*

19. Section 24 (1) (g) provides that, if an interstate sentence is registered in this State, the offender may be dealt with in this State for a breach of the sentence, whether occurring before or after the sentence was registered. Schedule 1 [6] amends section 27 so as to provide that, if a local sentence is registered in an interstate jurisdiction, a breach of the sentence occurring before the sentence was registered cannot be dealt with under the laws of this State. This will prevent the offender from being subject to separate proceedings in each jurisdiction for the same breach.

*Miscellaneous amendments*

20. Schedule 1 [2] amends section 7 to provide that the regulations may declare that a combination of community based sentences is taken, for the purposes of the Act, to be a single community based sentence under a law of this State.
21. Schedule 1 [3] amends section 19 so as to clarify the circumstances in which a community based sentence under a law of this State is taken to correspond to an interstate sentence.
22. Schedule 1 [9] enables savings and transitional regulations to be made as a consequence of the proposed Act or any other Act that amends the Act.

## **Schedule 2 Amendment of Parole Orders (Transfer) Act 1983 No 190**

### *Administration of local and interstate parole orders*

23. Schedule 2 [19] inserts proposed Part 3 into the Act. The new Part contains the following provisions:
24. Proposed section 10A contains various definitions for the purposes of the proposed Part.
25. Proposed section 10B enables the Minister to enter into arrangements with the corresponding Minister of an interstate jurisdiction for the administration, within this State and that jurisdiction, of parole orders issued under the respective laws of each jurisdiction.
26. Proposed section 10C requires any permission for interstate travel that is given to a NSW parolee to be given in the form of an interstate travel permit, and to be subject to such conditions as are required to be imposed on the permit by the arrangements referred to in proposed section 10B. The proposed section further provides that an interstate travel permit ceases to have effect in an interstate jurisdiction if the relevant authority in that jurisdiction is notified that permission to travel has been revoked, or if the parolee is arrested in the interstate jurisdiction pursuant to a warrant issued under the laws of that jurisdiction.
27. Proposed section 10D provides that, while a NSW parolee is travelling interstate in accordance with an interstate travel permit, the conditions of the permit are taken to have replaced the conditions of his or her parole and his or her compliance (or non-compliance) with the conditions of the permit is taken to be compliance (or non-compliance) with the conditions of his or her parole.
28. Proposed section 10E empowers the local parole authority (that is, the State Parole Authority) to issue an arrest warrant for an interstate parolee if advised by the relevant interstate registrar that the parolee's interstate travel permit is no longer in force in this State or if of the opinion that the parolee has failed to comply with the conditions of the permit.
29. Proposed section 10F gives recognition in this State to arrest warrants of the kind referred to in proposed section 10E that are issued under the laws of another jurisdiction.
30. Proposed section 10G provides that nothing in the Act is intended to limit or otherwise affect the operation of the Service and Execution of Process Act 1992 of the Commonwealth.

### *Registration of parole orders*

31. Section 5 enables the Minister to request registration interstate of a NSW parole order (section 5 (2)) and to respond to a similar request from interstate by directing the Registrar of Transferred Parole Orders to register an interstate parole order (section 5 (1)). Section 7 sets out certain matters that must be satisfied before such a request or direction is given, in particular that the person to whom the request or direction relates has consented to (or requested) such action and is residing in the jurisdiction concerned.

32. Schedule 2 [8] transfers these latter matters to section 5, with two changes. Firstly, the amendment enables the person to whom the request or direction relates to withdraw any consent or request that he or she has previously given. Secondly, the amendment provides that it is sufficient if that person is present, rather than residing, in the jurisdiction concerned. The latter change is intended to facilitate the interstate transfer of a parole order concerning a person whose whereabouts are known but whose intentions as to residence cannot be established. Schedule 2 [12] makes a consequential amendment to section 8, making it clear that a parole order may not be registered under the Act unless the person to whom it relates is actually present in this State.
33. Schedule 2 [11] substitutes section 7. The new section contains only those matters to which the Minister must have regard when deciding whether to make a request or direction under section 5, but requires additional matters (such as the administration of justice and the protection of the community) to be taken into consideration.

#### *Documents to accompany requests for registration*

34. Section 6 sets out the documents that must accompany a request by the Minister for registration interstate of a NSW parole order. In particular, those documents must include the original parole order and the originals of any variations that have been made to it. Copies of documents other than the parole order and its variations are acceptable, but must be certified by the person in whose custody the originals have been entrusted. In many cases the supply of an original parole order is impracticable or inappropriate. Schedule 2 [10] inserts proposed section 6 (3) to allow a copy to be provided instead, so long as the copy has the same legal effect as the original. Schedule 2 [9] amends section 6 (2) so as to enable copies of other documents to be certified by the Registrar of Transferred Parole Orders instead of the person having possession of the document, so allowing for a single certificate.

#### *Proceedings for breaches arising before registration*

35. Section 9 states that registration of an interstate parole order under the Act gives the order the same effect as a parole order issued under the laws of this State. The section is silent as to how a breach of the conditions of a parole order is to be dealt with if the breach occurred before the order was registered. Schedule 2 [13] amends section 9 so as to make it clear that such a breach is to be dealt with under the laws of this State. Schedule 2 [17] amends section 10 so as to provide that a breach of the conditions of a NSW parole order may not be dealt with under the laws of this State if, subsequent to the breach, the parole order has been registered in another jurisdiction.

#### *Consequences of revocation of parole*

36. Section 9 (1) provides that, while a parole order is registered under the Act, the laws of this State apply to and in relation to the order and the person to whom the order relates. Section 9 (4) specifically provides that a person whose parole order is revoked is liable to imprisonment for the remainder of his or her sentence, calculated from the date of his or her release on parole. The general rule for revocation of parole is that the remainder of the person's sentence is calculated as from the date on which the parole order is revoked (see sections 168 and 254 of the Crimes (Administration of Sentences) Act 1999). Schedule 2 [15] omits section 9 (4), and thereby reinstates the general rule (via section 9 (1)).

*Miscellaneous amendments*

37. Schedule 2 [1], [5] and [20] insert Part headings before existing sections 1, 5 and 11 of the Act.
38. Schedule 2 [2] amends the definition of designated authority in section 3 so as to ensure that such an authority must be a natural person, and not a body corporate.
39. Schedule 2 [4] extends the definition of parole order in section 3 to prospective parole orders, so as to allow an interstate parole order to be registered in this State before it takes effect. Schedule 2 [6] and [7] make consequential amendments to section 5.
40. Schedule 2 [14] substitutes section 9 (3) so as to define appropriate court in a way that avoids the need to make regulations under the Act. The new definition follows a definition of the same expression in the Crimes (Interstate Transfer of Community Based Sentences) Act 2004.
41. Schedule 2 [18] amends section 10 (2) (b) so as to remove a potential ambiguity of meaning.
42. Schedule 2 [21] inserts proposed section 11A. The new section deals with the use by the Minister of certain documents and information when making determinations under the Act or exercising discretions conferred by the Act.
43. Schedule 2 [3] and [16] are law revision amendments that insert missing words.

**Schedule 3 Amendment of Prisoners (Interstate Transfer) Act 1982 No 104**

*Delivery of transferred prisoners*

44. Section 24 currently requires a prisoner who is being transferred from this State to another jurisdiction, or from another jurisdiction to this State, to be conveyed to a specified prison and there delivered into the custody of the gaoler of that prison. Schedule 3 [2] inserts proposed subsection (4) into that section so as to state that these requirements are satisfied if the prisoner concerned is delivered to an interstate escort, and at a location, authorised by the local prisons authority of the transferee jurisdiction. Schedule 3 [1] and [3] make consequential amendments to sections 5 and 31.

*Arrest powers of interstate escorts*

45. Section 32 enables an interstate escort to arrest a prisoner who escapes from custody while being conveyed through this State to a prison in another jurisdiction pursuant to section 31. Schedule 3 [4] amends section 32 so as to confer the same power on an interstate escort who is conveying a prisoner to a prison in this State pursuant to section 24.

**ISSUES CONSIDERED BY COMMITTEE**

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

### 3. Director of Public Prosecutions Amendment (Disclosures) Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Director of Public Prosecutions Act 1986 (the Act) as follows:
  - (a) to require officers of the New South Wales Crime Commission, the Police Integrity Commission and the Independent Commission Against Corruption, when investigating alleged indictable offences, to disclose to the Director of Public Prosecutions (the DPP) all relevant material that might reasonably be expected to assist the case for the prosecution or the case for the accused person, in the same way as the police,
  - (b) to clarify an exception from the duty of disclosure that applies in respect of material that is the subject of a claim of privilege, public interest immunity or statutory immunity, and to remove a sunset provision that applies in relation to that exception,
  - (c) to allow law enforcement officers to withhold providing to the DPP any material obtained during an investigation that is the subject of a statutory publication restriction.

#### BACKGROUND

2. This Bill follows the introduction of the Director of Public Prosecutions Amendment (Disclosures) Bill 2011, which was drafted and introduced to the parliament with urgency, immediately following the Court of Criminal Appeal decision in *R v Lipton* [2011], which removed the right of police officers to withhold material from prosecutors and allowed such material to be available for inspection by defence counsel.
3. Following the introduction of the 2011 Bill, the government undertook a review of disclosure practices between the police and the Director of Public Prosecutions, which was extended to other agencies engaged in investigating indictable matters, including the Police Integrity Commission, the NSW Crime Commission and the Independent Commission Against Corruption. The provisions in the current Bill aim to reflect a consideration of the law, current practice and the operational needs of the agencies concerned.

#### OUTLINE OF PROVISIONS

##### 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.

## **Part 2 Schedule 1 Amendment of Director of Public Prosecutions Act 1986 No 207**

6. Schedule 1 [1] (and Schedule 1 [3], to the extent that it defines law enforcement officer) extends existing disclosure requirements, that currently apply to police officers, so as to require officers of the New South Wales Crime Commission, the Police Integrity Commission and the Independent Commission Against Corruption, when investigating alleged indictable offences, to disclose to the DPP all relevant material that might reasonably be expected to assist the case for the prosecution or the case for the accused person.
7. Schedule 1 [2] makes it clear that the duty of disclosure arises if the DPP exercises any function under the Act with respect to the prosecution of the offence (for instance, if the DPP institutes proceedings in respect of the offence).
8. Schedule 1 [3] clarifies the duty of disclosure, insofar as it applies to sensitive material (that is, information, documents or other things that are the subject of a claim of privilege, public interest immunity or statutory immunity). At present, law enforcement officers are not required to disclose sensitive material to the DPP, but are required to disclose that they have obtained sensitive material. The amendment makes it clear that law enforcement officers are not required to provide sensitive material to the DPP, but are required to inform the DPP of:
  - (a) the existence of the sensitive material, and
  - (b) the nature of the claim relating to it.
9. Law enforcement officers are required to provide the sensitive material to the DPP if the DPP requests the provision of the material.
10. The sunset provision that applies to the existing provision relating to disclosure of sensitive material is repealed.
11. Schedule 1 [3] also provides for a new exception from the duty of disclosure. A law enforcement officer is not required to provide to the DPP any information, document or other thing if to do so would contravene a statutory publication restriction. A statutory publication restriction is a statutory provision, or an order made under a statutory provision, that prohibits or restricts the publication of certain evidence given before or obtained by the Police Integrity Commission, the New South Wales Crime Commission, or the Independent Commission Against Corruption. Law material the subject of a statutory publication restriction, but only to the extent not prohibited by the statutory publication restriction.
12. Schedule 1 [6] and [7] provide for specific transitional matters and enable savings and transitional regulations to be made as a consequence of the amendments.
13. Schedule 1 [4] and [5] are consequential amendments.

## Schedule 2 Amendment of Director of Public Prosecutions Regulation 2010

14. Schedule 2 amends the Director of Public Prosecutions Regulation 2010 as a consequence of the amendments to the Act. In particular, it provides for a new form in which disclosures to the DPP are to be made.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Administration of criminal justice*

15. The Committee notes that the Bill enables police officers to determine whether material is subject to a claim of privilege, public interest immunity or statutory immunity. Information, documents or other things which are the subject of a claim of privilege or statutory immunity are only provided to the Director of Public Prosecutions when requested. The Bill also allows law enforcement officers to withhold any material obtained during an investigation that is the subject of a statutory publication restriction.
16. Whilst the Committee notes that the effect of the amendment will fetter a defendant's ability to access information which could assist in their defence, the Committee also recognises that the purpose of the amendment is strike a balance between an investigatory body's need to protect the safety of its witnesses and its investigatory processes, and the prosecution's duty of disclosure and the need to ensure on fair trial for the accused.

**In the circumstances, and given the public interest at stake, the Committee does not consider there to be an undue trespass on personal rights and liberties arising from the provisions of this Bill.**

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

#### *Retrospectivity*

17. The Committee notes that amendments extend to proceedings for indictable offences commenced prior to the introduction of the Bill.

**Although the Committee often comments on retrospective provisions in legislation, the Committee notes that the retrospective aspects of this Bill should not adversely affect any persons.**

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

#### *Commencement by proclamation*

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

**The Committee will always be concerned where the commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee acknowledges that commencing the Act by proclamation may assist in ensuring that the administrative and practical arrangements for the new disclosure procedures are appropriately established.**

## 4. Electronic Conveyancing (Adoption of National Law) Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Council
Minister responsible	The Hon. Greg Pearce MLC
Portfolio	Minister for Finance and Services

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to enact the Electronic Conveyancing National Law (the National Law). The National Law forms the basis for a national scheme for the electronic lodgment and processing of conveyancing transactions. The object of the National Law is to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that:
  - (a) enables documents in electronic form to be lodged and processed under the land titles legislation of each participating jurisdiction, but
  - (b) does not derogate from the fundamental principles of the Torrens system of land title as incorporated in the land titles legislation of each participating jurisdiction, such as indefeasibility of title.
2. In order to achieve this object, the National Law, among other things, authorises the Registrar in each participating jurisdiction to operate or authorise the operation of an Electronic Lodgment Network, and provides for the making of rules relating to the operation of the Electronic Lodgment Network.
3. The National Law is set out in the Appendix to this Bill.
4. The jurisdictions proposed to be participating jurisdictions under the National Law are New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and the Northern Territory.
5. In addition to applying the National Law as a law of this State, the Bill contains application provisions that provide for the meaning of various terms used in the National Law, and for the application of other laws of this State in relation to the National Law.

### BACKGROUND

6. The *Electronic Conveyancing (Adoption of National Law) Bill 2012* will enact the Electronic Conveyancing National Law as a law of New South Wales.
7. The national law facilitates a reform to the practice of conveyancing in New South Wales, by allowing for the electronic lodgement and processing of conveyancing

transactions in accordance with the Council of Australian Governments national partnership agreement.

## **OUTLINE OF PROVISIONS**

### **Part 1 Preliminary**

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.
10. Clause 3 defines certain words and expressions used in the provisions of the proposed Act (other than the National Law).

### **Part 2 Application of Electronic Conveyancing National Law**

11. Clause 4 applies the National Law as a law of this State.
12. Clause 5 sets out the meaning, for the purposes of New South Wales only, of certain generic terms used in the National Law. The Registrar is defined as the Registrar-General.
13. Clause 6 makes the Supreme Court the responsible tribunal for New South Wales under the National Law. The responsible tribunal has functions with respect to appeals under the National Law.
14. Clause 7 provides that the Interpretation Act 1987 (apart from Part 6A relating to the NSW legislation website) does not apply in respect of the National Law. The National Law has its own interpretation provisions.

### **Part 3 Miscellaneous**

15. Clause 8 enables the Governor to make regulations for the purposes of the proposed Act.
16. Clause 9 provides for a consequential amendment to the Electronic Transactions Regulation 2012.

## **Appendix Electronic Conveyancing National Law**

17. The Appendix sets out the National Law.

### **Part 1 Preliminary**

18. Clause 1 sets out the name (also called the short title) of the National Law.
19. Clause 2 provides for the commencement of the National Law in a participating jurisdiction to be as provided for by an Act of that jurisdiction.
20. Clause 3 defines certain expressions used in the National Law.
21. Clause 4 gives effect to Schedule 1 to the National Law, which provides for the interpretation of the National Law.
22. Clause 5 provides for the object of the National Law, as set out in the Overview.

23. Clause 6 provides that the National Law binds the State.

## **Part 2 Electronic Conveyancing**

### ***Division 1 Electronic lodgment***

24. Clause 7 allows a document to be lodged electronically for the purposes of land titles legislation if the document is lodged in a form approved by the Registrar and by means of an electronic lodgment network provided and operated under the National Law.
25. Clause 8 requires the Registrar to process a document lodged electronically.
26. Clause 9 provides that an instrument executed and lodged electronically under the National Law has the same effect as a paper document.

### ***Division 2 Client authorisations and digital signatures***

#### ***Subdivision 1 Client authorisations***

27. Clause 10 provides for client authorisations. A client authorisation is a document by which a party to a conveyancing transaction authorises a subscriber to complete a conveyancing transaction electronically.
28. Clause 11 gives effect to client authorisations.

#### ***Subdivision 2 Digital signatures***

29. Clause 12 provides for the digital signing of documents by subscribers and the effect of documents that are digitally signed. The clause sets out the circumstances in which a digital signature may be repudiated, namely, that the digital signature was not created by the subscriber or by a person authorised to create digital signatures on behalf of the subscriber, and the subscriber did not fail to comply with the participation rules or to take reasonable care with respect to the creation of the digital signature. The clause does not prevent the unsigned of a document, which may occur prior to settlement.

## **Part 3 Electronic Lodgment Networks**

### ***Division 1 Preliminary***

30. Clause 13 explains what is meant by an Electronic Lodgment Network or ELN. An ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of land titles legislation.

### ***Division 2 Operation of Electronic Lodgment Networks***

31. Clause 14 gives the Registrar power to provide and operate an ELN.
32. Clause 15 gives the Registrar power to approve a person to provide and operate an ELN. Such a person is an Electronic Lodgment Network Operator (ELNO).
33. Clause 16 permits the Registrar to attach conditions to an approval to operate an ELN.
34. Clause 17 permits a person approved as an ELNO to provide an ELN in accordance with the approval.
35. Clause 18 requires a person approved as an ELNO to comply with the operating requirements.

- 36. Clause 19 provides for renewal of approval as an ELNO.
- 37. Clause 20 permits the Registrar to revoke or suspend the approval of a person as an ELNO.
- 38. Clause 21 permits the Registrar to monitor activities in an ELN.

*Division 3 Operating requirements and participation rules*

- 39. Clause 22 enables the Registrar to determine requirements in relation to the operation of an ELNO and the provision and operation, by an ELNO, of an ELN (operating requirements).
- 40. Clause 23 enables the Registrar to determine rules relating to the use of an ELN (participation rules).
- 41. Clause 24 requires the Registrar to have regard to any model operating requirements or model participation rules published by the Australian Registrars' National Electronic Conveyancing Council in determining the operating requirements and participation rules.
- 42. Clause 25 requires the Registrar to ensure that copies of the current operating requirements and participation rules, and superseded versions, are publicly available.
- 43. Clause 26 requires subscribers who are authorised to use an ELN to comply with the participation rules relating to the ELN.
- 44. Clause 27 allows the Registrar to waive compliance with all or any provisions of the operating requirements or participation rules.

*Division 4 Appeals*

- 45. Clause 28 provides for appeals against decisions of the Registrar made under the National Law.
- 46. Clause 29 provides for the determination of appeals by the responsible tribunal (in New South Wales, the Supreme Court).
- 47. Clause 30 provides for the awarding of costs on appeals.
- 48. Clause 31 makes it clear that the proposed Division applies despite any Act that establishes or continues the responsible tribunal, but does not otherwise limit such an Act.

*Division 5 Compliance examinations*

- 49. Clause 32 makes it clear that the Division extends to former ELNOs and former subscribers.
- 50. Clause 33 enables the Registrar to conduct investigations (compliance examinations) in relation to an ELNO or subscriber for the purpose of ascertaining whether or not the operating requirements and participation rules are being complied with, or investigating any suspected misconduct with respect to the use of an ELN.

- 51. Clause 34 requires an ELNO or subscriber to cooperate with a compliance examination.
- 52. Clause 35 allows the Registrar, instead of conducting a compliance examination or during or after the conduct of a compliance examination, to refer a matter to an investigatory, disciplinary or other appropriate authority.
- 53. Clause 36 makes it clear that the Division does not limit any provision of the land titles legislation that also authorises investigations, inquiries or examinations.

## **Part 4 Miscellaneous**

### ***Division 1 Delegation***

- 54. Clause 37 permits the Registrar to delegate functions under the National Law.

### ***Division 2 Liability of Registrar***

- 55. Clause 38 makes it clear that the Registrar is not obliged to monitor activities in an ELN or to conduct compliance examinations.
- 56. Clause 39 provides that no compensation is payable for things done or omitted in good faith in connection with the monitoring of activities in an ELN or the conduct of compliance examinations.
- 57. Clause 40 makes it clear that the Registrar is not responsible for the regulation or operation of any services provided by an ELNO that are additional to the ELN.

### ***Division 3 Relationship with other laws***

- 58. Clause 41 makes it clear that the National Law is in addition to and not in substitution for the laws of the State relating to electronic transactions or the use of electronic documents.
- 59. Clause 42 provides that a power conferred by the land titles legislation to make an instrument of a legislative or administrative character, or to do any other thing, extends to making instruments, or doing other things, for the purposes of the National Law.

## **Schedule 1 Miscellaneous provisions relating to interpretation**

- 60. Schedule 1 sets out the general interpretation provisions that have effect in relation to the National Law. The provisions have effect in substitution for the provisions of the Interpretation Act 1987.

## **ISSUES CONSIDERED BY COMMITTEE**

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

#### ***Right to silence***

- 61. Clause 34 of the Bill imposes an obligation on an Electronic Lodgment Network Operator (ELNO) or a subscriber subject to a compliance examination to furnish specified information or to produce specified documents for the purposes of the compliance examination or take specified actions. If the ELNO fails without reasonable excuse to fulfil such obligations, the Registrar issues penalties including the suspension or revocation of its approval under s20.

62. Clause 34(5) states that a claim that a response or document might tend to incriminate a person is not a reasonable excuse for failing to give stated information.
63. Clause 34 provides that if such information is provided by the ELNO or subscriber upon request is not admissible as evidence in court in criminal proceedings against the individual, except for in proceeding about the false or misleading nature of anything in the information, answer or documents or in a proceedings in which the false or misleading nature of the information, answer or document is relevant evidence.

**The Committee will always be concerned when a person is compelled by a government official to answer questions or produce documents that may be incriminating.**

**However, the Committee also notes that such requirements are agreed to by conveyancers upon subscribing and that such requirements are common in commercial duties. The Committee further notes that the Bill provides such information is inadmissible as evidence against the person in criminal proceedings.**

**Therefore, the Committee makes no adverse comments in relation to this issue.**

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

#### ***Conferral of subject power to National Law***

64. The object of the Bill is to apply as a law of this State a National Law for the registration and regulation of electronic conveyancing under a national system.

**The Committee is keen to comment in circumstances where a Bill has the effect of referring the power of the NSW Parliament to legislate with respect to subject matter to National Law. The Committee notes that in these circumstances, the National Law takes the form of an appendix to the Bill and, as such, is not separate to NSW legislation and may be amended by the NSW Parliament. As such, the Committee makes no further comment in relation to this issue.**

#### ***Commencement by proclamation***

65. Clause 2 states that the Bill commences on a day or days to be appointed by proclamation.

**The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the operation of this Bill requires certain administrative arrangements to be implemented. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.**



## 5. Firearms Amendment (Gun Safety) Bill 2012\*

Date introduced	18 October 2012
House introduced	Legislative Council
Member responsible	Mr David Shoebridge MLC
	*Private Member's Bill

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Firearms Act 1996* to remove the exemption that currently allows unlicensed persons to possess and use firearms on approved shooting ranges. The Bill also amends the *Firearms Regulation 2006* to restate and limit the exemption under the Act that currently allows unlicensed persons to possess and use firearms while participating in firearms safety training courses.

### BACKGROUND

2. This Private Member's Bill has been introduced as a result of concerns to a previous amendment made to the *Firearms Act 1996* in 2008. This earlier amendment provided that there be exemptions for unlicensed persons shooting on approved ranges and for persons undertaking firearms safety training courses, allowing such persons not to have a firearms licence.

3. According to the Member who introduced the Bill, Mr David Shoebridge MLC:

A little more than two years and two months after this Parliament amended the *Firearms Act* apparently to protect public safety and streamline things, a young woman ... went to a number of gun clubs and received training in how to use a semiautomatic handgun ... She got all that training and access with no-one checking the police records or this young lady's mental health records ... Tragically, this young lady had a very troubled mental health history...

She used that access and training when on 22 August 2010, after having been given the gun... She contacted her father and invited him to come to her place and fix her computer ... When he was at her computer she walked behind him ... and killed her father ... This woman only had access to a semiautomatic handgun and the capacity ... [as] ... a result of that change in 2008, which did not streamline our firearms laws but directly impacted upon public safety and had tragic outcomes in the community.

### 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 Firearms Act 1996 No 46

6. Schedule 1 omits the exemption in the *Firearms Act 1996* that currently allows unlicensed persons to possess and use firearms on approved shooting ranges while under the direct supervision of a licensed person.

### Schedule 2 Amendment of Firearms Regulation 2006

7. Schedule 2 [1]–[4] remove references to the exemption that is omitted by Schedule 1.
8. Schedule 2 [5] restates the current exemption that allows unlicensed persons to possess and use firearms while participating in firearms safety training courses under the direct supervision of an approved firearms instructor. The new exemption is limited to persons who are undertaking the course known as the Firearms Licence Qualification Course or any other approved course. The exemption specifies that it commences when the person begins the firearms safety training course concerned and ends when that course is complete (or, if the person ceases the course at an earlier date, on that earlier date). The provision requires the person or body conducting the course to record certain particulars.
9. Schedule 2 [6] restates current requirements relating to the exemption for unlicensed persons undertaking firearms safety training courses. The requirements are imposed as conditions of the approval of a person to be an instructor for a firearms safety training course.

### 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. Graffiti Control Amendment (Racist Graffiti) Bill 2012\*

Date introduced	18 October 2012
House introduced	Legislative Council
Member responsible	The Hon Walter Secord MLC
	*Private member

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Graffiti Control Act 2008* to create a specific offence (with a maximum penalty of \$2,200 or imprisonment for 12 months) of placing on premises racist graffiti that can be seen from a public place. Racist graffiti is defined as any drawing, writing, symbol or other visible representation that could reasonably be assumed to be intended to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group, and placing racist graffiti on premises means affixing a placard or paper containing the racist graffiti on the premises or marking, by means of chalk, paint or other material, the premises with racist graffiti.

### BACKGROUND

2. This Bill follows recent community concerns and subsequent media reports of incidents involving graffiti of a racist and offensive nature.

### 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 amends the *Graffiti Control Act 2008* in the manner described in the Purpose and Description.

### 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. Local Government Amendment (Conduct) Bill 2012

Date introduced	18 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Don Page MP
Portfolio	Local Government

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Local Government Act 1993* to enable the Director-General of the Department of Premier and Cabinet to conduct investigations into possible councillor and former councillor misconduct.
2. The Bill also enables the Director-General to take a range of disciplinary action against a councillor found to have engaged in misconduct, including suspension, and to enable the Local Government Pecuniary Interest and Disciplinary Tribunal to disqualify a councillor found to have engaged in misconduct from holding civic office for up to 5 years.

### BACKGROUND

3. This Bill has been introduced following requests by Councils who have sought a stronger code of conduct to set higher standards for behaviour and deter behaviour that does not meet this standard. Councils have also sought more efficient and effective procedures for dealing with complaints and stronger sanctions to deter poor behaviour.
4. This review involved consultation and collaboration with the local government sector and other key stakeholders such as the Independent Commission Against Corruption and the New South Wales Ombudsman.
5. The review process involved a discussion paper to identify the issues, a position paper that outlined a reform proposal and workshops around the State to refine the proposal and to ensure that it was workable. Consultation drafts of the proposed new model code, procedures and the legislative changes contained in this Bill were issued for comment.

### 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 a day or days to be appointed by proclamation.

#### *Misconduct of councillors*

8. **Schedule 1 [12]** inserts new provisions relating to misconduct by councillors, the investigation by the Director-General of allegations of misconduct and the taking of

disciplinary action by the Director-General against councillors found to have engaged in misconduct.

9. Misconduct (previously referred to as misbehaviour) includes a contravention of the *Local Government Act 1993* or the regulations under that Act, a failure by a councillor to comply with an applicable requirement of the code of conduct (which is a code adopted by a council based on a model prescribed by the regulations) and a failure by a councillor to comply with any order issued by the Director-General in relation to a misconduct investigation or issued as a form of disciplinary action.
10. At present, the Director-General may only initiate proceedings for the suspension of a councillor on limited grounds and in limited circumstances and may take no other disciplinary action. Under the new provisions, the Director-General may conduct an investigation for the purpose of determining whether a councillor has engaged in misconduct. For the purpose of the investigation, the Director-General may order a councillor or a council staff member, delegate or administrator to provide information or documents and may arrange for a departmental report to be prepared in relation to the investigation.
11. The Director-General will have broad powers to take disciplinary action against a councillor if satisfied that the councillor has engaged in misconduct and that disciplinary action is warranted. The Director-General will be able to counsel or reprimand a councillor and issue various orders requiring the councillor to cease engaging in the misconduct, apologise for the misconduct or participate in training or mediation. The Director-General will also continue to be able to suspend a councillor, and to suspend the councillor's right to be paid, but the period for which a suspension may be imposed is increased from 1 month to 3 months.
12. In determining which disciplinary action, if any, to take against a councillor who has engaged in misconduct, the Director-General may take into account any previous incidents of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.
13. The Director-General is required to make any decision to suspend a councillor from civic office or to suspend a councillor's right to be paid publicly available and may make decisions to take other forms of disciplinary action publicly available. There is no liability for defamation in respect of such publication.
14. The Director-General may, instead of taking disciplinary action, decide to refer the matter to the council concerned with recommendations as to how the council might resolve the matter. The Director-General may also refer the matter to the Tribunal for consideration.
15. A councillor against whom disciplinary action is taken by the Director-General may appeal to the Tribunal within 28 days.
16. The Director-General may conduct an investigation for the purpose of determining whether an administrator of a council has engaged in misconduct.
17. The Director-General may also investigate allegations of misconduct by former councillors and may refer such matters to the Tribunal for consideration.

18. Existing provisions that provide that a council may by resolution at a meeting formally censure a councillor for misconduct and that provide for the recovery from a council of reasonable expenses incurred by the Department of Premier and Cabinet in the conduct of an investigation into a councillor at that council are retained.
19. Schedule 1 [4], [6]–[8], [13]–[15] and [19]–[21] are consequential amendments.

#### *Administration of code of conduct*

20. Schedule 1 [11] provides that the regulations may prescribe a model procedure for administering the model code of conduct, which will set out the procedure for dealing with alleged contraventions of the code of conduct. A council must adopt a procedure based on the model procedure. Councillors, members of staff, delegates of a council and administrators of a council must comply with the adopted procedure. However, contravention of the procedure will not constitute misconduct.

#### *Conduct of administrators*

21. Schedule 1 [9] and [10] provide that the requirements imposed on councillors, members of staff of councils and delegates of councils to act honestly and with care and diligence and to comply with the code of conduct also apply to administrators of councils (other than administrators appointed to exercise the functions of a council in relation to water supply, sewerage and stormwater drainage).

#### *Local Government Pecuniary Interest and Disciplinary Tribunal*

22. Schedule 1 [16] and [18] make it clear that the Tribunal has the power to take action against a former councillor in matters involving complaints relating to the non-disclosure of pecuniary interests and misconduct matters. The Tribunal will also be able to take into account previous pecuniary interest complaints proved against a councillor (or council employee, advisor or member of a council committee), previous incidents of misconduct by a councillor and any previous action taken against the person in determining which, if any, disciplinary action to take against the person.
23. Schedule 1 [17] gives the Tribunal the power to disqualify a councillor who has engaged in misconduct from civic office for up to 5 years. The Tribunal can currently disqualify councillors against whom pecuniary interest complaints are proved.

#### *Other amendments*

24. Schedule 1 [1] provides that any part of a council meeting in which alleged contraventions of the code of conduct by a councillor is discussed may be closed to the public.
25. Schedule 1 [3] updates references to a Minister and Schedule 1 [2] omits a redundant note as a consequence. Schedule 1 [5] updates references to an Act.
26. Schedule 1 [22] enables savings and transitional arrangements to be made as a consequence of the proposed Act and any other Act that amends the *Local Government Act 1993*.
27. Schedule 1 [23] inserts savings and transitional provisions.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by Proclamation*

28. Clause 2 provides that this Act is to commence on a day or days to be appointed by proclamation.

**The Committee is generally concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature, as an inappropriate delegation of legislative powers.**

## 8. Marine Safety Amendment (Domestic Commercial Vessel National Law Application)Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Roads and Ports

### PURPOSE AND DESCRIPTION

1. The object of this bill is to amend the *Marine Safety Act 1998* to give effect in NSW to a nationally consistent scheme for the regulation of marine safety in relation to domestic commercial vessels by applying the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth as a law of this State. The Bill also makes provision to help ensure that the Commonwealth law and the applied law of this State are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

### BACKGROUND

2. The Bill represents the culmination of a cross-agency and multi-jurisdictional effort by Transport for NSW, Roads and Maritime Services, the Australian Maritime Safety Authority, other marine safety authorities and industry stakeholders, and will establish a national system for commercial vessel safety to commence possibly as early as January 2012, and will apply the national law to the extent of the Commonwealth's constitutional reach. This Bill will apply the national law in New South Wales to cover any gap in the Commonwealth's constitutional reach.
3. The Council of Australian Governments agreed to a national approach to regulating domestic commercial vessels in Australia and that the Australian Maritime Safety Authority would be the national safety regulatory.

### OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.
6. Schedule 1 [7] inserts Part 1A into the Act which contains the following provisions:

Part 1A Application of Commonwealth domestic commercial vessel national law



## Division 1 Preliminary

7. Proposed section 9A states the purpose of the proposed Part (which is principally to adopt in this State a uniform national approach to the regulation of marine safety in relation to domestic commercial vessels).
8. Proposed section 9B defines certain words and expressions used in the proposed Part. In particular, the *Commonwealth domestic commercial vessel national law* (referred to in this Note as *the Commonwealth marine law*) is defined as the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth (being the provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* of the Commonwealth), together with regulations and other legislative instruments made under that Law and savings and transitional provisions. The *applied provisions* are defined as the Commonwealth marine law that applies as a law of this State because of proposed section 9C.

## Division 2 The applied provisions

9. Proposed section 9C applies the Commonwealth marine law as a law of this State. In addition, the proposed section provides that the Commonwealth marine law so applies as if it extended to matters in relation to which this State may make laws, whether or not the Commonwealth may make laws in relation to those matters. The regulations may provide that the Commonwealth marine law applies as if amendments made to that law had not taken effect.
10. Proposed section 9D applies the *Acts Interpretation Act 1901* of the Commonwealth as a law of this State in relation to the interpretation of the applied provisions.

## Division 3 Functions and powers under applied provisions

11. Proposed section 9E provides that the National Regulator appointed under the Commonwealth marine law and other authorities and officers have the same functions and powers under the applied provisions as they have under the Commonwealth marine law.
12. Proposed section 9F provides that any delegation by the National Regulator under the Commonwealth marine law is taken to have effect for the purposes of the corresponding provision of the applied provisions. It is envisaged that the Chief Executive of Roads and Maritime Services will be delegated the functions of the National Regulator in this State.

## Division 4 Offences

13. Proposed section 9G states that the object of the proposed Division is to further the purpose of the proposed Part by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth. In addition, the proposed section gives examples of the purposes for which an offence is to be so treated.
14. Proposed section 9H applies the relevant Commonwealth laws as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth. In addition, the proposed section provides that, except as provided by the regulations under the proposed Part, an offence against the applied provisions is

taken to be an offence against the laws of the Commonwealth and not an offence against the laws of this State.

15. Proposed section 9I provides that a function or power in relation to an offence against the Commonwealth marine law conferred on a Commonwealth officer or authority by Commonwealth laws applying because of proposed section 9H is also conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provisions.
16. Proposed section 9J provides that a person is not liable to be punished for an offence under the applied provisions if the person has been punished for the same offence under the Commonwealth marine law.

### Division 5 Administrative laws

17. Proposed section 9K applies the Commonwealth administrative laws (which are defined in proposed section 9B) as laws of this State to any matter arising in relation to the applied provisions, except as provided by the regulations under the proposed Part. The proposed section further provides that a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth, not this State. In addition, the proposed section provides that any provision of a Commonwealth administrative law applying because of the proposed section that purports to confer jurisdiction on a federal court is taken not to have that effect. This is consistent with the High Court decision in *Wakim's case (Re Wakim; Ex parte McNally)* (1999) 198 CLR 511 that a State law cannot confer jurisdiction on the Federal Court.
18. Proposed section 9L provides that a function or power conferred on a Commonwealth officer or authority by a Commonwealth administrative law applying because of proposed section 9K is also conferred on the officer or authority in relation to a matter arising in relation to the applied provisions.

### Division 6 Fees and fines

19. Proposed section 9M enables regulations to be made with respect to the fees payable to this State for things done under the Commonwealth marine law or the applied provisions by an officer or employee of this State or an agency of this State who is acting as a delegate of the National Regulator.
20. Proposed section 9N provides that amounts paid to this State by the National Regulator in respect of infringement notices issued under the Commonwealth marine law are to be paid into the Waterways Fund established under the *Ports and Maritime Administration Act 1995*.
21. Proposed section 9O requires any fees, penalties, fines and other amounts payable under the applied provisions (with certain exceptions) to be paid to the Commonwealth.

### Division 7 Miscellaneous

22. Proposed section 9P provides that the validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth marine law.

23. Proposed section 9Q provides that a reference in a Commonwealth law to any provision of a Commonwealth law is taken, for the purposes of proposed sections 9H and 9K, to be a reference to that provision as applying because of those proposed sections.
24. Proposed section 9R enables regulations to be made to give effect to the proposed Part or the applied provisions.
25. Schedule 1 [1]–[6] and [8]–[27] make amendments to the Act as a consequence of the Commonwealth marine law and the applied provisions, including omitting requirements for registration certificates and survey certificates for domestic commercial vessels covered by the Commonwealth marine law and applied provisions and requirements for certificates of competency for the crew of such vessels.
26. Schedule 1 [28] and [29] enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
27. Schedule 2 makes amendments to various Acts and regulations as a consequence of the enactment of the proposed Act and by way of state law revision.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by Proclamation*

28. Clause 2 provides that the Act is to commence on a day or days to be appointed by proclamation.

**The Committee is generally concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that this Bill forms part of a nationwide scheme and, given the nature of cooperative federalism, a commencement date is dependent on the actions of other States. In such circumstances, the Committee does not consider commencement by proclamation to be an inappropriate delegation of legislative power.**

## 9. Miscellaneous Acts Amendment (Directors' Liability) Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend certain Acts that impose executive liability, and to amend certain regulations made under those Acts, so as:
  - (a) to change the type of liability that is imposed for certain offences under those Acts and regulations, from executive liability to accessorial liability, and
  - (b) to change the type of executive liability that is imposed for certain offences under those Acts and regulations, from type 3 executive liability to type 1 executive liability, and
  - (c) to include, in or near each provision creating an offence committed by a corporation that gives rise to executive liability, a note drawing attention to that liability, and
  - (d) to include, where practicable, standard provisions for executive liability and accessorial liability, and
  - (e) to make other minor or consequential amendments.
2. No provision for type 2 executive liability is contained in the Acts and regulations amended by the Bill.
3. No provision for type 3 executive liability is contained in the Acts and regulations amended by the Bill, except that the Bill continues current arrangements for some specified offences under the Protection of the Environment Operations Act 1997, under which a person who is a director or manager is taken to have contravened a provision contravened by a corporation, unless the person satisfies the court that the person:
  - was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - used all due diligence to prevent the contravention by the corporation.
4. That Act also contains provision for type 1 executive liability and accessorial liability.
5. The Bill relates to a COAG agreement with respect to the harmonisation across Australian jurisdictions of legislation imposing executive liability.

## BACKGROUND

6. In 2006, reports published by the Taskforce on Reducing the Regulatory Burden on Business and the Corporations and Markets Advisory Committee highlighted the need for improved consistency and a principled approach to personal liability for corporate offences across the Commonwealth, States and Territories.
7. In 2008, the Council of Australian Governments made a commitment to reforming directors' liability and adopted high-level principles.
8. In 2011, the Council of Australian Governments Business Regulation and Competition Working Group established a committee chaired by New **South** Wales to produce guidelines on the application of increased directors' liability.
9. The guidelines were approved by the Council of Australian Governments on 25 July 2012. All jurisdictions in Australia are currently in the process of implementing those guidelines through legislation.
10. This Bill implements these guidelines, as noted in the Bill's Second Reading speech:

The purpose of this bill is to implement nationally consistent and principles-based reforms to the legislation governing the criminal responsibility of directors and officers for corporate offences. The bill implements a Council of Australian Government's commitment under the Seamless National Economy Partnership Agreement.
11. The Attorney-General also mentioned during the Bill's Second Reading speech "the reforms contained in the bill will reduce the number of offences to which special directors' liability provisions apply from over 1,000 to around 150."

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of Acts and Regulations

14. Schedule 1 amends the following Acts and Regulations to give effect to the object set out in the purpose and description above:

*Animal Research Act 1985:*  
*Building and Construction Industry Long Service Payments Act 1986*  
*Children and Young Persons (Care and Protection) Act 1998*  
*Classification (Publications, Films and Computer Games) Enforcement Act 1995*  
*Contaminated Land Management Act 1997*  
*Conveyancers Licensing Act 2003*  
*Drug Misuse and Trafficking Act 1985*  
*Drug Misuse and Trafficking Regulation 2011*  
*Duties Act 1997*  
*Electricity (Consumer Safety) Act 2004*  
*Environmentally Hazardous Chemicals Act 1985*  
*Explosives Act 2003*

*Food Act 2003*  
*Forestry Act 1916*  
*Funeral Funds Act 1979*  
*Gaming Machines Act 2001*  
*Health Insurance Levies Act 1982*  
*Heritage Act 1977*  
*Jury Act 1977*  
*Landlord and Tenant (Amendment) Act 1948*  
*Liquor Act 2007*  
*Loan Fund Companies Act 1976*  
*Long Service Leave Act 1955*  
*Long Service Leave (Metalliferous Mining Industry) Act 1963*  
*Mining Act 1992*  
*Motor Dealers Act 1974*  
*Motor Vehicle Repairs Act 1980*  
*National Parks and Wildlife Act 1974*  
*Native Vegetation Act 2003*  
*Payroll Tax Act 2007*  
*Pesticides Act 1999*  
*Printing and Newspapers Act 1973*  
*Property, Stock and Business Agents Act 2002*  
*Protection of the Environment Operations Act 1997*  
*Racing Administration Act 1998*  
*Rural Workers Accommodation Act 1969*  
*Security Industry Act 1997*  
*Sydney Water Catchment Management Act 1998*  
*Sydney Water Catchment Management Regulation 2008*  
*Taxation Administration Act 1996*  
*Threatened Species Conservation Act 1995*  
*Unlawful Gambling Act 1998*  
*Valuers Act 2003*  
*Veterinary Practice Act 2003*  
*Water Industry Competition Act 2006*  
*Workplace Injury Management and Workers Compensation Act 1998*

## ISSUES CONSIDERED BY COMMITTEE

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

*Commencement by proclamation*

15. Clause 2 states that the Bill commences on a day or days to be appointed by proclamation.

**The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the implementation of this Bill will require certain administrative arrangements to be implemented. In these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.**

# 10. Passenger Transport Amendment (Ticketing and Passenger Conduct) Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon Gladys Berejiklian MP
Portfolio	Transport

## PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Passenger Transport Act 1990*:
  - (a) to transfer to that Act provisions relating to ticketing and conduct offences of persons on trains and other railway premises from the *Rail Safety Act 2008*, and
  - (b) to include provisions enabling a “smartcard” ticketing system to be introduced on trains, buses and ferries, and
  - (c) to make other amendments relevant to the enforcement of those provisions.
2. The *Rail Safety Act 2008* will be repealed in due course as part of the implementation of a national scheme dealing with rail safety which does not cover the matters that are to be transferred by this Bill.
3. The Bill also amends other legislation consequentially.

## BACKGROUND

4. In 2013 the *Rail Safety Act 2008* will be repealed as part of the implementation of a National Rail Safety Regulator and national rail safety law. The *Rail Safety Act 2008* enables regulations regarding ticketing, revenue protection and passenger conduct. In order to prevent losing these regulation making powers when the Rail Safety Act is repealed, this Bill transfers them to the *Passenger Transport Act 1990*.

## OUTLINE OF PROVISIONS

### 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 or days to be appointed by proclamation.

## Schedule 1 Amendment of Passenger Transport Act 1990

### *Ticketing and conduct offences*

7. Schedule 1 [16] and [17] amend section 63 of the Act to include in the regulation-making powers contained in that section matters relating to ticketing (including smartcard ticketing) and conduct offences in relation to trains and other railway premises.
8. Schedule 1 [2] amends section 3 of the Act to include definitions relevant to those regulation-making powers, such as a definition of railway premises based on the definition in the rail safety national law which includes (among other things) trains and rail infrastructure.
9. Schedule 1 [15] inserts proposed section 57 into the Act to provide that, if a court convicts a person of an offence against the regulations relating to railway premises or monorail premises and is satisfied that the conduct in question caused or could have caused appreciable danger or harm to persons, animals, premises or property, the court can impose a maximum penalty of 250 penalty units rather than the penalty provided by the regulations for the offence. This takes account of the fact that the maximum penalty that can currently be imposed for offences against the regulations under the Act is 50 penalty units whereas the maximum penalty that can currently be imposed for an offence against the regulations under the *Rail Safety Act 2008* is 250 penalty units.
10. Schedule 1 [3], [18] and [19] make consequential amendments.

### *Enforcement powers*

11. Schedule 1 [1] amends the definition of authorised officer in section 3 (1) of the Act to include a police officer. Currently, an authorised officer has to be appointed by a transport regulator. Schedule 1 [4], [8] and [11]–[13] make consequential amendments.
12. Schedule 1 [5] substitutes section 46I of the Act to include, in the powers of an authorised officer to enter premises, a power to enter railway premises. A similar power is currently contained in section 85 of the *Rail Safety Act 2008*.
13. Schedule 1 [6], [7] and [9] amend sections 46R and 46W of the Act to make provision for the appointment of authorised officers in relation to rail passenger services and railway premises.
14. Schedule 1 [10] amends section 55 of the Act to include, in the power of an authorised officer to require a person to state his or her name and address in circumstances where the officer reasonably suspects that an offence against the Act or the regulations has been committed, a power to make such a requirement in relation to graffiti offences on railway premises. A similar power is currently contained in section 104 of the *Rail Safety Act 2008*. Schedule 1 [14] makes a consequential amendment.

### *Savings and transitional provisions*

15. Schedule 1 [20] amends Schedule 3 to the Act to enable regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.
16. Schedule 1 [21] amends Schedule 3 to the Act to include a specific savings and transitional provision in relation to the *Rail Safety (Offences) Regulation 2008*.



## Schedule 2 Amendment of other legislation

17. Schedule 2 amends the *Rail Safety Act 2008* to remove provisions that will now be covered by the provisions inserted in the *Passenger Transport Act 1990* by Schedule 1. The Schedule also makes a consequential amendment to the *Transport Administration Act 1988*.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Commencement by proclamation*

18. The Bill provides for the Act to commence on a day or days to be appointed by proclamation. The Committee notes that in anticipation of the implementation of national rail safety law in 2013, this Bill transfers regulation making provisions from the *Rail Safety Act 2008* into the *Passenger Transport Act 1990*.

**The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that the inclusion of a commencement by proclamation provision assists in the implementation of national rail safety law in 2013.**

# 11. Ports Assets (Authorised Transactions) Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer and Minister for Industrial Relations

## PURPOSE AND DESCRIPTION

1. The object of this Bill is to authorise and facilitate the transfer to the private sector of the State's ports assets at Port Botany and Port Kembla, subject to the restriction that the land concerned can be leased to the private sector for up to 99 years but ownership of the land must remain with the State. The State's ports assets are currently vested in the Sydney Ports Corporation and the Port Kembla Port Corporation, which are State owned corporations and are referred to in this Bill as *port SOCs*.
2. The Bill has detailed provisions dealing with the transfer of ports employees and their rights and entitlements on transfer. See Part 4 of the Bill.

## BACKGROUND

3. During the second reading speech, the Treasurer outlined that the Bill was seeking to authorise the lease of Port Botany and Port Kembla to the private sector. The Treasurer particularly noted that this was an important initiative to provide billions of dollars to help fund infrastructure across the State.

## 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 the date of assent.
6. Clause 3 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines *authorised transaction* to mean a transfer of ports assets authorised by Part 2.

### Part 2 Authorised transactions

7. Clause 4 authorises the transfer to the private sector of the State's ports assets at Port Botany and Port Kembla subject to the restriction that the land concerned can be leased to the private sector for up to 99 years but ownership of the land must remain with the State. The clause also authorises the transfer of the Port Botany and Port Kembla ports assets to any public sector agency.

8. Clause 5 requires the proceeds of the transfer of ports assets pursuant to an authorised transaction, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the Restart NSW Fund.

### **Part 3 Facilitating authorised transactions**

9. Clause 6 provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction.
10. Clause 7 provides that an authorised transaction is to be effected as directed by the Treasurer in any manner that the Treasurer considers appropriate.
11. Clause 8 provides for the establishment of a State owned corporation as a *transaction SOC* for the purposes of an authorised transaction.
12. Clause 9 provides for the establishment of companies as *transaction companies* for the purposes of an authorised transaction (including by means of the corporate conversion of a port SOC). Transaction SOCs and transaction companies are referred to as *transaction entities*.
13. Clause 10 provides that each port SOC and each transaction entity has and may exercise all such functions as are necessary or convenient for the purposes of an authorised transaction. The clause also authorises the Treasurer to act for or on behalf of and in the name of a port SOC or a transaction entity in the exercise of any of its functions for the purposes of an authorised transaction.
14. Clause 11 provides that port SOCs and transaction entities are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of an authorised transaction.
15. Clause 12 provides for the exercise of a port SOC's functions by a subsidiary of the port SOC when ports assets are transferred to the subsidiary for the purposes of an authorised transaction.
16. Clause 13 establishes the Ports Assets Ministerial Holding Corporation to hold ports assets acquired by it or transferred to it and to carry on any activities or business that relate to ports assets held by it.

### **Part 4 Arrangements for transfer of staff**

17. Clause 14 provides for the transfer of an employee of a port SOC to the employment of another public sector agency.
18. Clause 15 provides for the secondment of an employee of a port SOC to the service of another public sector agency or an employer in the private sector.
19. Clause 16 provides for the transfer of an employee of a port SOC or a transaction entity to employment in the private sector, with a maximum 2 year employment guarantee period.
20. Clause 17 provides for the continuity of the employment entitlements of employees transferred under the Part.

21. Clause 18 provides for the making of transfer payments to employees of a port SOC whose employment is transferred to the private sector under the Part or as a result of a transaction arrangement entered into for the purposes of an authorised transaction.

## **Part 5 Arrangements for transfer of assets and functions**

22. Clause 19 authorises the Treasurer to make vesting orders under Schedule 4 for the purposes of an authorised transaction.
23. Clause 20 provides for the severance of fixtures owned by a port SOC from land owned by a port SOC or another public sector agency.
24. Clause 21 provides for the Treasurer to give directions for the grant of any relevant authorisation under various laws to a person who becomes or is proposed to become the new operator of ports assets pursuant to an authorised transaction.
25. Clause 22 authorises the Ports Assets Ministerial Holding Corporation to acquire land for the purposes of an authorised transaction by agreement or compulsory acquisition that the Corporation determines to be land on which ports assets of a port SOC are situated or land used or occupied by a port SOC.
26. Clause 23 provides for the adjustment of the objectives and functions of a port SOC to ensure that they remain appropriate following the transfer of ports assets pursuant to an authorised restructuring.

## **Part 6 Operation of other laws**

27. Clause 24 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of an authorised transaction and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with an authorised transaction.
28. Clause 25 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.
29. Clause 26 provides that the *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction, agreement or other arrangement entered into for the purposes of an authorised transaction.
30. Clause 27 authorises the release of information by the Auditor-General for the purposes of an authorised transaction.
31. Clause 28 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of an authorised transaction.
32. Clause 29 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.
33. Clause 30 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

- 34. Clause 31 protects the validity of provisions of leases of ports assets entered into for the purposes of an authorised transaction.
- 35. Clause 32 provides that a planning control is of no effect to the extent that it would operate to impose a cargo throughput limit for Port Botany.

## **Part 7 Miscellaneous**

- 36. Clause 33 authorises the Treasurer to delegate any function of the Treasurer under the proposed Act to the Secretary of the Treasury or any other officer of the Government Service prescribed by the regulations.
- 37. Clause 34 provides for the proposed Act to bind the State and all other Australian jurisdictions.
- 38. Clause 35 provides for the operation of the proposed Act outside the State.
- 39. Clause 36 provides for the construction of the proposed Act so as not to exceed the legislative power of the State.
- 40. Clause 37 provides for when orders take effect and for evidence of and presumptions about orders.
- 41. Clause 38 provides for how documents are to be given or served for the purposes of the proposed Act.
- 42. Clause 39 is a general regulation-making power.

## **Schedule 1 Interpretative provisions**

- 43. Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

## **Schedule 2 Provisions concerning transaction SOCs**

- 44. Schedule 2 contains special provisions for the board of directors, chief executive officer, dividends scheme and other procedures of a transaction SOC.

## **Schedule 3 Corporate conversion of port SOCs and transaction SOCs**

- 45. Schedule 3 provides the procedure for the corporate conversion of a port SOC or transaction SOC into a transaction company.

## **Schedule 4 Vesting of assets, rights and liabilities**

- 46. Schedule 4 provides for the making of vesting orders by the Treasurer for the purposes of an authorised transaction. Vesting orders operate to vest assets, rights and liabilities comprising ports assets in the transferee specified in the order.

## **Schedule 5 Savings, transitional and other provisions**

- 47. Schedule 5 enacts a savings and transitional regulation-making power and contains special provisions for the change of name and dissolution of the Sydney Ports Corporation and the Port Kembla Port Corporation.

## Schedule 6 Amendment of Acts and regulations

48. **Schedule 6** makes amendments to various Acts and regulations as a consequence of the future operation of Port Botany and Port Kembla by the private sector (as “private ports”), including the following amendments:
- (a) the *Marine Safety Act 1998* will be amended to provide for the appointment of officers, employees and agents of a private port operator as authorised officers for the purposes of the marine safety legislation,
  - (b) the Ports and Maritime Administration Act 1995 will be amended:
    - i to provide a special regulatory regime for private ports, including provision for the regulation of activities at private ports by means of directions given by the private port operator for the purpose of maintaining or improving safety and security at the port, and conferring information gathering powers on private port operators, and
    - ii to institute a price monitoring scheme to monitor charges imposed by private port operators, and
    - iii to provide for certain existing port charges to be charged by private port operators, and
    - iv to provide for a new port charge (a port infrastructure charge to fund investment in ports) to be charged at both public and private ports.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Official powers*

49. Part 4 of the Bill provides that employees of port state owned companies may be transferred within the public sector, seconded or transferred to private sector employment.

**The Committee notes that State employees may have a preference to work for the agency for which they applied to work, or a general preference to work within the public sector. Given the objects of this Bill, the Committee makes no further comment on this issue.**

#### *Denial of compensation*

50. Clause 30 of the Bill provides that compensation is not payable by or on behalf of the State because of the enactment or operation of the Bill or relating to the enactment of the Bill.

**The Committee is concerned that removing a right to compensation may impact on the rights and liberties of individuals. Given the objects of this Bill, the Committee makes no further comment on this issue.**

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

### *Functions in the regulations*

51. Subclause 12(4) provides that the regulations may prescribe additional functions of a port state owned company. Subclause 13(6)(c) provides that further functions of the Ports Assets Ministerial Holding Corporation may be outlined in the regulations.

**The Committee notes that functions of state owned companies are more appropriately included in legislation, rather than in regulation. The Committee refers to Parliament whether providing for additional functions for port state owned companies, or specifically the Ports Assets Ministerial Holding Corporation, in the regulations is appropriate in the circumstances.**

# 12. Primary Industries Legislation Amendment Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Council
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Minister for Primary Industries

## PURPOSE AND DESCRIPTION

### 1. The objects of this Bill are:

#### (a) to amend the *Apiaries Act 1985*:

- i to simplify the process of registration for beekeepers, and
- ii to extend the powers of the Director-General with respect to the removal or destruction of apiaries or beehives from or on land where the keeping of bees is prohibited or restricted, and
- iii to allow inspectors to issue permits authorising the movement or keeping of bees, beehives, apiary products or appliances that would otherwise contravene that Act, and

#### (b) to amend the *Fisheries Management Act 1994* to make further provision with respect to the powers of fisheries officers to require information for the purposes of that Act, including the production of records relating to commercial fishing activities and the power to require persons to provide information and answer questions, and

#### (c) to amend the *Stock Foods Act 1940*:

- i to remove exemptions that allow a person to sell stock food (whether in packages or in bulk) without providing information about that stock food either on the packaging or in a written statement with the delivery of bulk stock food, and
- ii to allow the Director-General to delegate the authorisation of inspectors and analysts under that Act, and

#### (d) to amend the *Stock Medicines Act 1989*:

- i to allow veterinary practitioners to use low-risk animal pesticide products in a manner contrary to the usage instructions on the products, and
- ii to ensure that unregistered stock medicines are prohibited for use on stock that is a member of a food-producing species, and



- iii to clarify the responsibility of veterinary practitioners to keep records in relation to the use of restricted substances on food producing species of stock, and
  - iv to remove unnecessary regulatory requirements relating to the taking of samples, the manner of advertising of notices and the form of certificates issued by analysts, and
- (e) to make a minor amendment to the *Pesticides Act 1999* as a consequence of the changes to the *Stock Medicines Act 1989*.

## BACKGROUND

- 2. The Bill was introduced to improve the effectiveness and efficiency of the legislation governing agriculture and fisheries in NSW. The Bill seeks to clarify existing provisions and remove anomalies that impact on the effectiveness of compliance and enforcement operations.
- 3. During the second reading speech, the Hon. Duncan Gay MLC indicated that the NSW Farmers Association supports the agriculture amendments.

## 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, except for Schedule 1 [1]–[6], [10], [11] and [14] which commence on a day or days to be appointed by proclamation.

### Schedule 1 Amendment of Apiaries Act 1985 No 16

- 6. Schedule 1 [2] replaces sections 7–13 of the *Apiaries Act 1985* to simplify the process of registration for beekeepers. Schedule 1 [1], [10] and [11] make consequential amendments.
- 7. Proposed section 7 provides that a person may apply to the Director-General for registration as a beekeeper.
- 8. Proposed section 8 provides that registration as a beekeeper is subject to the conditions prescribed by the regulations and such other conditions as may be imposed by the Director-General.
- 9. Proposed section 9 provides that registration as a beekeeper may be granted for a period not exceeding 2 years.
- 10. Proposed section 10 provides for the suspension of a person's registration as a beekeeper.
- 11. Proposed section 11 provides for the cancellation of a person's registration as a beekeeper.
- 12. Proposed section 12 provides for the renewal of a person's registration as a beekeeper.

13. Proposed section 13 requires the Director-General to keep a register of beekeepers.
14. Schedule 1 [3] replaces the existing requirements relating to the identification of beehives with a provision that requires beehives to be identified with the registered beekeeper's registration number and in accordance with the conditions of the beekeeper's registration. Schedule 1 [4]–[6] make consequential amendments.
15. Schedule 1 [7] clarifies the matters that may be included in a direction to remove an apiary or beehive. That Schedule also provides that a person who is ordered to move an apiary or beehive may destroy the apiary or beehive and the person by doing so is taken to have complied with the order.
16. Schedule 1 [8] makes it clear that the Director-General may authorise the removal or destruction of an apiary or one or more beehives if a beekeeper has failed to comply with a requirement that the apiary or beehives be removed, or has moved the apiary or beehives to premises on which the keeping of bees is prohibited.
17. Schedule 1 [9] gives effect to the object set out in paragraph (a) (iii) of the Overview above.
18. Schedule 1 [12] makes a minor amendment in the nature of statute law revision.
19. Schedule 1 [13] allows for the making of regulations of a savings or transitional nature as a consequence of the amendment of the *Apiaries Act 1985*.
20. Schedule 1 [14] enacts provisions of a savings and transitional nature as a consequence of the amendment made by Schedule 1 [2].

### **Schedule 2    Amendment of Fisheries Management Act 1994 No 38**

21. Schedule 2 [1]–[5] give effect to the object set out in paragraph (b) of the Purpose and Description above.
22. Schedule 2 [6] and [7] remove provisions that apply in respect of information, or answers to questions, required by a fisheries officer, such as the provision that states that a person is not excused from providing information or answering a question on the grounds that the information or answer might incriminate the person. Those provisions continue to apply in respect of requests for information that is reasonably required for the purposes of Part 7 and Part 7A of the *Fisheries Management Act 1994*.
23. Schedule 2 [8] allows for the making of regulations of a savings or transitional nature as a consequence of the amendment of the *Fisheries Management Act 1994*.

### **Schedule 3    Amendment of Pesticides Act 1999 No 80**

24. Schedule 3 amends the *Pesticides Act 1999* as a consequence of the amendment made by Schedule 5 [2].

### **Schedule 4    Amendment of Stock Foods Act 1940 No 19**

25. Schedule 4 [1] and [2] give effect to the object set out in paragraph (c) (i) of the Purpose and Description above.

26. Schedule 4 [3] gives effect to the object set out in paragraph (c) (ii) of the Purpose and Description above.
27. Schedule 4 [4] enables the making of regulations of a savings or transitional nature as a consequence of the amendment of the *Stock Foods Act 1940*.

### **Schedule 5 Amendment of Stock Medicines Act 1989 No 182**

28. Schedule 5 [2] defines the term *stock medicine* for the purposes of the *Stock Medicines Act 1989* as being a veterinary chemical product (within the meaning of the Agvet Code) other than a veterinary chemical product that is represented as being suitable for, or is manufactured, supplied or used for, the external treatment of ectoparasites and that requires dilution or mixing in water, unless the product is prescribed by the regulations to be a low-risk veterinary chemical product. The effect of the amendment is to permit low-risk veterinary chemical products to be used as stock medicines rather than pesticides. *Stock medicine* also includes a substance or mixture of substances prepared by a veterinarian, or prepared by a pharmacist in accordance with the instructions of a veterinarian, in the course of the practice of his or her profession. The effect of the amendment is to ensure that these substances cannot be used on stock that is a member of a food-producing species unless registered. Schedule 5 [1] makes a consequential amendment.
29. Schedule 5 [3] gives effect to the object set out in paragraph (d) (iii) of the Overview above.
30. Schedule 5 [4] removes an unnecessary requirement with respect to the taking of samples of stock medicine for analysis or examination.
31. Schedule 5 [5] removes an unnecessary requirement that a notice of the Director-General's intention to apply for the forfeiture of property that has been seized under the *Stock Medicines Act 1989* be in a prescribed form.
32. Schedule 5 [6] removes an unnecessary requirement that a certificate given by an analyst as to the result of an analysis is to be in the prescribed form.
33. Schedule 5 [7] allows for the making of regulations of a savings or transitional nature as a consequence of the amendment of the *Stock Medicines Act 1989*.

### **ISSUES CONSIDERED BY COMMITTEE**

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

##### ***Self incrimination***

34. Schedule 2 of the Bill provides fisheries officers with the power to require a person to produce records, translations of records and statements, with a failure to comply being an offence.

**The Committee notes that the effect of requiring individuals to provide documentation and answer questions may impact on any right to silence and right against self incrimination. The Committee refers to Parliament whether such powers are appropriate.**

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

### ***Matters in regulations rather than legislation***

35. Clause 2 of Schedule 1 of the Bill provides that the Director-General may refuse an application for registration as a beekeeper on grounds prescribed in the regulations [proposed new subsection 7(3) of the *Apiaries Act 1985*]. It also outlines that the Director General may suspend the registration of a beekeeper [proposed new subsection 10(2)] and that the Director General may cancel the registration of a beekeeper [proposed subsection 11(2)].

**The Committee notes the grounds on which beekeepers may be refused registration, or have their registration suspended or cancelled, are not outlined in the registration. Given the impact on the livelihood of beekeepers of such criteria, the Committee refers to Parliament whether such matters relating to licensing ought to be outlined in the principal legislation, rather than the regulations.**

## 13. Rail Safety (Adoption of National Law) Bill 2012

Date introduced	18 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Minister for Transport

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
  - (a) to apply as a law of this State the Rail Safety National Law which is contained in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia. The enactment of this Bill is part of a uniform scheme of legislation applying that Law (which relates to the accreditation of rail transport operators and rail safety) in the States and Territories (participating jurisdictions),
  - (b) to enable the Independent Transport Safety Regulator (the ITSR) to exercise the functions of the National Rail Safety Regulator under that Law,
  - (c) to confer on Transport for New South Wales (TfNSW) functions relating to the strategic co-ordination of safety regulatory frameworks in relation to transport authorities and other related functions,
  - (d) to confer on Roads and Maritime Services (RMS) functions relating to the accreditation of bus operators and other related enforcement and licensing functions, as well as safety functions,
  - (e) to make consequential amendments to other Acts and provision of a savings and transitional nature consequent on the enactment of the Bill,
  - (f) to repeal the *Rail Safety Act 2008* and regulations under that Act.
2. The Rail Safety National Law scheme provides for the following matters:
  - (a) the establishment of the National Rail Safety Regulator,
  - (b) the safety duties of rail transport operators (including rail infrastructure managers and rolling stock operators) and of designers, manufacturers and suppliers of rolling stock and rail infrastructure,
  - (c) the accreditation by the National Rail Safety Regulator of rail transport operators for the purposes of railway operations,
  - (d) the registration of rail infrastructure managers of private rail sidings,

- (e) requirements for safety management systems for rail transport operators, including interface agreements relating to rail and roads,
  - (f) requirements for other safety plans and programs for rail transport operators,
  - (g) training requirements for, and drug and alcohol testing of, rail safety workers,
  - (h) the appointment and powers of rail safety workers for the purposes of enforcement of the Law,
  - (i) enforcement measures, including improvement and prohibition notices, non-disturbance notices, injunctions, court-based sanctions and infringement notices and enforceable voluntary undertakings.
3. National regulations supporting the Rail Safety National Law are to be made by the Governor of South Australia and are to be adopted by each participating jurisdiction.
4. The Rail Safety National Law, as applied by this Bill in New South Wales, will replace the *Rail Safety Act 2008*.

## BACKGROUND

5. In 2009, the Council of Australian Governments voted to establish single national regulators for heavy vehicles, rail safety and maritime safety in addition to a national rail safety investigator. This Bill makes the necessary legislative amendments to establish the National Rail Safety Regulator in New South Wales.
6. The Rail Safety National Law follows an applied scheme which requires a host jurisdiction, in this case South Australia, to pass the national law and for other States and Territories to pass legislation applying this law as a law of their own jurisdiction.

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

7. Clause 1 sets out the name (also called the short title) of the proposed Act.
8. Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. Different days may be appointed for the commencement of different provisions of the Rail Safety National Law.
9. Clause 3 defines certain words and expressions used in the proposed Act.

### Part 2 Application of Rail Safety National Law

10. Clause 4 applies the Rail Safety National Law as a law of this jurisdiction, to be called the Rail Safety National Law (NSW), with the modifications set out in Schedule 1 to the proposed Act.
11. Clause 5 defines certain words and expressions used in the Rail Safety National Law (NSW).
12. Clause 6 excludes the application of specified laws of New South Wales, including the *Government Information (Public Access) Act 2009*, the *Interpretation Act 1987*, the

*Subordinate Legislation Act 1989* and the *State Records Act 1998* to the applied provisions and the instruments made under the applied provisions. It also applies certain laws of South Australia to those provisions and instruments.

13. Clause 7 enables regulations made under the Rail Safety National Law to be disallowed in New South Wales only if they are disallowed by a majority of the jurisdictions that have applied that Law.

### **Part 3 Provisions relating to drug and alcohol testing and train communications**

#### ***Division 1 Drug and alcohol testing***

14. Clause 8 contains a power to make regulations for or with respect to matters relating to the drug and alcohol testing of rail safety workers, including the conduct of testing, accreditation of analysts and associated evidentiary matters. Provision is made under
15. the Rail Safety National Law for such matters to be dealt with separately by participating jurisdictions.

#### ***Division 2 Train communications***

16. Clause 9 contains a power to make regulations with respect to requirements for train communication systems.

### **Part 4 Miscellaneous**

17. Clause 10 enables the Governor to make regulations for the purposes of the proposed Act. In particular, the regulations may amend the schedule of modifications to the Rail Safety National Law and modify the regulations made under that Law. Regulations may also be made under the proposed Act that are contemplated by that Law as being made under the proposed Act.
18. Clause 11 enables regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
19. Clause 12 provides for the manner in which proceedings for offences against regulations made under the proposed Act are to be dealt with.
20. Clause 13 authorises the ITSIR to provide the National Rail Safety Regulator with information and assistance for the purposes of the Rail Safety National Law (NSW).
21. Clause 14 repeals the *Rail Safety Act 2008*, the *Rail Safety (General) Regulation 2008* and the *Rail Safety (Drug and Alcohol Testing) Regulation 2008*.

#### ***Schedule 1 New South Wales changes and additions to Rail Safety National Law***

22. Schedule 1 contains amendments to the Rail Safety National Law for the purposes of its application in New South Wales. The Schedule modifies that Law as follows:
  - (a) to include applicable New South Wales definitions,
  - (b) to confer jurisdiction on the Local Court, District Court and Industrial Court in relation to offences under that Law and on the Administrative Decisions Tribunal and the

Industrial Relations Commission in relation to the review of certain decisions under that Law,

- (c) to enable preliminary breath tests or breath analyses or urine screening tests to be required after an accident or irregular incident when rail safety work is being carried out,
- (d) to apply drug testing provisions to urine tests,
- (e) to provide for other matters relating to such testing, so as to maintain current New South Wales safeguards.

*Schedule 2 Amendment of Acts*

- 23. Schedule 2.1–2.10 and 2.12 amend the Acts specified in those Subschedules as a consequence of the repeal of the Rail Safety Act 2008.

*Schedule 2.11 Passenger Transport Act 1990 No 39*

*Changes in functions of transport authorities*

- 24. Schedule 2.11 [6] confers the power to accredit bus services on RMS, rather than TfNSW. Schedule 2.11 [1]–[5], [7]–[12], [91] and [97] make consequential amendments.
- 25. Schedule 2.11 [13] confers the power to issue authorities to drive buses used for public passenger services on RMS, rather than TfNSW. Schedule 2.11 [14]–[17] make consequential amendments.
- 26. Schedule 2.11 [19] confers the power to accredit persons to carry on taxi-cab services on RMS, rather than TfNSW. Schedule 2.11 [18] and [20]–[26] make consequential amendments.
- 27. Schedule 2.11 [27] confers the power to licence taxi-cabs on RMS, rather than TfNSW. Schedule 2.11 [28]–[37] make consequential amendments.
- 28. Schedule 2.11 [38] confers the power to issue authorities to drive taxi-cabs used for public passenger services on RMS, rather than TfNSW. Schedule 2.11 [39]–[43] make consequential amendments.
- 29. Schedule 2.11 [44] confers the power to authorise the operation of taxi-cab networks on RMS, rather than TfNSW. Schedule 2.11 [45]–[50] make consequential amendments.
- 30. Schedule 2.11 [51] enables RMS, rather than TfNSW, to accept nominations of directors or managers for corporations seeking authorities for taxi-cabs.
- 31. Schedule 2.11 [52] enables RMS, rather than TfNSW, to exempt a taxi-cab operator from accreditation or licensing requirements.
- 32. Schedule 2.11 [53] confers the power to accredit persons to carry on private hire vehicle services on RMS, rather than TfNSW. Schedule 2.11 [54]–[58] make consequential amendments.
- 33. Schedule 2.11 [59] confers the power to licence private hire vehicles on RMS, rather than TfNSW. Schedule 2.11 [60]–[66] make consequential amendments.



34. Schedule 2.11 [67] confers the power to issue authorities to drive private hire vehicles on RMS, rather than TfNSW. Schedule 2.11 [68]–[72] make consequential amendments.
35. Schedule 2.11 [73] enables RMS, rather than TfNSW, to accept nominations of directors or managers as designated directors or managers for corporations seeking authorities for private hire vehicles.
36. Schedule 2.11 [74] makes RMS, rather than TfNSW, the body that determines the market value of a taxi-cab licence for the purposes of determining the tax on the transfer of the licence.
37. Schedule 2.11 [75] requires information about public passenger service safety to be provided to RMS.
38. Schedule 2.11 [76] requires information about transport accidents that may affect the safety of a public passenger service to be provided by RMS to the Chief Investigator.
39. Schedule 2.11 [77] makes a consequential amendment.
40. Schedule 2.11 [78] requires reports about notifiable occurrences affecting public passenger service safety to be provided to RMS.
41. Schedule 2.11 [93] confers on RMS, rather than TfNSW, powers to cause inspections to be carried out to ensure that the operator of a public passenger service is complying with the terms of the person's accreditation.
42. Schedule 2.11 [95] retains the power of TfNSW to cause inspections to be carried out to ensure that the operator of a public passenger service by means of a bus is complying with the terms of the person's service contract. Schedule 2.11 [94] and [96] make consequential amendments.
43. Schedule 2.11 [118] enables both TfNSW and RMS to appoint authorised officers for enforcement and compliance purposes in respect of their respective functions.
44. Schedule 2.11 [119] makes a consequential amendment.
45. Schedule 2.11 [120] provides for the notification by RMS of reviewable decisions made by RMS, in addition to TfNSW, as a result of the transfer of some TfNSW functions to RMS by the proposed Act.
46. Schedule 2.11 [121] provides for the review by the Administrative Decisions Tribunal of licence decisions by RMS, as a result of the transfer of the decision-making functions from TfNSW to RMS by the proposed Act.
47. Schedule 2.11 [122] enables RMS, rather than TfNSW, to enter into an arrangement to share or exchange information concerning safety and other matters with WorkCover, the Chief Investigator and any other person or body prescribed by regulations. Schedule 2.11 [123] makes a consequential amendment.
48. Schedule 2.11 [124] and [125] make RMS the body to which suspended or cancelled accreditations, authorities and licences, as well as number-plates for suspended or

cancelled licences, must be returned. Schedule 2.11 [126] makes a consequential amendment.

49. Schedule 2.11 [127] confers on TfNSW, rather than RMS, the power to approve guidelines for the matters to be included in drug and alcohol programs for ferry services.
50. Schedule 2.11 [131] enables RMS, rather than TfNSW, to recover fees, charges or taxes payable under the Passenger Transport Act 1990 or regulations made under that Act.
51. Schedule 2.11 [132] requires RMS, which will now have accreditation and licensing functions, to keep records related to accreditation, licences and authorities. Schedule 2.11 [133] and [135] make consequential amendments.
52. Schedule 2.11 [134] requires TfNSW to keep records relating to service contracts.

*Investigation powers*

53. Schedule 2.11 [79] confers power on the Chief Investigator to investigate transport accidents or incidents involving railway operations (a transport safety investigation).
54. Schedule 2.11 [81] makes it clear that the Chief Investigator may conduct a transport safety investigation in the manner the Chief Investigator thinks fit and may also investigate all relevant preceding events and circumstances.
55. Schedule 2.11 [82] enables the Chief Investigator to discontinue investigations.
56. Schedule 2.11 [83] inserts a reference to a defined term.
57. Schedule 2.11 [84] requires a notice to attend and answer questions, or produce documents or other things, given by the Chief Investigator to specify a time and place for doing so and also enables the Chief Investigator to require evidence to be given on oath or affirmation.
58. Schedule 2.11 [85] provides for reports on transport safety investigations and enables the Chief Investigator to provide copies of draft reports or proposed recommendations to the Minister or other persons before finalising a report.
59. Schedule 2.11 [80], [89] and [128] make consequential amendments.
60. Schedule 2.11 [86] extends the power of the Minister to constitute a Board of Inquiry to transport accidents or incidents involving railway operations.
61. Schedule 2.11 [87] enables the Chief Investigator to request the Minister to constitute a Board of Inquiry into a transport accident or incident involving railway operations.
62. Schedule 2.11 [88] provides that the Chief Investigator or a person who is or was a transport safety investigator is not obliged to comply with a subpoena or similar direction in civil proceedings if the Chief Investigator certifies that the person concerned is or was involved in a transport safety investigation. It also provides that a person who is or was a member of a Board of Inquiry or an authorised officer is not obliged to comply with a subpoena or similar direction in civil proceedings if the Minister certifies that the person concerned is or was involved in a transport safety inquiry.

63. Schedule 2.11 [90] extends to rail safety workers a scheme that enables employees to make confidential reports to the Chief Investigator about matters that may affect public transport safety.
64. Schedule 2.11 [92] makes an amendment consequential on the removal of the power of authorised officers to deal with transport safety investigations.
65. Schedule 2.11 [98] inserts a definition and creates a new Division as a result of the application of certain provisions to transport safety investigators. Schedule 2.11 [101], [102], [103], [104], [111] and [113] make consequential amendments.
66. Schedule 2.11 [99] enables a transport safety investigator to use reasonably necessary force when exercising functions.
67. Schedule 2.11 [100] requires a transport safety investigator to do as little damage as possible when exercising functions.
68. Schedule 2.11 [105] excludes police officers from the requirement to have a written authority to enter premises when exercising powers as authorised officers.
69. Schedule 2.11 [106]–[110] confer on transport safety investigators the power to obtain assistance and facilities from the occupier of premises in accordance with notice issued by the Chief Investigator.
70. Schedule 2.11 [112] provides that an occupier will be taken to have obstructed a transport safety inspector (and liable under the obstruction offence) if the person fails to comply with a requirement to provide assistance and facilities.
71. Schedule 2.11 [115] enables a transport safety investigator to apply for a search warrant to enter premises on which the investigator has reasonable grounds to believe there is evidence or a thing that is relevant to a transport safety investigation.
72. Schedule 2.11 [114], [116] and [117] make consequential amendments.
73. Schedule 2.11 [129] extends offences relating to obstructing authorised officers to the same acts in relation to transport safety investigators. Schedule 2.11 [130] makes a consequential amendment.
74. Schedule 2.11 [137] provides for the following matters relating to transport safety investigators:
  - (a) the appointment of transport safety investigators by the Chief Investigator,
  - (b) requirements for carrying and producing identity cards and their return by former investigators,
  - (c) powers to enter premises, including circumstances when a warrant is required,
  - (d) powers on entry to premises,
  - (e) the rights of occupiers to be present during a search,
  - (f) power to secure accident sites,

- (g) power to stop and detain vehicles,
- (h) powers to retain seized documents and other seized things.

*Savings and transitional provisions*

- 75. Schedule 2.11 [136] inserts savings and transitional provisions consequent on the enactment of the proposed Act.
- 76. Schedule 2.13 *Transport Administration Act 1988* No 109

*Changes in functions of transport authorities*

- 77. Schedule 2.13 [1] inserts a definition.
- 78. Schedule 2.13 [2] prevents TfNSW from being able to give a direction to RMS about a review by RMS of the likely impact of a direction by TfNSW to a transport authority on the safety management system of the transport authority.
- 79. Schedule 2.13 [3] confers on RMS, rather than the ITSr, the function of reviewing such a direction when it relates to bus services.
- 80. Schedule 2.13 [6] omits and inserts definitions as a consequence of the removal of functions from the ITSr.
- 81. Schedule 2.13 [7] limits the safety objectives of the ITSr to promoting the safety of railway operations. Currently, it extends to promoting the safety of transport services generally.
- 82. Schedule 2.13 [8] revises the principal functions of the ITSr to remove its strategic co-ordination functions and other functions relating to the safe operation of transport services generally, while retaining functions relating to the review and evaluation of and advising on the safety of railway operations. It also removes the function of accrediting rail transport operators (now to be covered by the Rail Safety National Law (NSW)). The ITSr will have functions relating to the review and evaluation of railway operations and functions conferred on it under that Law or by arrangement with the National Rail Safety Regulator under that Law. Schedule 2.13 [9] and [14] make consequential amendments.
- 83. Schedule 2.13 [10] limits the power of the ITSr to disclose or publish certain information to circumstances in which it is necessary or desirable for the safe operation of railway operations. Currently, this power extends in relation to the safe operation of transport services generally. Schedule 2.13 [11] makes a consequential amendment.
- 84. Schedule 2.13 [16] repeals provisions establishing the Independent Transport Safety Advisory Board and also repeals a spent review provision. Schedule 2.13 [13] and [15] make consequential amendments.
- 85. Schedule 2.13 [18] enables the Chief Investigator to investigate and advise the Minister on any matter related to the safe operation of transport services if requested to do so by the Minister.
- 86. Schedule 2.13 [19] makes it clear that it is not a function of the Chief Investigator to apportion blame for transport safety matters, to provide the means to determine

liability in respect of such matters, to assist in court proceedings (unless required to do so under an Act) or to allow any adverse inference to be drawn from a person's involvement in a transport safety matter.

87. Schedule 2.13 [23] enables the Chief Investigator to enter into arrangements with the Australian Transport Safety Bureau to perform services in connection with the Bureau's functions, to exercise the Bureau's functions or to provide staff.
88. Schedule 2.13 [24] confers on RMS functions relating to monitoring the safe operation of bus services and compliance with recommendations arising out of inquiries. It also confers power to conduct safety audits and to disclose information if necessary for the safety of bus services.
89. Schedule 2.13 [27] removes the power of the ITSr to require an inquiry into and report on a bus or ferry accident.
90. Schedule 2.13 [28] extends the protection from personal liability for acts done in good faith under the Passenger Transport Act 1990 and other Acts to Boards of Inquiry established under that Act.
91. Schedule 2.13 [29] confers on TfNSW functions currently exercised by the ITSr, including strategic co-ordination of safety regulation for transport authorities, reviewing and advising on safety matters and on the implementation of recommendations of reports on transport accidents or incidents and other matters.
92. Schedule 2.13 [30] omits provisions relating to the constitution and procedure of the Independent Transport Safety Advisory Board.

#### *Rail Safety National Law (NSW)*

93. Schedule 2.13 [4], [5], [25], [26], [31] and [32] update references to the Rail Safety Act 2008 (which is to be repealed by the proposed Act) to references to the appropriate provisions of the Rail Safety National Law (NSW).
94. Schedule 2.13 [6] inserts definitions as a result of the repeal of the *Rail Safety Act 2008*.
95. Schedule 2.13 [12], [17] and [20]–[22] omit references to the *Rail Safety Act 2008*.
96. Schedule 2.13 [15] omits a reference to the delegation of functions under the *Rail Safety Act 2008*.

#### *Savings and transitional provisions*

97. Schedule 2.13 [33] enables regulations containing provisions of a savings or transitional nature to be made consequent on the enactment of the proposed Act.
98. Schedule 2.13 [34] inserts savings and transitional provisions 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

#### *Personal physical integrity*

99. Part 3 Division 1 of the Bill provides that regulations may make provision for the administering of tests, including breath tests, drug screening tests and the taking of blood or urine samples and other body tissues or fluids.

**The Committee will always seek to comment on provisions which impact the personal physical integrity of individuals. Given the public safety objective of this National Law, the Committee makes no further comment on this issue.**

#### *Search and seizure without warrant*

100. In order to implement the National Law, Schedule 2 of the Bill provides for a number of amendments to current New South Wales legislation. Schedule 2 amends the *Passenger Transport Act 1990* to allow a transport safety investigator to enter special premises without consent for the purpose of investigating a notifiable occurrence. The Committee notes that a notifiable occurrence is an accident or incident associated with railway operations that could have caused significant property damage, serious injury or death. Schedule 2 also provides such an investigator with the power to seize any thing directly relevant to an investigation if the investigator believes that such action is reasonable.

**Whilst the Committee notes the coercive search and seizure powers outlined in Schedule 2 of the Bill, the Committee notes the circumstances in which this power may be exercised – namely in circumstances involving notifiable occurrences – and as such, makes no further comment on this issue.**

#### *Reversal of onus of proof*

101. Section 20 of the National Law provides the Regulator with the power to obtain information to assist in the monitoring of enforcing of the National Law. A person must not without reasonable excuse fail to comply with a request from the Regulator. The evidential burden is on the accused to show a reasonable excuse for non compliance. Subsections 226(3), 227(2), 228(2) provide that the evidential burden is placed on the accused with respect to documents that are claimed by the Regulator to be false or misleading or interfering with trains or trams.

**The Committee notes that the effect of section 20 and subsections 226(3), 227(2) and 228(2) of the National Law is to reverse the onus of proof. However, the Committee notes the objectives of the National Law – particularly as they relate to safety – and considers these sections to be reasonable in the circumstances.**

#### *Access to justice*

102. Subsection 217(2) of the National Law outlines that appeals with respect to reviewable decisions must be instituted within 28 days.

**The Committee notes that restricting access to appeals to those instituted within a month of a decision may adversely impact on an individual's right to**

seek recourse in the courts. However, as this relates to National Law the Committee makes no further comment on this issue.

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

#### *Henry VIII clause*

103. Part 4 clause 10 of the Bill enables the making of regulations, for the purposes of the proposed National Law. It provides that the regulations may amend Schedule 1. Schedule 1 is the New South Wales changes and additions to Rail Safety National Law.

**The Committee considers that the inclusion of a clause that enables the amendment of legislation through regulation to be of great concern. Schedule 1 has the power to amend the National Law as it stands in New South Wales. Whilst the Committee appreciates the importance of enabling New South Wales to adapt the National Law to the specific conditions in New South Wales where appropriate, to make such amendment through regulation is arguably inappropriate and the Committee refers this to Parliament for its attention.**

#### *Conferral of subject power to National Law*

104. The object of the Bill is to apply as a law of this State a National Law for rail safety under a national system.

**The Committee is keen to comment in circumstances where a Bill has the effect of referring the power of the NSW Parliament to legislate with respect to subject matter to National Law. The Committee notes that in these circumstances, the National Law takes the form of a Note to the Bill and, as such, is not separate to NSW legislation and may be amended by the NSW Parliament. As such, the Committee makes no further comment in relation to this issue.**

# 14. Statute Law (Miscellaneous Provisions) Bill (No 2) 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

## PURPOSE AND DESCRIPTION

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

## BACKGROUND

2. Periodically, the Attorney General introduces legislation that continues statute law revision.

## 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:
  - *Apprenticeship and Traineeship Act 2001 No 80,*
  - *Australian Museum Trust Act 1975 No 95,*
  - *Biofuels Act 2007 No 23,*
  - *Child Protection (Working with Children) Act 2012 No 51,*
  - *Children and Young Persons (Care and Protection) Act 1998 No 157,*



- *Crime Commission Act 2012 No 66,*
- *Criminal Procedure Act 1986 No 209,*
- *Election Funding, Expenditure and Disclosures Act 1981 No 78,*
- *Independent Commission Against Corruption Act 1988 No 35,*
- *Library Act 1939 No 40,*
- *Local Government Act 1993 No 30,*
- *Museum of Applied Arts and Sciences Act 1945 No 31,*
- *Parliamentary Electorates and Elections Regulation 2008,*
- *Prevention of Cruelty to Animals Act 1979 No 200,*
- *Public Finance and Audit Act 1983 No 152,*
- *Racing Administration Act 1998 No 114,*
- *Residential Tenancies Act 2010 No 42,*
- *Security Industry Act 1997 No 157,*
- *Special Commissions of Inquiry Act 1983 No 90,*
- *State Emergency Service Act 1989 No 164,*
- *Sydney Opera House Trust Act 1961 No 9,*
- *Travel Agents Act 1986 No 5,*
- *Universities Governing Bodies Act 2011 No 51,*
- *Water Management Act 2000 No 92.*

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

## **Schedule 2 Amendments by way of statute law revision**

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

## **Schedule 3 Repeals**

10. Schedule 3 repeals a number of Acts and provisions of Acts and instruments, and restores an Act that was previously repealed.
11. Clause 1 repeals redundant Acts and redundant provisions of an instrument.

12. Clause 2 repeals provisions of Acts, and instruments, that contain commenced amendments to other Acts and instruments or commenced repeals.
13. Clause 3 restores the *Law Courts Limited Act 1977*, which was repealed in 2011 but which has some ongoing application.

#### **Schedule 4 General savings, transitional and other provisions**

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

### **ISSUES CONSIDERED BY COMMITTEE**

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

##### ***Retrospectivity***

16. Item 2 of clause 1.6 of Schedule 1 of the Bill provides that amendments to subsection 57(4) of the *Crimes Act 2012* are taken to have commenced on 5 October 2012 (the date on which the *Crimes Act 2012* was proclaimed). The amendments have the effect of requiring the Crime Commission's Management Committee to provide guidelines to the Police Integrity Commission in relation to the terms of agreements regarding orders made by consent under the *Criminal Assets Recovery Act 1990*. Guidelines are not to be furnished unless the Management Committee has consulted with the Commissioner of the Police Integrity Commission and obtained his or her written agreement to the furnishing of the guidelines.

**The Committee notes the retrospective introduction of the clauses in relation to the Management Committee's preparation of guidelines in relation to consent orders under the *Criminal Assets Recovery Act 1990*. However, as this section relates to the ongoing work between the Police Integrity Commission and the Management Committee of the Crime Commission, the Committee makes no further comment on this issue.**

17. Clause 1.18 of Schedule 1 of the Bill outlines that items 3-5 of the clause commence, or are taken to have commenced, on 1 November 2012. Items 3-5 relate to the applications for licences to work in the security industry. Clause 1.23 of Schedule 1 of the Bill is taken to have commenced on 25 October, and outlines that section 4 of the *Universities Governing Bodies Act 2011* may provide for the commencement of provisions before the day on which the governing body resolution takes effect.

**The Committee notes that these clauses may commence retrospectively. However, as these clauses relate to administrative details the Committee makes no further comment on this issue.**

*Excessive penalties*

18. Item 1 of clause 1.13 of Schedule 1 provides for increased penalties in relation to the failure to vote, by way of amendment to the *Parliamentary Electorates and Elections Regulation 2008*.

**The Committee is concerned that the *Parliamentary Electorates and Elections Regulation 2008* provides penalties in relation to the failure vote. The Committee is particularly concerned that the effect of this amendment is to double the maximum penalties. The Committee refers to Parliament whether this is appropriate in the circumstances.**

*Privacy*

19. Item 1 of clause 1.14 of Schedule 1 amends the *Prevention of Cruelty to Animals Act 1979*, with the effect being that, in relation to the power to enter land, the consent of the occupier of the premises is only necessary in relation to the part of a premises used for residential purposes.

**The Committee is concerned that the effect of the amendment is to construe more narrowly the types of property that require an occupier's consent before entry from 'dwellings' to 'premises or a part of premises used for residential purposes'. However, as the object of the principal legislation is to prevent cruelty to animals, and relates to concerns that injured animals may be placed in a residential dwelling, the Committee makes no further comment in relation to this issue.**

## 15. Swimming Pools Amendment Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Don Page MP
Portfolio	Local Government

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Swimming Pools Act 1992* to require swimming pools to be registered, to provide for the inspection of swimming pools, and the issue of certificates of compliance by local authorities and accredited certifiers. The Bill also makes the registration and certification of swimming pools a requirement before a property with a swimming pool can be sold or leased.
2. The Bill also extends the application of the Principal Act that applied to hotels and motels to all forms of tourist and visitor accommodation, removes certain exemptions from the Principal Act, and makes powers of entry under the Principal Act by council officers consistent with those under the *Local Government Act 1993*.

### BACKGROUND

3. This Bill proposes a series of amendments that have been prompted by the ongoing concerns of young children drowning or near-drowning in swimming pools.
4. The Deputy State Coroner has conducted a series of inquests into swimming pool deaths and has made recommendations to strengthen the *Swimming Pools Act 1992*.
5. The Government has undertaken a two-year review of swimming pools legislation. As part of this process, proposals were developed through a cross-agency working group, and consultations were held with various stakeholders, including Hannah's Foundation, the Royal Lifesaving Society of New South Wales, the Samuel Morris Foundation, the Commission for Children and Young People, and local councils.

### 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 with the exception of Schedule 1 [16] and [26] to the proposed Act (which provide for the inspection and registration of swimming pools) which commence 6 months after the date of assent and Schedule 2.2 and 2.3 (which prevent the sale and lease of premises on which swimming pools are situated unless the pool is registered and certified) which commence 18 months after the date of assent.
8. Schedule 1 [26] inserts proposed Part 3A into the Principal Act. That Part establishes the Register of Swimming Pools and makes the Chief Executive of the Division of Local Government in the Department of Premier and Cabinet (the *Director-General*)

responsible for the keeping and administration of the Register. The owner of premises on which a swimming pool is situated must ensure that certain information about the swimming pool (the *registration information*) is entered on the Register by providing the information to the Director-General (this is expected to be done on-line). Alternatively the owner may give the registration information to the relevant local authority (in most cases the relevant local council) and the local authority is required to enter the information on the Register. A swimming pool is registered when the registration information about the swimming pool is entered on the Register. Proposed Part 3A permits the Director-General to issue a document certifying certain information on the Register for evidentiary purposes. The Director-General may also enter into agreements under which another person or body can exercise the functions of the Director-General under the proposed Part. Authorised persons (being authorised officers and other persons prescribed by the regulations) and the Minister for Local Government are entitled to access information on the Register and that access is to be free of charge.

9. Schedule 1 [27] permits regulations to be made for or with respect to the Register.
10. Schedule 1 [16] inserts proposed Division 5 into Part 2 of the Principal Act. That Division requires each local authority to develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with Part 2 of the Principal Act. A local authority is then required to inspect swimming pools in accordance with this program. Aside from this mandatory program of inspection, an owner of property on which a swimming pool is situated may request the local authority or an accredited certifier (being a person with a category A1, A2 or A3 accreditation under the *Building Professionals Act 2005*) to carry out an inspection. A local authority must carry out such an inspection within a reasonable time if the request from the owner is in writing and states that the inspection is necessary to enable the sale or lease of the premises. If, following an inspection, the local authority, or in the case of a voluntary inspection, the local authority or the accredited certifier is satisfied that the requirements for the issue of a certificate of compliance have been met, the local authority or accredited certifier must issue a certificate of compliance. The requirements for the issue of a certificate of compliance are that the swimming pool is registered and that the pool complies with the requirements of Part 2 of the Principal Act. A certificate of compliance remains valid for 3 years from the date of its issue but ceases to be valid if a direction is issued under section 23 of the Principal Act with respect to the swimming pool to which the certificate relates. A local authority or accredited certifier that issues a certificate of compliance must ensure that the details of the certificate are entered on the Register of Swimming Pools.
11. If an accredited certifier carries out an inspection of a swimming pool at the request of the owner of premises and finds that the requirements for the issue of a certificate of compliance have not been met, the certifier must give a written notice to the owner setting out (amongst other things) the reasons why the requirements have not been met and whether the accredited certifier is of the opinion that the swimming pool poses a significant risk to public safety. If the accredited certifier is of the opinion that the pool is a significant risk to public safety, the accredited certifier must immediately forward a copy of the notice to the relevant local authority. If the accredited certifier is not of the opinion that the pool is a significant risk to public safety, the notice is to be forwarded to the relevant local authority only if a certificate of compliance is not issued in respect of the swimming pool within 6 weeks after the inspection. The local authority is then able

to use its existing powers under the Principal Act to ensure that the swimming pool is brought into compliance.

12. A local authority may charge a fee for an inspection under the proposed Division and any such inspection is to be conducted by an authorised officer. If the local authority is a council it must include information about inspections in its annual report.
13. Regulations made under the proposed Division are able to modify the provisions of the Division in relation to local authorities that are not councils (being the Western Lands Commissioner and the Lord Howe Island Board). Schedule 1 [27] permits regulations to be made for or with respect to inspections. Schedule 1 [13] and [17]–[20] make consequential amendments.
14. Schedule 1 [5], [10] and [11] extend the application of the Principal Act (and in particular the application of Division 2 of Part 2 of the Principal Act) to swimming pools situated on premises on which there is tourist and visitor accommodation rather than just hotels and motels as is currently the case. *Tourist and visitor accommodation* means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes backpackers' accommodation, bed and breakfast accommodation, farm stay accommodation and serviced apartments. Schedule 1 [12] provides an exemption from these requirements for existing pools and for any pools constructed or installed before 1 May 2013. Schedule 1 [2], [9], [14] and [15] make consequential amendments.
15. Schedule 1 [6]–[8] remove exemptions found in sections 8, 9 and 10 of the Principal Act which provide that a child-resistant barrier is not required to surround a swimming pool constructed before 1 August 1990 or situated on a small, large or waterfront property. The exemptions now cease to apply in respect of a swimming pool if a barrier is erected on the premises (between the swimming pool and a residential building) as a barrier to direct access to the swimming pool from any residential building situated on the premises.
16. Schedule 1 [22]–[24] make the powers of entry for purposes under the Principal Act the same as those under the *Local Government Act 1993* when the person making the entry is an officer appointed by a council. The powers of entry are unchanged for authorised officers who are appointed by a local authority other than a council. Schedule 1 [25] makes a consequential amendment.
17. Schedule 1 [3] makes a minor amendment to bring the definition of *swimming pool* in the Principal Act into line with the definition used in the relevant Australian Standard.
18. Schedule 1 [4] makes it clear that a swimming pool is situated on premises on which another building is located if the swimming pool is ancillary to that other building, regardless of whether the swimming pool is on a separate lot.
19. Schedule 1 [21] sets out the circumstances in which a local authority is deemed to have refused to issue a certificate of compliance for the purposes of making an appeal to the Land and Environment Court.
20. Schedule 1 [1] sets out a number of definitions to be used for the purposes of the Principal Act including *relevant occupation certificate* in respect of a swimming pool which means an occupation certificate issued under the *Environmental Planning and*

*Assessment Act 1979* that is less than 3 years old and that authorises the use of the swimming pool.

21. Schedule 1 [28] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.
22. Schedule 1 [29] contains a number of savings and transitional provisions
23. Schedule 2.1 makes a consequential amendment to the *Building Professionals Act 2005* to provide that the carrying out of inspections for the purposes of the Principal Act and the issuing of certificates of compliance under that Act is certification work.
24. Schedule 2.2 amends the *Conveyancing (Sale of Land) Regulation 2010* so that the vendor under a sale of residential premises on which there is a swimming pool must attach to the contract of sale either a valid certificate of compliance for the pool or a relevant occupation certificate together with evidence that the swimming pool is registered under proposed Part 3A of the Principal Act.
25. Schedule 2.3 amends the *Residential Tenancies Regulation 2010* to make it a term of all residential tenancy agreements that if a pool is situated on the residential premises, the landlord agrees to ensure that the pool is registered and that there is a valid certificate of compliance or relevant occupation certificate for the pool and that a copy of the certificate will be provided to the tenant at the time that the agreement is entered into.

## ISSUES CONSIDERED BY COMMITTEE

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

## 16. Tattoo Parlours Amendment Bill 2012

Date introduced	17 October 2012
House introduced	Legislative Council
Minister responsible	The Hon. Mike Gallacher MLC
Portfolio	Minister for Police

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
  - (a) to confer additional powers on authorised officers in relation to entry to premises and the conduct of searches for the purposes of ensuring compliance with the Tattoo Parlours Act 2012 (the principal Act), and
  - (b) to expand the definition of close associate of an applicant for a licence or a licensee to include certain contractors and employees, and
  - (c) to prohibit persons, other than licensed tattooists, from performing body art tattooing procedures on licensed premises, and
  - (d) to make further provision with respect to licences, the information that must accompany an application for a licence, the display of information by licensed tattooists and operators and the conditions that apply to licences, and
  - (e) to make provision with respect to the handling of criminal intelligence material provided to the Administrative Decisions Tribunal (the Tribunal) by the Commissioner of Police (the Commissioner), and
  - (f) to allow the Commissioner to require a licensee or close associate of a licensee to provide certain information in connection with investigations for security determinations about licensees, and
  - (g) to make provision for the making and keeping of records in relation to body art tattooing businesses, and
  - (h) to make other minor amendments.

### BACKGROUND

2. The *Tattoo Parlours Act 2012* was introduced to address concerns about the influence of outlaw motorcycle gangs on the tattoo industry in NSW. More broadly, the Act also introduced a licensing and regulatory regime for tattoo parlours and tattooists generally.
3. This amending Bill seeks to address some issues that have been identified during the operation of the new licensing regime. It confers additional search and enter powers on authorised officers, expands the definition of a close associate of a licensee, and makes other provisions in relation to the regulation of tattoo parlours.



## 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 Tattoo Parlours Act 2012 No 32

6. Schedule 1 [1] expands the definition of *close associate* of an applicant for a licence or a licensee to include a person who is or will be an employee, or is or will be a contractor, in respect of the business carried on pursuant to the licence. The principal Act allows the Director-General to require certain information to be provided relating to close associates of an applicant or licensee and allows the Commissioner to have regard to information relating to close associates of an applicant or licensee when making a security determination.
7. Schedule 1 [2] provides that it is an offence for a person to perform a body art tattooing procedure (whether or not for fee or reward) at licensed premises unless the person is authorised to do so under a tattooist licence.
8. Schedule 1 [3] makes a consequential amendment.
9. Schedule 1 [4] provides that an application for a licence must be accompanied by copies of 3 forms of personal identification (of a kind approved by the Director-General) in respect of each individual identified as being a close associate of the applicant.
10. Schedule 1 [6] provides that a tattooist licence or operator licence comes into force on the date specified in the licence rather than on the date on which the licence is collected by the licensee.
11. Schedule 1 [8] allows the Commissioner to require a licensee or a close associate of a licensee to provide information for the purpose of investigating and determining whether a licensee continues to be a fit and proper person to hold a licence or whether it would be contrary to the public interest for the licensee to continue to hold the licence.
12. Schedule 1 [9] provides that it is a condition of an operator licence that the licensee must not permit an individual to perform any body art tattooing procedure at the licensed premises unless the individual is licensed to do so.
13. Schedule 1 [10] allows for the making of regulations that specify the document or information that a licensee under an operator licence is required to display in licensed premises. It is a condition of a licence that a licensee must comply with the Act and the regulations.
14. Schedule 1 [11] provides that the Director-General must cancel a licence if the licensee does not collect the licence within 60 days of being notified of the grant of the licence. This is in addition to the existing requirement that the Director-General must

cancel a licence if an adverse security determination is made by the Commissioner about the licensee.

15. Schedule 1 [5], [7] and [12] make consequential amendments.
16. Schedule 1 [14] allows the Commissioner to withdraw from a security determination information from a criminal intelligence report or other criminal information that has been included in the determination if the Tribunal determines that the information is not information that the Tribunal is prevented from disclosing in the reasons for its decision. The amendment provides that, in such a case, the Tribunal is to give the Commissioner an opportunity to withdraw the information before making its decision. If the Commissioner withdraws information, the Tribunal is not to consider that information in its decision and must not disclose that information to any person.
17. Schedule 1 [13] makes a consequential amendment.
18. Schedule 1 [16] inserts proposed sections 30A–30C.
19. Schedule 1 [15] and [17] make consequential amendments.
20. Proposed section 30A permits an authorised officer to enter licensed premises, or other premises on which the officer reasonably suspects body art tattooing procedures are being performed, for the purpose of ensuring compliance with the principal Act.
21. Proposed section 30B permits an authorised officer to obtain a warrant to enter premises and conduct a search of the premises for evidence of a breach of the principal Act if there are reasonable grounds for believing that a provision of the principal Act has been contravened.
22. Proposed section 30C permits an authorised officer to exercise certain functions while conducting a search of premises that have been lawfully entered in accordance with the principal Act for the purpose of determining whether a provision of the principal Act has been or is being contravened.
23. Schedule 1 [18] provides that it is an offence to obstruct or hinder an authorised officer who is exercising functions under the principal Act in the course of determining whether a contravention of that Act has occurred, or to fail to comply with a reasonable request made by such an officer in exercising such a function.
24. Schedule 1 [19], [20] and [21] expand the general regulation-making power under the principal Act to allow for the making of regulations with respect to the following:
  - (a) the application of and exemptions from the licence requirements of the Act, including the issue of short term permits to perform body art tattooing procedures, and the conduct of body art tattooing shows or exhibitions,
  - (b) the refund of fees paid under the Act, in addition to the existing power to make regulations relating to the waiver, reduction and postponement of such fees,
  - (c) the making, keeping and inspection of records relating to body art tattooing businesses.

25. Schedule 1 [22] inserts transitional provisions consequent on the enactment of both the principal Act and proposed Act.

### **Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

26. Schedule 2 makes an amendment consequent on the insertion of proposed issues considered by committee.

## **ISSUES CONSIDERED BY COMMITTEE**

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

#### ***Privacy and Oppressive Official Powers***

27. Clause 8 of Schedule 1 of the Bill has the effect of amending the *Tattoo Parlours Act 2012* so as to enable the Commissioner, during investigations as to whether a licensee continues to be a fit and proper person to hold a licence, to require the provision of information and records. This power extends to requiring a 'close associate' of the licensee to comply with such requests from the Commissioner. A 'close associate' includes some who is "or will be" engaged as a contractor or employee of the licensee (clause 1 of Schedule 1 of the Bill).

**The Committee is concerned that the effect of clause 8 of Schedule 1 of the Bill is to provide the Commissioner with the power to compel the production of information and records from individuals who may only be a contractor of the licensee, or "will be" a contractor of the licensee. Whilst the Committee recognises the purpose of this clause with respect to ensuring that a licensee continues to be a fit and proper person to hold a tattoo parlour licence, the Committee refers to Parliament whether the power to compel such information and records from contractors and employees, or individuals who "will be engaged" as a contractor or employee, constitutes an undue trespass on privacy and represents an oppressive official power.**

#### ***Self incrimination***

28. Clause 16 of Schedule 1 of the Bill has the effect of inserting sections 30A-30C of the *Tattoo Parlours Act 2012*. Clause 16 relates to power of entry with and without a warrant, and includes powers to require a person to make copies of documents, produce documents, answer questions and provide documentation. Clause 18 of Schedule 1 of the Bill outlines that a person must not fail to comply with a request, or hinder an officer, with such actions attracting a maximum of 20 penalty units.

**The Committee notes that the effect of requiring individuals to provide documentation and answer questions may impact on any right to silence and right against self incrimination. The Committee refers to Parliament whether such powers are appropriate, particularly in circumstances where a warrant has not been sought.**

#### ***Retrospectivity***

29. Clause 22 of Schedule 1 of the Bill provides that amendments to sections 4, 11, 16, 17 and 27 of the *Tattoo Parlours Act 2012* apply in respect of all licences and applications for licences, whether or not granted before the commencement of this Bill.

**The Committee refers to Parliament whether expanding the definition of 'close associate' retrospectively is appropriate in circumstances where this exposes such individuals to privacy and oppressive official powers, as highlighted above.**

## Part Two - Regulations

# 1. Environmental Planning and Assessment Amendment (Transitional Part 3A Projects) Regulation 2012

### PURPOSE AND DESCRIPTION

1. The objects of this Regulation are:
  - (a) to modify the application of certain provisions of Part 3A (as in force immediately before its repeal) to transitional Part 3A projects, and
  - (b) to prescribe time limits for proponents of Part 3A projects or concept plan applications to comply with environmental assessment requirements.
2. This Regulation is made under the Environmental Planning and Assessment Act 1979, including section 157 (the general regulation-making power), clause 1 of Schedule 6 and clause 10 of Schedule 6A.

### ISSUES CONSIDERED BY COMMITTEE

**The objective of the regulation could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA**

#### *Delegation of Legislative Power*

3. Schedule 1 of the Regulation has the effect of amending clause 2 (1) (c) of Schedule 6A of the *Environmental Planning and Assessment Act 1979* (the Act). Schedule 6A relates to the transitional arrangements following the repeal of Part 3A of the Act. Prior to repeal, Part 3A provided the Minister with certain powers in relation to major infrastructure and other projects. The amendment of clause 2 (1) (c) has the effect of removing a reference from 'within 2 years' to insert instead 'on or before 30 November 2012 or on or before such later day'.
4. Schedule 1 of the Regulation also has the effect of inserting clauses 3D and 3E in Schedule 6A of the Act. These clauses modify environmental assessment provisions and provide time limits for proponents to comply with environmental assessment requirements in relation to Part 3A projects.

**The Committee acknowledges the purpose of the regulation, which is to provide a specified length of time in relation to the transitional arrangements following the repeal of Part 3A of the Act, and does not raise any issues with respect to its content. However, the Committee notes that the effect of the regulation is to amend the principal Act. The Committee also notes that clause 10 of Schedule 6A of the Act provides the regulations with the power to amend Schedule 6A. The Committee notes that legislation is more appropriately achieved by way of an amending Act, rather than by regulation.**

**However, given the savings and transitional nature of Schedule 6A, the Committee makes no further comment in relation to this issue.**

## 2. Road Transport (Vehicle Registration) Amendment (Release of Information to Toll Operators) Regulation 2012

### PURPOSE AND DESCRIPTION

1. The object of this Regulation is to enable Roads and Maritime Services (the Authority) to enter into agreements with other toll operators that authorise the release to those toll operators of the name and address of a registered operator of a vehicle and the identification details of the vehicle. The Authority will be required to consult with the Privacy Commissioner before entering into such an agreement.
2. This Regulation is made under the *Road Transport (Vehicle Registration) Act 1997*, including sections 10 (3) and 14 (the general regulation-making power).

### ISSUES CONSIDERED BY COMMITTEE

The regulation trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

#### *Right to privacy*

3. Clause 14A permits Roads and Maritime Services to share vehicle registration information to private toll road operators.

**The Committee will always comment when a government department is permitted to release a person's private information to another organisation. However, the Committee notes that the release is subject to a registration disclosure agreement that cannot be entered into without prior consultation with the Privacy Commissioner, and that the information shared relates to registration information. As such, the Committee makes no adverse comments.**

# Appendix One – Index of Ministerial Correspondence on Bills

**The Committee is not in receipt of Ministerial Correspondence with respect to Bills.**



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

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